

D18/46582

17 October 2018

**Department of Planning, Transport and Infrastructure
GPO BOX 1815
ADELAIDE
SA 5001**

RECEIVED

15 Oct 2018

DPTI

Dear Sir / Madam,

RE: ASSESSMENT PATHWAYS: HOW WILL THEY WORK? TECHNICAL DISCUSSION PAPER

Thank you for the opportunity to provide feedback on the Department of Planning, Transport and Infrastructure (DPTI) Technical Discussion Paper – Assessment Pathways: How Will They Work?

Adelaide Plains Council (APC) provides the following feedback on the Discussion Paper:-

1. Code assessed applications are assigned to an assessment panel, except where the regulations assign an assessment manager or accredited professional. What should be considered when assigning these relevant authorities?

A complexity of development hierarchy will need to be set out to guide the types of development that will fall under each level of assessment based on land use, scale and proposed impacts and whether or not the development meets the relevant provisions of the Code.

Under the current system there is no consistency with regards to the type and complexity of applications assessed by a Council Assessment Panel and many straightforward applications are passed to panels, often for political rather than planning reasons.

Applications assigned to an assessment panel should generally be significant applications in both size and complexity; and/or have impacts which are not able to be entirely mitigated; and/or have required specialist advice or referrals; and/or have a public notification submission which is of relevance and that needs taken into consideration.

Assessment Managers and Accredited professionals should be able to assess all other forms of development.

2. Should the current scope of 'exempt' development be expanded to capture modern types of common domestic structures and expected works?

Yes. Planning Regulations need to move with the times and take into account structures that were not necessarily common 10 years ago.

3. Should the current scope of 'building consent only' development be expanded to allow for more types of common development with minor planning impacts?

Yes. Planning Regulations need to move with the times and take into account structures that were not necessarily common 10 years ago.

4. How should the scope of a 'minor variation' to deemed-to-satisfy development be defined?

A minor variation is one where the scale and/or nature of the variation results in a development which is not substantially different from one that would have been entirely 'deemed-to-satisfy'. The variation must have a negligible impact in relation to itself and the development overall.

It may be helpful to outline examples as to what would *not* be considered a minor variation. For example:-

- The site boundary has changed
- The siting, scale and height of the development has changed significantly
- The use has changed
- The appearance is adversely affected
- Changes to windows or other openings impact on neighbouring properties.

5. Are there some elements of a project that should always be notified if the deemed-to-satisfy criteria are not met (e.g. buildings over height)? Are there other things that don't matter as much for the purposes of notification?

If a development proposal meets all the provisions set out by the Code, then public notification should not be required as the intention of the new system is to focus public submissions at the policy engagement stage. Public notification should therefore occur only when Code criteria are not met. A default to public notification if Code requirements are not met would also act as an incentive for applicants to try to meet the provisions of the Code.

6. What types of performance assessed development should be assessed by an Assessment Panel?

Applications assigned to an assessment panel should generally be significant applications in both size and complexity; and/or have impacts which are not able to be entirely mitigated;

and/or have required specialist advice or referrals; and/or have a public notification submission which is of relevance and that needs taken into consideration. Not all applications that receive submissions via the public notification process should automatically go to an assessment panel for a decision as sometimes the submissions do not raise concerns of a planning nature or the concerns can be overcome by a planning condition (e.g. restricted opening hours).

7. What types of principles should be used when determining 'restricted' development types in the Planning and Design Code?

Development that is considered inappropriate in terms of its land use for a particular zone, and not in keeping with the desired character for the area should be determined as 'impact assessed (restricted)' development. Current non-complying lists can be used as a guide for this, with lists potentially slimmed down to those development types that the Commission thinks will fall within its remit of assessment, potentially based on the development's potential impact and scale as well as its land use. Impact assessed (not restricted) principles for determination will largely be based on the scale and impact of the development – i.e. of major and potentially state-wide importance.

8. How should restricted development be assessed? What other considerations outside of the Code should be taken into account?

