28 February 2019

DPTI Planning Reform Engagement Team
Department of Planning, Transport and Infrastructure
Level 5, 50 Flinders Street, Adelaide 5000
GPO Box 1815,
Adelaide SA 5001

Dear Sir/Madam

Re: Development Assessment Regulations and Practice Directions

Please find below the Town of Gawler’s (Council) response in relation to the draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 (the draft Regulations), as well as the draft practice directions, which support the Planning, Development and Infrastructure Act 2016. We have endeavoured to accumulate feedback from Council Staff and Elected Members to provide professional and meaningful comment regarding the draft regulations.

As a matter of priority, Council stresses the need for development to mitigate the impacts of climate change. In the absence of such expressed provisions within the draft Regulations and Practice Directions, it is critical that these matters are appropriately addressed in the Planning and Design Code, especially with regard to the design criteria applied to Deemed-To-Satisfy and Accepted development.

The below commentary is provided under relevant subheadings:

Relevant Authorities

In relation to Deemed-To-Satisfy developments (without any variation from the Deemed-To-Satisfy criteria) being assessed by level 4 accredited professionals, it is agreed that this will help speed up approval timeframes however, it will result in the further reduction in the quality of residential design in our public realm, a matter of great concern for Council and the wider community.

We are likely to see homes which are designed specifically to meet Deemed-To-Satisfy criteria, further intensifying the cookie cutter approach, as they can be quickly and easily approved without question.

In addition to the above, we are of the impression that all dwellings may fall into the Deemed-To-Satisfy category. What happens in instances where civil infrastructure is impacted, an on-site waste control system is required or overlooking occurs? Or will
Deemed-To-Satisfy developments be similar to the Residential Code and only occur in certain areas? Clarification is sought by Council on this matter.

In terms of draft Regulation 22 (1) (ii) and proposed delegations for Assessment Panels, Council comments that development costs (in this instance $5 million) do not necessarily align with complexity in terms of a planning assessment. A better approach may be use floor area of proposed developments.

In regards to the vesting of assets to Council through the land division process, confusion remains in relation to Council's role and powers in this space. Land divisions, particularly large scale land divisions, are complex and require negotiation with developers around numerous matters including open space, stormwater infrastructure and roads. Land Division Consent plays a pivotal role through the process and clarification is required as to its future role and implications for Council.

**Land Division and the Role of Land Surveyors**

The draft Regulations seek to introduce an accreditation level for surveyors to provide Land Division Consent for Deemed-To-Satisfy applications.

There was discussion in previous material which discussed the possibility of land surveyors being potentially able to acquire a Level 4 accreditation for the purposes of assessing small lot land divisions, however a separate accreditation level solely for land surveyors (division of 1 or more allotments and that may be assessed as Deemed-To-Satisfy development under section 106 of the Act) appears new.

As stated in previous submissions, Council strongly rejects the proposal of the private sector acting as a relevant authority for land division regardless of the auditing mechanisms which are proposed to be introduced.

Land division, for the most part, is a challenging exercise which requires a thorough, unbiased and comprehensive assessment. Council is disappointed to see this avenue still being pursued by the Government even though there has been significant feedback raising the same concerns with this approach.

**Proposed Application Timeframes**

The proposed assessment timeframes provided in the draft regulations are not unreasonable, however performance assessed applications which do not require public notification, any referrals and where an Assessment Manager is the relevant authority would benefit from an extension from 20 business days to 30 business days.

In instances where a relevant authority is inundated with applications and the deemed consent system is in place, the additional time will assist relevant authorities and hopefully support a quality over quantity approach. In addition, this would still be faster than current Regulations which permit 8 weeks.

Council is supportive of draft regulation 35 which provides 5 business days for a number of administrative checks to occur prior to the commencement of any assessment begins. However, Council does wish to raise concern with the following statement in the practice directions under ePlanning, which is related;
"It is anticipated that while the SA planning portal will prompt information from an applicant when lodging an application to assist in its categorisation and allocation to the relevant authority, there will also be an option for the applicant to lodge their application without this information. In such cases, it is likely that the application will be automatically allocated to the assessment manager or assessment panel relevant to the location of the proposed development".

At the outset, the above paragraph from the guide document contradicts much of the material previously released regarding the reforms which suggested that an applicant would not be able to lodge unless all relevant information were to be submitted.

