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Dear DPTI Planning Engagement

Assessment Pathways Discussion Paper

The *Assessment Pathways Discussion Paper* provides a good outline of the range and nature of assessment pathways and their associated procedural elements.

The review of logic and implications is limited and difficult due to the lack of the key related parts to the package that is critical to defining a designated Assessment Pathway, eg Planning and Design Code policy, Land Use Definitions and Classes, Public Notification criteria etc

On a general note, the nomenclature of the Assessment Pathways are very technical and not self-evident. For simplicity and clarity of meaning a suite of corresponding common use terms should be considered.

However, to address the range of issues, key criteria and provide structure to the submission, the suggested Discussion Points in the Paper have been followed.

Relevant Authorities

DP 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?

Application authority should be assigned according to:

- Complexity of the application;
- Whether public notification is desired;
- Whether the use is envisaged in the zone;

- Performance Assessed applications with use of discretion and judgement should be assessed by a publicly accountable authority with broad balance of community interests, transparency and responsibility, ie Assessment Manager, CAP (Council Assessment Panel), SCAP (State Commission Assessment Panel);
- Accredited Professionals should be limited to technical Deemed-to-Satisfy applications.

Assessment Categories

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

Could be consideration of some expansion for typical minor development, eg fence retaining wall combinations up to 2.1m, porous above fence screening up to 2.7m. Children's cubby houses have been an issue because they are not identified and technically need to be assessed as domestic outbuildings. A suitable limited scale and location scope could be considered.

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

A review of the current criteria for 'building rules only' and 'Res Code' could lead to better scope and tighter definition to potentially expand the limitations to typical, minor and reasonable options.

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

A Deemed-to-Satisfy 'minor variation' is very difficult to quantify and a contradiction. Any 'variation allowance' would simply become a default, rendering the Deemed-to-Satisfy standard unreliable and meaningless. Any variation should be performance assessed in the context of the circumstances.

DP 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?

Any elements which will entail major key policy variation, direct impact and/or undue implications upon neighbouring properties or the locality should be notified, eg development/building on a residential boundary, 2-storey or more (obtrusive scale, overshadowing, privacy implications etc), over-height, under-setback, outside envelope, over-size, under-parked, over-intensive etc.

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

Difficult to be definitive given it is unknown what types of development will be performance assessed pursuant to the Code. Beyond this, based on above principles, the following for example:

- publicly notified development;
- development which is likely to have a substantive impact beyond the site;
- substantial variation from policy;
- substantially different to the existing character;
- any form of medium/higher density and 3 storey residential and/or mixed use development.

DP 7 What types of principles should be used when determining ‘restricted’ development types in the Planning and Design Code?

Difficult to be definitive given unknown nature of criteria pursuant to the Code, but:

- land use compatibility with the intent of the zone;
- extent of possible impacts, eg emissions such as noise, pollution etc;
- size and extent of development and non-envisaged or excessive scale.

Unclear what process will apply to SCAP consideration and as a minimum a formal referral and consultation (noted concurrence to be excluded) with a local CAP and/or Council similar to current comparable non-complying development process.

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

Process and applicable assessment criteria unclear because by default ‘restricted’ development is outside the Code.

Should be rare and not supported unless high merit, limited impacts and assessed in a strategic context towards future desired outcomes – essentially in reality a Code amendment process should occur with applicable strategic, region/locality and due public policy consideration.

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

Proper and orderly planning with a focus on a strategic context towards a future desired outcome. Simply being of economic significance should not be the driver for abrogation and undermining or proper and orderly planning.

Public Notification

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

Only Assessment Managers where no representations, or representations satisfactorily resolved. Still involves application of discretion and judgement that should be through a transparent and publicly accountable process and authority.

Not appropriate for all Accredited Professionals (eg Private Certifiers) given lack of transparency, accountability and challenge.

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

The applicant/owner at their expense and to a specified standard.

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

Time stamped photographic evidence and Statutory Declaration.

Any subsequent evidence of compromise to standard or removal/obscuring could void process, meaning onus should be on applicant/owner.

DP 13 For how long should an application be on public notification (how long should a neighbour have to provide a submission)? Should a longer period apply for more complex applications?