Restricted development should be assessed at the local government level rather than the State Planning Commission, with referral for comment to the Commission only. If the 'restricted' development category captures forms of development that are generally not envisaged within the relevant zone, how is the Commission best placed to determine whether the development is suitable for its location? Will the Commission be carrying out state-wide site visits for all applications? How will a planning officer based in the Adelaide CBD decide whether or not a 'restricted' development is appropriate for a location in Wudinna?

If restricted development is to be assessed by the Commission, then consultation with the relevant local Council should be mandatory for all restricted development applications to ensure that any unique local circumstances are taken into account in the Commission's assessment.

9. What scale of development and/or impact types would be suited to the impact assessment (not restricted) pathway?

The same scale of development that currently falls into the 'major development/project' category i.e. developments that require whole of government assessment and are substantial enough to have more than a localised impact.

10. Should accredited professionals/assessment managers have the capacity to determine publicly notified applications?

Yes. The majority of performance assessed development will require public notification so why would assessment managers and accredited professionals not be capable of determining these applications? Such applications are currently the bread and butter of local government planning officers and it would not be practical to have all these applications determined by an Assessment Panel. The Assessment Manager and Planning Level 3 Accredited Professional criteria under the Draft Accredited Professionals Scheme Regulations will ensure that those assessing performance assessed development (which have been publically notified) are suitably qualified and experienced.

However, it would not be appropriate for a private certifier to be determining publically notified applications as there is less control over personal details of respondents and meeting records management requirements than that in local and state government settings.

11. Who should be responsible for placing a notice on the subject land?

Whoever is assessing the application. However, some flexibility in this area may be required for extremely large or regional Council areas where the landowner may be the most appropriate person to erect the site notice.

12. How would that person/body provide/record evidence of a notice being placed on the land throughout the specified notification period?

Whoever places the notice on the subject land would be responsible for taking a time dated photo of the notice on site. However, this person cannot be held responsible if the notice is removed, obscured or defaced before the specified notification period has elapsed. The relevant authority should take reasonable steps for protecting the notice and, if need be, replacing it, however, they should not be deemed as being non-compliant with the public notification period should this occur without any fault or intention of their own.

13. For how long should an application be on public notification (how long should a neighbour have to provide a submission)?

Retain the existing public notification period of 10 business days. From APC's perspective, there have been no issues with this length of public notification period in practice and therefore no evidence to justify why it would be made shorter or longer if the current period is working without issue.

Should a longer period apply for more complex applications?

No. This would add an unnecessary complication to the public notification process in terms of the understanding from the general public. Provided the period for providing comments is

calculated to begin when the neighbour receives the notice (and not when the letter is posted out), 10 business days should be sufficient for even relatively large applications.

14. What type of information should be submitted with deemed-to-satisfy applications? Are the current requirements in Schedule 5 of the Development Regulations 2008 sufficient/too onerous?

APC considers that the current requirements in Schedule 5 of the Development Regulations 2008 provide sufficient information for undertaking an assessment of development proposals and these requirements should be carried forward under the new system for deemed-to-satisfy applications.

In line with Draft State Planning Policies 5 - Climate Change and 14 - Water Security and Quality, the requirement for new dwellings to have rainwater tanks should be added to the requirements for the new deemed-to-satisfy pathway. Currently this is an APC wide policy but it cannot be enforced for applications that meet existing Residential Code provisions as it is not included in Schedule 5.

15. Should relevant authorities (including accredited professionals) be allowed to dispense with the requirement to provide the mandatory information listed by the regulations/code/practice directions?

No, unless the information required under the regulations is not of relevance to the development proposal. If the information requirements are necessary then why should this be disregarded? The new system is trying to create consistency and transparency in the development assessment process. Whilst there should be an element of flexibility to ensure the system operates effectively, there would be very few circumstance where the minimum mandatory information requested would not be required as part of the planning assessment.

16. Should a referral agency or assessment panel be able to request additional information/amendment, separate to the one request of the relevant authority?

Yes. It is quite likely that a referral agency will require further information of a more specialist nature in order to carry out an effective assessment of the development proposal, which would not have been requested by the relevant authority. It would be irresponsible to prevent agencies (or an assessment panel) from requesting information which is necessary to make an informed judgement regarding a planning application.

