22 October 2018

Department of Planning, Transport and Infrastructure

By email: DPTI.PlanningEngagement@sa.gov.au

Dear Sir / Madam

Re: Submission on the Assessment Pathways Discussion Paper

Thank you for the opportunity to make a submission on the Assessment Pathways Discussion Paper.

Council is currently in caretaker period for the Local Government Elections and has not formally considered this paper. The discussion paper will be provided to Council for consideration at the first available meeting of the new Council, following which an endorsed submission will be provided to the Department.

Council staff have considered the paper and provide the following comments.

Relevant Authorities

- There are inherent challenges associated with privately engaged accredited professionals determining performance based developments, particularly where this involves balancing the consideration of levels of non-compliance with policy where there may be a trade-off between private development benefit and public/external benefit. The relationship between a private client and relevant authority (accredited professional) differs to that of the relationship between a customer and a public relevant authority (Panel or Assessment Manager) where such trade-offs need to be considered. Subjective judgements that require a balance between the applicant’s desire to maximise development outcomes and the potential external impacts are likely to be more effective when determined by an independent Panel or Assessment Manager.

The discussion paper suggests publicly notified applications may be determined by CAPs, unless the CAPs delegate some of these applications to Assessment Managers. This may have resourcing implications for the Salisbury CAP. The Salisbury CAP holds 8 to 10 meetings per year and considers approximately 20 applications per year, whereas adjoining Council CAPs hold more frequent meetings and may consider over 50 applications annually. An increase in applications determined by the Salisbury CAP as a consequence of this reform will be a significant inefficiency for the Salisbury community and applicants. While the CAP has the option to delegate these applications to staff (the Assessment Manager), this uncertainty and inconsistency across councils should be avoided. Assessment Panels should determine developments where third party representors indicate a desire to be heard by the relevant authority or where the Planning and Design Code prescribes developments of a complex or significant nature to warrant determination by the Panel consistent with the principles of transparency of assessment process.
Council will continue to be the relevant authority for development approval. The new system requires Council to check that all the necessary consents have been issued before issuing the final approval. Given an applicant may choose multiple accredited professionals to assess an application or elements of a development, or defer elements of a development application, Council will be compelled to review the plans for consistency between approvals much more comprehensively than today. While this is an increased workload for Council that may be partially off-set by reduced workloads as a result of assessments by non-council accredited professionals, this level of administration should be recognised in the future system. The cost implications should be borne by the applicant who benefits from this mechanism or a sanction applied to the accredited professional who has failed to ensure consistency in their assessment. (Q1)

The new system will enable an applicant to seek approval for various elements of consent. This concept appears to introduce a complex assessment process and potentially segments applications in a way to inhibit a complete view / understanding of a development and the associated impacts. It is not clear what issue this initiative is seeking to ‘fix’ and this has potentially significant unintended consequences. This new process should be justified with evidence of the issue it seeks to address, and, if justified, supported with a practice direction.

Assessment Categories

- The scope of a minor variation is currently subject to differing interpretation and providing some definition for greater consistency is supported. The greatest certainty will be created by reducing the scope of this interpretation. The current process also has very little transparency. As part of this process, it is recommend that the relevant authority be required to document the decision to grant a minor variation and that should be reviewable in the event of a subsequent enquiry. (Q4)

- Development that is not reasonably expected (land use) or impacts on adjoining land (building height, siting, length on boundary) should generally undergo a public notification process. It is important that the notification does not create a false expectation on behalf of the applicant or representor, given the assessment decision is still made against the Code.

The notification of developments where the Deemed to Satisfy criteria is not met introduces a much finer grain of notification trigger than is generally applied in the current Development Regulations. Combined with the limitation of representations to consider only that element that is not met, it creates a more complicated process for the relevant authority and the representor. It is unrealistic to expect a lay person (representor) to not consider the totality of a development in making a representation, and it will then fall on the relevant authority to determine the relevance or otherwise of all or parts of a representation. It is noted however that this is a matter for consideration in the Planning and Design Code. (Q5)

- Assessment Panels should determine developments where third party representors indicate a desire to be heard by the relevant authority or where the Planning and Design Code prescribes developments of a complex or significance nature to warrant determination by the Panel. (Q6)

Public Notification

- Development applications that undergo public notification should include the opportunity for a third party representor to be heard by the relevant authority and these development applications should continue to be determined by Panels, as currently occurs. It is important for the community to be able to see and participate in the development process for applications that are inherently more complex and controversial.
Assessment Managers should have the capacity to determine publicly notified applications where representors do not wish to make a verbal submission. A number of applications that are publicly notified are currently determined under delegated authority. Assigning all publicly notified applications to Panels will be very inefficient in comparison to existing delegations and practices at the City of Salisbury.