Public Notification needs more nuance than a single simple one-size fits all option. Public Notification should be tailored from site specific, limited, simple short option, eg building wall on 1 boundary, to suitable broader, longer, complex options relative to the scale, complexity and impact of development.

Typical and reasonable period is 10 business days for simple option but for larger scale and complex performance assessed, and for restricted or impact assessed, should be extra time of 20 and 40 business days respectively.

Signage on the subject site should be an identified requirement for all forms of public notification.

Extent and Status of Public Notification

The anticipated limitation of public notification generally and particularly 3rd party appeals is concerning.

As described above there should be a reasonable level of advice and input to developments with variations from policy and impacts to others. Besides the rare obvious 'restricted' categories attracting greater 3rd party appeal rights, there should be thresholds for Code performance assessed development with undue variation from policy (which would need to be clearly defined) to trigger the higher level of public notification and 3rd party appeal rights for natural justice.

Current scenarios include major development in Urban Corridor Zones that are not on the zone boundary requiring no notice, and otherwise if designated to be notified could be any height irrespective of desired 5 storey limit and still attract minimum limited notice and no 3rd party appeal rights.

A better, more tailored, hierarchical and justified regime of public notice that serves natural and reasonable justice for neighbours and the community should be explored by the SPC.

Provision of Information

DP 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?

Current requirements are minimal. These standards and further specific recognition of planning requirements need to apply all applications. Information needs to include everything that is required to assess the application.

General Information Requirements

Currently inadequately specified. Requirements for more complex multi storey, multi dwelling and non-residential development should be included like land use description and detailed operation, overshadowing, overlooking, traffic and manoeuvring, parking, detailed landscaping plans etc.

Assessment Categories

DP 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. Likely to be minimum requirements anyway and quality of application documentation needs to be elevated to facilitate 'streamlined' process.

DP 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. This is important as they have not been responsible for processing the application prior to its presentation, and the request for information would only be for matters pertinent to a proper assessment of the application.

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

Yes this is very important. Also further information supplied may not be complete or sufficient, which should be determined by the relevant authority, whereby further request and stopped clock should apply.

Design Review

A 'Design Review' process in respect to larger, complex, critical and sensitive 'classes' of development would be beneficial. Besides obvious large development, there may be a need for detailed review of new replacement/infill buildings in sensitive heritage and character zones.

It is unclear if this referral would be only to the State Government Architect or local CAP's could also establish a design advisory process.

Fees

For an effective system and pursuit of good outcomes there are a number of steps in the assessment process where considerable investment of time and resources is necessary to ensure consistency, compatibility, integration, compliance etc

The breakdown of development applications into many pieces, eg:

- multiple 'elements' (building components like a garage or building parts like a wall);
- staged consents;
- outline consents;
- reserved matters;
- deferral of referrals;
- consents in any order;
- multiple variations;
- from a variety of authority's (eg Private Certifier, CAP, SCAP);

leaves the ultimate overall Development Approval coordination, complex and substantial checks and effort, primarily to Councils.

While it is continually purported a 'consistency' check by Council is not expected it is more effective and streamlines the system to do so. It avoids significant issues later, where challenges and redress are compounded and construction is seriously delayed if inconsistencies are subsequently exposed, ie during construction.

Community expectation is that Council will be first and primary port of call for query, assistance, explanation, justification, consistency, compliance and enforcement placing extraordinary burden upon already limited resources.

Fees should be built in for all discreet steps to recognise these resulting obligations, facilitation of system by proper checks and balances and to aid recovery of some income for these critical functions given pressure on limited general Council resources, including:

- Preliminary Advice;
- Lodgement – assist non-ePlanning literate to enter into system;
- Consents information review, negotiation, notification and assessment;

- DA issue with integration of multiple components, consistency checks, viz building with planning (and with Codes and procedure criteria);
- Compliance, Mandatory Inspections (planning and building) and Enforcement (more expiations and expedited processes).

Outline Consents

DP 18 How long should an outline consent be operational?

3 to 6 months, and no more than 12 months. Potential conflicts with ongoing consents if policy changes in between.

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

Larger scale envisaged development and land uses. In reality, if the zone policy is comprehensive, clear and rigorous the envisaged development would be readily identified for certainty or investment purposes. It's unlikely an outline consent would be given for any scope beyond policy, without more associated comprehensive details to justify.