Council opposes the option for applicants to be able to submit applications without the minimum baseline information being provided. If applicants were able to lodge without the predetermined minimum, it would also open up new issues in relation to further information requests and how many times a relevant authority can request additional information. If mandatory information is not submitted, the relevant authority should be given an additional 5 days next time the applicant re-submits.

**Application Information Requirements**

In relation to proposed draft Regulation 36, it is hoped that DPTI can provide some clarification in regards to requests for additional information. The Regulations suggest that a Relevant Authority cannot request further information for a Deemed-To-Satisfy application where the development proposes residential development. In the instance the 'Baseline Information' provided is in fact missing something vital to the assessment of the application, would this be considered a 'request for additional information'?

In relation to the proposed Schedule 8 list and the suggested baseline information for lodgement, Council is of the opinion that civil works plans containing site levels would also be beneficial. Such information can bring to the attention of the planner information which is vital when dealing with matters of retaining and stormwater which, if not assessed appropriately, can detrimentally impact upon developments, neighbouring structures and the streetscape.

A further note on this matter is in relation to the proposed 10 business days in which a relevant authority is required to ask for additional information. In instances where Council planners are referring applications to internal departments e.g. engineering for comment, this may be problematic and would benefit from a slight increase.

**Concept of Deemed Planning Consent and Standard Conditions**

As reiterated via several of Council's planning reform submissions, Council remains strongly opposed to the concept of 'deemed consent'. Council believes it will result in additional financial and resourcing pressure on local government, with expected increased legal fees and staff attendance caused by court action if an applicant serves notice under Section 125 of the Act.

The current "deemed refusal" process works well, promoting negotiation with applicants to achieve good outcomes. The new process will enable applicants to easily serve a notice on the relevant authority, even if the development is unsatisfactory, which will require relevant authorities to defend their position. Council is disappointed to see the State Government remain steadfast on this matter and the concept remain a part of the new system.
Although Council is of the opinion that the ‘deemed consent’ process in fundamentally flawed, in the spirit of being constructive feedback is provided below in relation to the standard conditions in the practice direction which would be applied ‘where appropriate’ in the instance of a ‘deemed consent’ approval:

- References to application numbers should also include plan reference numbers
- Any references to Australian Standards should simply state ‘in accordance with the latest Australian Standard’ instead of referencing specific standards which are subject to ongoing amendments (unless these conditions are to be updated every time an Australian Standard is updated)
- Who determines what good condition is? It should read “to the reasonable satisfaction” of the relevant authority
- If the Code anticipates landscaping, one would assume this is a crucial component of the assessment. It does not make sense to condition the requirement for a landscaping plan, when at that point you can’t really assess it against the provisions of the Code
- Single storey dwellings where overlooking occurs as a result of site works (particularly if retaining walls under 1m are not considered development with a fence on top). Overlooking and stormwater are probably the top 2 complaints that council receive about development applications and it appears poor practice to simply condition these aspects of development
- Where an application proposes commercial or industrial development on a site exceeding 1000sqm – stormwater is an issue for all development with hard-stand surfaces, not just commercial and industrial developments exceeding 1000sqm
- Issues concerning site contamination should be considered at the assessment stage, not just noted. This is a key assessment consideration, particularly for sensitive development, especially residential
- Standard conditions which refer to developments such as retaining walls and water tanks should include provisos to preclude such developments (of size) at the front of dwellings
- Any conditions which raise ambiguity throughout the document need to be further refined and reduced
- Terminology should be more consistent
- Have each of the proposed conditions reviewed by a specialist solicitor to reduce and or refine each condition prior to implementation

Public Notification

In regards to public notification in association with performance assessed development applications, Council is of the opinion that imagery (of the proposed development) is not necessarily required on notification materials placed on the subject site. This is on the basis that imagery is likely to add cost for applicants, reduce the possibility of total or partial reuse, may not be available and could provide imagery of a development which may still be subject to change. Imagery is likely to be available via the QR codes which are proposed to be placed on these consultation signs.

As per Council’s previous submission, Council remains of the opinion that the relevant authority should be responsible for the sourcing and placement of the notice on the subject land for public notification at the expense of the applicant.
It would not be inappropriate to also propose a slight increase in the notification period to allow for potential third party involvement e.g. printers involved to provide the goods required.

