1 March 2019

Department of Planning, Transport and Infrastructure

By email: dpti.planningengagement@sa.gov.au

Dear Mr Sir / Madam

Re: Draft Development Assessment Regulations & Practice Directions

Thank you for the opportunity to make a submission on the Development Assessment Regulations and Practice Directions.

The relatively complex nature of these regulations, combined with the release of the Planning and Design Code for Outback Areas has meant that staff have not been able to review and brief the elected members of Council on this phase of the reform within the prescribed time for this consultation process. This information will be provided to Council for consideration at the first available meeting, following which any endorsed amendments to Council’s submission will be provided to the Department.

Relevant Authority – Council Assessment Panels

The draft regulations assign prescribed developments to relevant authorities. An analysis of the proposed delegations for Council Assessment Panels (CAPs) for the period 2017/18 has revealed that, compared to the current number of applications assessed by our Panel, there would have been an 1100% increase in development applications assigned to the Salisbury Assessment Panel for determination in that period if the proposed provisions were in place. The CAP would have been assigned as the relevant authority for 105 applications compared to the nine applications the Panel actually assessed during this period. While the number of development applications considered by the Panel for this period was low (the Panel considers an average of 20 applications per year) and the Planning and Design Code may change the assessment pathways for some developments, this scale of increase is inconsistent with the intent of the reform program (faster / simpler development assessment).

This change has significant cost implications for Council and likely increased delays for applicants, notwithstanding that the application may be determined within the new prescribed timeframes.

While a CAP may delegate development applications to an Assessment Manager, there is the potential for Panels to take a conservative position on the extent of delegation based on the framework set by the regulations and a comparative analysis of the level of delegation granted by other similar Panels. Furthermore, a Panel will still have direct responsibility for delegated decisions and their consideration of delegations will be confined to statutory planning considerations. Council delegations are however based on broader considerations such as how delegations can better support economic policy objectives for investment in the city which has been developed over a period of time.

Assessment Panels play an important role where the community participation in the planning process needs to be highly visible. It is recommended that the regulations should only assign the
Panel as the planning authority where a representor wishes to be heard in support of their representation. This is current common practice. It is acknowledged this may require legislative amendment, but this issue is too important not to address at the start of the new development system.

Further assignment of applications should be made concurrent with the implementation and/or amendment of the Code by a council. Councils may then take a considered approach to the nature of applications that should be assigned to the CAP. This is considered to be a more appropriate tailored approach for more complex development, rather than a relatively blunt regulatory mechanism that disadvantages those councils that have taken strategic policy decisions and have implemented best practices to realise optimal planning outcomes for their communities.

In this context the provisions are also inconsistent with the broader State Government agenda to reduce costs and time for business. Council subscribes to this agenda, as evidenced by being a signatory of the State Government’s Small Business Friendly Council Charter. It is incongruous for the State Government to be introducing a framework which will add to the costs and time for business to engage with the planning system.

Increased role Assessment Panels

Assessment panels have been given a greater role in the system such as being notifiable bodies (regulation 33), collecting fees (regulation 33(4)), delegating powers (section 100 of the PDI Act) and responsibility for oversight of staff for this function, deciding if representors may make verbal submission (regulation 53(5), hearing appeals against delegated decisions (section 202 of the PDI Act) and being responsible for building consents & advising relevant council of decisions (regulation 59). It appears that there may be some cost implications for the operation of Panels but this is uncertain at this stage. It is recommended that the Commission give consideration to where the Assessment Panels have been referenced in the draft regulations for administrative purposes and whether this should be reassigned to Council or the Assessment Manager. Furthermore, a publication on the role of Panels in the new system would assist to provide for clarity and consistency across the sector.

Timeframes

Timeframes are acknowledged as an important indicator of the performance of the system but not the only measure. Mandated timeframes, combined with the deemed consent provisions, will result in reduced opportunities for negotiated best practice outcomes and lead potentially to an increase in adversarial approaches. It is recommended that further consideration be given to an appropriate balance between speedy decisions and good planning and development outcomes. Examples of potentially undesirable implications include:

- A development may be deemed minor and thus be removed from the need for public notification but this decision must be made within the verification period. If not, the performance assessed elements will be subject to public notification and thus determination by the CAP. It is likely that relevant authorities will not be able to make a considered decision in this timeframe.

- Request for further information within 10 days for all developments does not recognise the varying complexity of development. Complex developments typically will require input from various disciplines within council and important matters may not be readily identified in this time for the specific development application. This may result in more encompassing requirements for information which would disadvantage both the relevant authority and applicant.
Costs and Resources

The draft regulations have introduced additional cost burdens on councils, have resource implications on councils which will further increase costs and potentially be seen as cost shifting onto councils. It is recommended that a review be undertaken on the overall costs in the new system, and identify where costs can be reduced. It would be appropriate that the State Government's Business Impact Assessment framework be applied to determining the impact of the regulations upon Councils, which are collectively and individually significant businesses, and significant employers and contributors to the State economy. It is further recommended that the Commission engage with local government and industry sectors on the fee schedule to ensure that the fees enable fair and appropriate cost recovery that reflect the balance of private benefit and public benefit inherent in the planning system. Furthermore, the regulations should seek to simplify when and to whom applicants pay fees via the eplanning solution.