Accredited professionals should not be determining development applications that have undergone public notification given the complexity of such proposals and the community expectation that an independent authority will balance competing interests. (Q10)

- The requirement for placing a notice on the subject land should be with the applicant and evidence of placing the sign on the property should be provided to the relevant authority via notification in the eplanning system with a photo of the sign on the land. It is suggested that consideration also be given for third party contractors undertaking this role and providing evidence to the relevant authority and applicant. There are inherent risks and liabilities for a council to be expected to place such a sign on private property. (Q11)

- It is presumed that the source for the names and addresses for the public notification process will be council’s data or alternatively a central database that is maintained for currency, such as the Lands Title Office. This should be clarified in the regulations.

Assessment Categories

- A relevant authority should be able to dispense with the requirement for mandatory information that is otherwise required in the regulations/code/practice directions and be required to document the reason(s) for doing so. (Q15)

- A referral agency should be afforded the opportunity to request additional information in order to provide informed advice in relation to an application. A standardised schedule of information that the referral agencies could produce to streamline this process is also recommended. (Q16)

- In order to facilitate the full and proper assessment of a development, the relevant authority should be afforded the opportunity to request further information in the event amendments raise more questions / assessment considerations and/or is incomplete. (Q17)

Outline Consents

- Given this is a completely new concept, a limited trial / pilot should be considered before this assessment pathway is made operational. Clarification is required as to how the interrelationships between stages are identified and managed, and how the totality of a development proposal is assessed. Further information is required on how this process will work and an analysis of the benefits or otherwise of this proposal to applicants and the community. This will inform the development types and/or locations in which this pathway should apply. (Q18)

Referrals

- Given that statutory referrals have been reduced to only where important technical information is required and the agency may give direction to the relevant authority, it is not evident that a deferral of this advice would benefit an applicant and the relevant authority may be unable to provide an informed decision in the absence of this advice. (Q21)
Preliminary Advice

- Councils are likely to continue to provide this service to its community given community expectations that the council can be approached for such advice, and that preliminary advice will generally lead to a better development outcome and an improved assessment process. However, as there is an increased risk of ‘shopping around’ for advice, it would be appropriate to consider a fee and/or process to limit this practice. (Q22/23)

Deemed Planning Consent

- It would inappropriate to allow the deemed planning consent option if the application is incomplete due to outstanding information or process such as public notification / referral that is required under the Act which is pending. This would be at odds with the objects of the Act.

It is unclear why this mechanism is necessary for an applicant who engages their own accredited professional in a fee for service arrangement. There is a risk that this may be exploited in such situations.

In broad terms, it is again unclear what this initiative is seeking to ‘fix’, and has potentially significant unintended consequences. Such a proposal should be supported by statistical evidence of the problem as a proportion of total development applications assessed. If the incidence is statistically insignificant, then it is recommended that this proposal not proceed, noting that this will require legislative change.

In respect to CAPs and Assessment Managers, this mechanism is likely to discourage collaborative processes between a relevant authority and an applicant given the risk it poses on the development application outcomes. There is also likely to be less tolerance on outstanding information and applications, which may lead to an escalation in refusals as the relevant authority seeks to manage the risk of ‘deemed approval’ for otherwise appropriate development, as opposed to working through issues with an applicant to seek a mutually acceptable outcome. (Q26)

Variations

- Applicants should be afforded the opportunity to make minor variations to an application and there should be a fee for the relevant authority to process this variation. (Q30/31)

Eplanning

- Council currently offers monthly invoicing and a streamlined process for some regular applicants. The eplanning development application diagram suggests the fee payment is made for each individual development application at the time of lodgement. In order to maintain this service level with regular applicants, the eplanning solution should have flexibility to accommodate such arrangements. This assists with a small business’ cash flow and is a more efficient process for regular users of the system by requiring one monthly transaction rather than multiple transactions and payments each month.

Yours sincerely

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