17. Should there be an opportunity to request further information on occasions where amendments to proposal plans raise more questions/assessment considerations?

Yes. Having restrictions on requesting information which will assist in the comprehensive assessment of a development proposal is not in the best interests of anyone, except potentially the applicant.

18. How long should an outline consent be operational?

Between a minimum of 12 months and a maximum of 3 years.

19. When, where and for what kind of development would an outline consent be appropriate and beneficial?

Outline consents would be beneficial for land uses that are not envisaged in the intended zone so that the principle of the actual use can be approved before too much detailed investigative works for the application are undertaken. Likewise, outline consents can provide certainty to developers for large scale development proposals, which involve significant masterplanning.

Reference in the discussion paper that the outline consent will be binding should be caveated as needing to be subject to a number of relevant reserved matters. For example, while the principle of the use may have been approved, if the applicant does not meet the required standards for design or access etc, then granting of a full planning consent should not occur.

Specific development details could also be covered in an outline consent, such as access, particularly if this is an issue that could be of some controversy within a development. However, most other 'reserved matters' would be assessed under the full application. Reserved matters could include appearance; means of access; landscaping; layout; and, scale.

20. What types of relevant authorities should be able to issue outline consent?

Assessment Managers and Accredited professionals should be able to assess and issue outline consent applications provided the development does not fall under the impact assessment - restricted development category (assuming the Commission is the relevant authority for this category of development).

For outline consent applications that fall under impact assessment - restricted development, the Commission should be the relevant authority for issuing the outline consent. If the outline consent is for a land use not envisaged in a particular zone and this is the reason the application is restricted development, the issuing of the outline consent by the Commission could then allow the full application to be delegated to an Assessment Panel, Assessment Manager or Accredited professional.

Private certifiers should not be allowed to issue outline planning consents.

21. What types of development referrals should the regulations allow applicants to request for deferral to a later stage in the assessment process?

The only referrals that should not be able to be deferred are those which involve activities of major environmental significance. Otherwise, provided the referral does take place, there is no reason to insist that the referral takes place upfront. However, it is unclear why deferral would

be beneficial and improve the efficiency of the development assessment process when a delayed referral could mean the need to make amendments to an application.

22. The Act stipulates that preliminary advice may be obtained from agencies. Should there also be a formal avenue for applicants to seek preliminary advice from the relevant authority?

No. Referral agencies can give formal advice because they are focused on one particular area of a development. A relevant authority has a multitude of matters to assess during a development assessment process and advice provided to an applicant in advance of a full assessment being undertaken needs to be heavily caveated. Applicants would expect certainty from a formal advice meeting with a relevant authority and this is not possible until a full assessment of the development proposal has been made. Informal advice meetings should therefore continue as the norm.

23. Should there be a fee involved when applying for preliminary advice?

APC would support a fee for preliminary advice charged by referral agencies to applicants. There is a lot of time and resources required to provide advice to applicants and to ensure these resources are not wasted with speculative developer queries, a small fee would dissuade this from occurring.

In regards to preliminary advice from a relevant authority, as per the response to Q22, a formal advice option from a relevant authority is not supported. However, if a formal advice option with a relevant authority is pursued, whilst APC would appreciate charging a small fee to cover the resources expended, an applicant would not be satisfied paying for advice which would need to be heavily caveated to cover the authority until a full assessment of the development proposal has been made. Applicants would accept paying to receive a level of certainty from the preliminary advice process but as this is not possible in relation to most complex applications without a full assessment, the relevant authority would be put in a difficult position to make guarantees regarding planning consents should a fee for advice be charged.

24. How long should a relevant authority have to determine a development application for each of the new categories of development?

The existing decision timeframes (except the concurrence timeframes – see Q25 below) are working well and should largely be carried over to the new categories of development:-

Development Category	Proposed Decision Timeframes
Deemed-to-satisfy	2 weeks
Deemed-to-satisfy/ performance assessed hybrid	8 weeks
Performance assessed	8 weeks
Impact Assessed (Restricted)	8 weeks

Building Consent	4 weeks
Land Division	12 weeks

However, due to the new deemed planning consent rules, time extensions should be provided if public notification or a referral is required. For example, under an 8 week decision timeframe for a performance assessed development, this should be extended to 10 weeks if public consultation is required (assuming a notification period of 10 business days). If a referral is required (which has an 8 week decision timeframe), the total decision timeframe for a performance assessed development would extend to 16 weeks.