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

Assessment Managers, CAP and SPAC.

It is unclear but normal Public Notification should be triggered for all elements and ultimate application based on overall development, eg initial height 'envelope' approval should not obviate further Public Notification for subsequent detail of a building within an envelope of that scale.

Referrals

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

This seems like an unnecessary complication, which would confuse the process, lead to later fundamental changes and just delay the inevitable.

However, if it is deemed appropriate it should be restricted to referrals that are not likely to change fundamental aspects of the ultimate design.

Preliminary Advice

DP 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?

Yes. The submitted information must be sufficient and that the discussed information and plans are stamped to ensure no confusion over what was considered in preliminary advice.

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

Yes. The process, time and decision making is significant. To afford formality to process and the outcome the necessary investment should be recognised.

Decision Timeframes

DP 24 How long should a Relevant Authority have to determine a development application for each of the new categories of development?

Current timeframes may be a starting point but with the, multiplicity of elements in the process and limits on resources they should be closely reviewed and qualified, for example:

- 'Accepted Development' = 2 weeks (potentially shorter dependent on what is required to confirm an Accepted Development in the e-Planning system);
- 'Deemed to Satisfy' = 4 weeks (based on there being no variations from the criteria);
- 'Performance Assessed' = 12 weeks excluding public notification, referrals, preliminary determinations and CAP agenda time-frames.

Assumption clock stops for any non-processing time, eg further information request, inadequate information, negotiation, etc

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

Generally yes but refer to above.

Deemed Planning Consent

DP 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?

No. Deemed consents should only be applicable to Accepted Development or Deemed to Satisfy where criteria is clear and no confusion about the process and decision timeframes (excluding all the stop the clock elements).

There are several issues with this approach. While it reverses the onus onto the authority, if under resource pressure it may well lead to a default position of a refusal, not helping the streamlining of the process. Equally, there are a range of time periods in the overall process that may not help the desired streamlined outcomes of a final effective decision, ie:

- Applicant to serve notice if frustrated;
- authority then has further 10 days to issue consent;

- if there is a Deemed Consent the applicant must wait a month for potential appeals from relevant authority;
- if there is an appeal wait for that process to ensue.

A situation that must be addressed is a Private Certifier, acting as the relevant authority, simply delaying process and forcing a Deemed Consent. Given only the Relevant Authority can appeal such a Deemed Consent it's unlikely a Certifier will appeal in such a circumstance, leading to potential inferior and unchallengeable development outcomes.

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

Difficult to suggest when policy, procedures, governance and nature of these are unclear but normal implementation issues should be addressed, eg:

- Built in accordance with approved documents;
- Site management;
- Stormwater disposal;
- Regulated and Significant Trees;
- Affect upon Heritage Places, on-site or adjacent sites;
- Neighbouring land protections and advice;
- Adherence to Council standards with relation to Council, and others, assets in the public realm, eg vehicle access, street trees, poles etc.

Conditions and Reserved Matters

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

Standard wording for basic conditions, which are applied widely.

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

A key test would logically be matters of consequential detail that can be readily addressed and would not alter the nature or fundamental design of the development, eg:

- Stormwater Management;
- Consents relating to other legislation;
- Adherence to other technical standards, eg car parking design.

Variations

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

Yes. Need to clarify that variations post approval should only be minor and inconsequential, which create no fundamental change, additional impacts beyond the site or change of category.

A Practice Direction or Guide would be valuable to define the nature and scope of 'minor variations'.

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

Yes. Potentially related to development nature, scale and the number of individual elements to reflect and recognise the level of work involved.

Crown Development and Essential Infrastructure

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

Current exemptions are reasonable.

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

There should be a definition of 'essential infrastructure' and clarification of what's included, eg power, gas, water, sewer, communications etc.

Temporary storage and depots required for the work being undertaken are included as exempt development, providing details are supplied together with activity plans to minimise impact on neighbouring property owners and occupiers, roads and traffic etc particularly in built up areas.

It is trusted this feedback assists with the State Planning Commission and department of Planning Transport and Infrastructure refinement and enhancement of the distinction, procedures and effectiveness of the new Planning System development application Assessment Pathways.

Should you have any questions please contact David Brown, Principal Policy Planner, on [REDACTED] or [REDACTED]

Yours faithfully



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