It is positive to see that penalties are enforceable via the draft regulations for anyone found guilty of interfering with the sign during the public notification period.

Assessing Separate Elements of Development (in any order)

Clarification has been provided on this matter through this latest suite of consultation material, confirming that it will ultimately be Council's responsibility to ensure that all approvals (Planning and Development) of a proposed development are consistent prior to issuing a full development approval under section 99(3) of the Planning, Development and Infrastructure Act 2016.

Nevertheless and as communicated by Council through previous submissions, the concept of applicants being able to obtain staged consents in any order is seen to be problematic in most scenarios and generally unwarranted. This approach could theoretically save an applicant time if their (hypothetical) application was perfect and presented no issues whatsoever.

However, if an applicant were to obtain building consent prior to planning consent and then, as a result of the planning assessment process, changes to the application were required, that applicant would then be required to go through the process of a variation to the building consent. Such an approach is likely to clutter the system and unnecessarily confuse applicants and it could also potentially increase costs for applicants seeking variations to their applications. If the Department is unwavering on this matter, perhaps it could be limited to Deemed-To-Satisfy applications.

Variations

Council is supportive of administrative fees being charged for minor variations, such variations do require time and resources to assess and relevant authorities should be compensated for this service. Noting that, fees should not be excessive as Council does not wish to discourage applicants from lodging variations simply to avoid fees.

The impending practice guideline which is to clarify what constitutes a minor variation will be a key document. Council believes the greatest tool in this space will be a practice guideline which reduces uncertainty by providing clear detail and does not engender subjectivity.

Exempt Development

Concerning the proposed list of exempt developments, Council provides the following comments.

Fencing / retaining wall combinations – Council is opposed to the proposal of a 1 metre retaining wall with a 2.1 metre fence (total 3.1 metres) being considered an exempt form of development. From a planning perspective this could have a detrimental impact upon streetscapes as such development can completely dominate the frontage of a dwelling, further to this, it could also reduce a relevant authorities ability to guide earth works through the construction phase. Perhaps if the Department and commission wishes to
see such development remain as exempt, it should be limited to the rear of allotments. From a building perspective a retaining wall with a 2.1 metre fence mounted on top of it will be subject to significant wind loads, as a result Council is of the opinion that building rules consent for such development should be required to ensure such structure are of sound construction.

Water tanks – Council is supportive of encouraging the installation of water tanks as this practice can provide environmental benefits, as well enabling greater on site bushfire protection. Nevertheless detail should be provided which prevents waters tanks from being exempt development when located at the front of dwellings due to streetscape impacts.

Tree Houses (Cubby Houses) – Council agrees that small cubby houses (less than 5m²) built for children should not require development approval, however Council wishes to highlight that complaints regarding such structures are not uncommon.

Demolition – Council agrees that, in many scenarios, demolition of certain single-storey buildings should be exempt from requiring development approval. Council is pleased to see that heritage places are not included in this discussion, however further detail regarding contributory items would be appreciated. Council would hope that demolition of contributory items would not be exempt from requiring approval. In instances where demolition is exempt from requiring development approval, a notification of proposed demolition to Council prior to commencement would still be valuable. This would assist in identifying heritage buildings in cases where owners may be unaware of their status.

Exempt State Agency Development

In regards to the exempt state agency development amendments, Council believes they are largely appropriate. However in regards to telecommunications facilities, an assessment where such facilities are to be located in residential zones would be beneficial.

The current system works well for such developments as it generally involves Council planners in identifying a number of potential locations and seeks to find the most appropriate. Case law essentially deems this infrastructure as essential and these applications are almost never refused. Nevertheless, by working with Council, the provider tries to get the best outcome for the local community by minimizing the amenity impacts.

Development Assessed by the Commission

Council does not have any comment concerning proposed changes regarding development assessed by the commission, what is being proposed appears mostly appropriate.

E-Planning

In terms of the e-planning system Council is keen to receive greater detail in relation to records storage, particularly with regards to large scale land divisions, which can generate thousands of documents throughout a projects lifespan. Council is wanting to have a better understanding of what capacity the system will have and what capabilities in house systems will still require.
As discussed above, Council is opposed to the notion of applicants being able to lodge applications via the e-planning system (the portal) without providing all of the baseline information required. This opens up a number of new questions and opposes previous principles, highlighted through the reform process, to generate a system which allows for quicker assessment time due to having all of the relevant information at hand.