Development applications assessed by SCAP

The draft regulations prescribe that comments sought from the CEO of Council must be made to SCAP within 15 business days and these comments are constrained to prescribed matters. The absence of local planning knowledge risks the omission of important information and this should be included as a prescribed matter in the regulations. Furthermore, it would seem appropriate to be consistent in the regulations in respect to the time afforded to councils to provide comments to the Commission to match the time that is afforded to the Commission to provide comments to councils in regulation 82 (30 business days).

Public Notice Sign

It is noted that the regulations prescribe that a public notice sign must be erected by a Council if requested by an applicant but this does not apply to Minister or SCAP. It would seem appropriate to afford the same exemption to councils where they nominate a specific circumstance. Furthermore, the fee for this process should reflect the actual cost to Council.

Given the likelihood of actual or alleged removal of such signs during consultation periods, it would be appropriate for the Commission to provide guidance on the implication if a sign is removed for consistent practice across the state, and via the regulations to remove the prospect of procedural challenge should a sign not be erected on a property or be removed during the consultation period.

Designated flood definition and schedule 8-Plans

The draft regulations require that flood risk areas are identified by reference to ARI or AHD. The minimum requirements for plans in schedule 8 should include a requirement to reference ARI or AHD. This is particularly important given the draft regulations provide that relevant authorities are not able to request further information for prescribed developments. In addition, schedule 8 should also include requirements for rear of lot drainage systems that require engineer designed systems with pumps to dispose of roof and stormwater from the land.

Furthermore, the City of Salisbury Development Plan does not currently contain flood information by reference to ARI or AHD and unless this information is incorporated into generation 1 of the Code, the absence of this information will create a real risk of development being approved without reference to the appropriate information to mitigate the flood risk.

Essential Safety Provisions

The draft regulations and eplanning solution provides the opportunity to streamline the Essential Safety Provisions (ESPs) for all building owners in the state and relevant authorities who are required to have regard to this information in their assessment process. The eplanning solution
should record all data in one central location so that registered practitioners can access previously issued ESPs and note existing performance solutions.

The onus for ESP management should be placed on the building owner and industry could drive the process through insurance renewal requirements and/or sale or lease of buildings, similar to the practice that applies to swimming pools and smoke detectors.

**Schedule 8-Plans**

A certificate of title is the legal mechanism to verify a site and site specific conditions such as easements/rights of way. This should be a requirement for an applicant to supply, given they would have required it to prepare their proposal in any case. The eplanning solution provides the opportunity to streamline this with links to SAILIS.

The scale of elevations and site plans should be 1:200 and the elevations should be 1:100 with sections at 1:50 to ensure detail can be interpreted properly.

**Construction Industry Training Fund**

The draft regulations and eplanning solution provides the opportunity to streamline the development assessment process for all applicants with payments being made directly via the SA Planning Portal as a mandatory requirement. It is recommended that this opportunity be further advanced in the draft regulations and eplanning solution.

**Exempt Development – 3 metre Fence and Retaining Walls**

It is recommended that consideration be given to this exemption in areas with prescribed gradients only. It will generally result in poor development outcomes if this exemption applied to land that has a flat topography.

**Exempt Development - Significant / Regulated Trees on Community Land / Streetscape Renewal Programs**

It is recommended that significant and regulated trees on community land should be exempted development given there are generally no development pressures for the removal of such trees, and the Community Land Management Plans under the Local Government Act 1999, which include community consultation, are used to manage the landscape character of community land.

Council also undertakes an extensive streetscape renewal program. The program aims to deliver an even distribution of street trees with a wide variety of species and age classes across the City. To achieve this aim, careful planning and selection of the streets is undertaken to provide a 50-year streetscapes lifecycle. The process involves extensive engagement with the affected communities. The statutory land use approval that follows this program for affected significant or regulated trees does not provide any substantial benefit to the process, and trees within such programs should be exempted.

**Exempt Development - Significant / Regulated Trees (Willow Myrtle)**

Willow myrtles should be exempt. These trees are typically small in height but have multiple trunks that result in them being regulated or significant. They rarely add to the character of the area and are not notable. They often have severe structural failure risks or disease due to the nature of their trunk system which means removal is warranted. They should be in the list of trees that can be removed without approval.
Relevant Authority – Land Surveyor

The draft regulations and accredited professionals regulations have reintroduced that a Land Surveyor is an accredited professional for the assessment of land divisions that are deemed-to-satisfy developments. This reintroduction appears to be inconsistent with the response provided to the discussion paper by the Department, and the benefits of this assessment pathway is not readily apparent.

Application to Relevant Authority

The use of the term 'lodged' should not be used when the application is given to a relevant authority to lodge the development application on the eplanning solution. This should be changed to accurately reflect the status of the application, such as 'submitted'.

Notice of Decision

For consistent practice and understanding, the time in which notices of decisions are provided to other relevant authorities should be consistent in the regulations, and not be separately distinguished.

Various Requirements to Notify Other Parties / Provide Plans

The draft regulations provide various instances where relevant authorities must notify other authorities and/or provide plans. It is not clear if this will be via the SA Planning Portal in all instances, and this should be clarified and mandated to streamline the development assessment process. In addition, there should be no need to provide plans to another relevant authority given they will be kept on the eplanning system.

We look forward to receiving the Department's response to the issues raised in this submission. Please contact Mr Chris Zafiropoulos, Manager Development Services if you would like further information in relation to this submission.

Yours sincerely

Terry Sutcliffe
General Manager, City Development