25. Are the current decision timeframes in the Development Act 1993/Regulations 2008 appropriate?

Yes. However, the concurrence timeframe should be reduced. If a full assessment for a merit application is 8 weeks, why is 10 weeks needed to concur with this decision? This is an excessive delay for applicants which is unnecessary.

In addition, concurrence with the Commission is now required for all land division applications creating additional allotments within the Environment Food Production Areas (EFPAs) (PDI Act Section 7 (5)(a)). This includes merit applications for horticulture and primary production purposes. This is considered to be an unnecessary cost and time delay for applicants who are meeting all the application requirements and are actually undertaking development envisaged and supported by the EFPA legislation.

26. Should a deemed planning consent be applicable in cases where the timeframe is extended due to:

- **a referral agency requesting additional information/amendment**
- **absence of any required public notification/referral**
- **any other special circumstances?**

A deemed planning consent can still be applicable when an application has been referred, however, the extended timeframe must be taken into account when the deadline for the relevant authority issuing the planning consent is met. For example, if the timeframe for issuing a decision for a performance assessed development is 8 weeks and a referral is required, which also has a timeframe of 8 weeks, the applicant will not be able to serve notice on the relevant authority until a period of 16 weeks has elapsed.

If there is no public notification or referral required, deemed planning consent should remain applicable under the standard default decision timeframes e.g. 8 weeks. It should not be reduced. As per the response to Q24, decision timeframes should be extended to account for public notifications and referrals, which will allow deemed planning consent to remain applicable in such circumstances.

27. What types of standard conditions should apply to a deemed consent?

As a general rule, planning conditions should be tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. However, if conditions are going to be blindly attached to a deemed consent, such conditions must meet the following provisions: - Conditions should be necessary; relevant to planning and; to the development to be permitted; enforceable; precise and; reasonable in all other respects.

All development approvals should include a condition which protects existing trees within the subject land and a condition which controls and retains stormwater on-site in relation to the new development.

28. What matters should addressed by a practice direction on conditions?

APC would support a practice direction that sets out model planning conditions for the most common forms of development and other model conditions (which can be amended to fit the circumstance) relating to key aspects of a development. This could include sets of conditions for dwellings, outbuildings and other common structures but also a list of conditions that address issues such as stormwater and drainage; native vegetation and trees; and, appearance e.g. appropriate colours.

Conditions relating to dog kennelling, horse keeping, truck parking, greenhouse horticulture development as well as conditions for development in flood zones and along the coast would also be welcomed.

29. What matters related to a development application should be able to be reserved on application of an applicant?

Any matter which is incidental to the development proposal and not fundamental to the overall assessment of the application should be able to be reserved and this is likely to differ between applications.

30. Should the scope for 'minor variations' - where a new variation application is not required - be kept in the new planning system?

Yes. This is a commonsense and practical approach to dealing with small changes to a planning consent once the development approval has been issued which avoids the unnecessary expenditure of resources processing a new application.

31. Should a fee be required to process 'minor variations'?

Yes. Time and resources of the relevant authority are required to assess and process a minor variation. A small fee – similar to the current base amount lodgement fee would help to cover costs in relation to this matter.

32. What types of Crown Development should be exempt from requiring approval (similar to Schedule 14 under the current Development Regulations 2008)?

The current list of Crown developments under Schedule 14 should be carried forward under the new planning system.

33. Are there any other forms of development/work that should be included in the definition of 'essential infrastructure'?

No. The list set out within the discussion paper appears comprehensive.

Should you require any further information from Council or have any queries regarding this consultation submission, please contact Megan Lewis, Planning Policy Officer on (08) [REDACTED] or info@apc.sa.gov.au.

APC looks forward to further engagement opportunities with DPTI and State Planning Commission throughout the transition to the new PDI Act.

Yours faithfully,



Robert Veitch
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