Building Regulations

The following comments have been provided by Council’s building staff regarding the draft regulations:

- **Level 4 Building Surveyor** represents a major benefit to rural/regional councils in that more inspections can be undertaken at a reduced cost. The downfall is Level 4 is only able to inspect residential Class 1 and Class 10 buildings including swimming pools. The major concern is the attainment of competency and a Level 4 would still require supervision from a qualified Level 1 – 3 Building Surveyor to maintain a high level of knowledge and support. With the inspection policy still under review, hold points and the potential 100% inspections maybe a Level 4 has the potential to reduce the burden on the current Building Surveyors.

- **25(2) – Accredited Professionals**
  - A new system that has no real effect on the delivery of Council services but may have minimal effect on the budget by way of extra registration fees.

- **25(7) – Independent technical expert**
  - Generally, same requirement as under the Development Act 1993 but has further emphasised appropriate qualifications to the approval of the relevant authority.

- **99 – Notifications during building work**
  - Further notifications have been placed on Council to maintain via the ePlanning system, with the change to the inspection policy will not be determined by Council but by State Government with implementation by Council. The exact changes is unknown as we are still awaiting a draft of the inspection policy for consultation.

- **100 – Essential Safety Provisions (ESPs)**
  - New expiation fees are able to be charged for non-compliance with submissions of the annual Form 3s in a timely manner. Agree with the proposed system but this will require Council to collect more data and as we don’t have a complete register yet, collation of information primarily will utilise more labour at Council’s cost.
• **108 – Certificates of Occupancy**
  
o  Fully support the implementation of the Certificate of Occupancy for Class 1a domestic dwelling but have issues as to determination of when the issuing can occur. Should be when the building is habitable not when all items of the approval area completed eg. paving, landscaping, rainwater tanks which are generally out of builders contract and left to owner to complete once they have the money and time.

• **109 – Statement of Compliance (and Schedule 12)**
  
o  A new expiation fee to apply which may cover some costs to Council to ensure compliance.

• **118 – Authorised officers and inspections**
  
o  At least one building-accredited professional to be appointed as an authorised officer for inspections may be an issue for regional Councils.

Current building regulations are being reviewed to improve consistency and usability.

This process will involve the preparation of new building regulations to better support improved performance, integrity and accountability in the building system, and to address any gaps or areas of emerging need in the building sector.

**What is not in the Regulations**

The guide document contains a summary section which discusses 'what is not in these (draft) regulation'. Council's take away message from this section is that the Department and Commission should aim to minimise the number of separate documents and regulations to be released e.g. fee regulations and referrals.

Our recommendation is that, as and when these regulations are drafted, they be integrated into the one set of regulations, in an effort to minimise confusion and the number documents which practitioners will have to work with once the new system is implemented.

Further to this, the use of Gazette notices to declare classes of development as impact assessed seems awkward and cumbersome for practitioners and should also be included into the regulations.

**Other**

- In relation to part '3F – Significant Trees' of the draft regulations, it should be titled 'Regulated and Significant Trees' to avoid confusion.
- Regulation 3F(6)(a) could benefit from detail concerning the pruning of the tree canopy and the 30% allowance. Additional guidance is desirable to assist in promoting favorable pruning e.g. not creating a lopsided tree.
- There needs to be a definition for the term 'storey', which potentially provides guidance in relation to heights.
- Regarding section 23(3)(a) of the draft regulations, this section should be expanded to include general planning assessment comments.
Where the draft regulations assume notices via the postage system will reach their destination in 3 business days, this is unlikely unless utilising Priority Post. May be safe to assume 5 business days.

Concerning draft regulation 89(5) should be expanded to include street lightning, furniture and landscaping in a manner satisfactory to the Council.

The definition of ‘Home Activity’ from the current set of Regulations should be transferred into the new Regulations.

Council thanks the Department and the Commission for the opportunity to provide feedback again through this transition and drafting period. If there are any questions in relation to this submission please contact Ryan Viney - Manager Development, Environment and Regulatory Services on [redacted] or via e-mail [redacted].

Yours faithfully

Karen Redman
Mayor

Direct line: [redacted]
Email: mayor@gawler.sa.gov.au