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Department of Planning Transport and Infrastructure
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Submission on SA Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019

Dear Sir /Madam

Thank you for the opportunity to comment on the draft *SA Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019*.

We provide the following comments for your consideration:

General Concerns	Key Issues and Comments
Pre-lodgement	<p>In addition to new assessment pathways and a more consistent set of planning rules, a notable change from the current to proposed planning regime is the implicit emphasis on pre-lodgement output by the relevant authority in order to guide and shape applications to pass through the system as smoothly and quickly as possible.</p> <p>While this approach has some benefits, a primary concern is that Councils will need to reconfigure resources to focus on preliminary assistance and lodgement, rather than development assessment. These preliminary efforts will go unrecognised and uncompensated (through fees) under the proposed scheme, as the extent of the true workload is obscured from official view. In essence, Council does all the hard work upfront, so the system appears efficient and effective.</p> <p>This change in emphasis also fails to acknowledge the reality of development assessment, that there is a fluidity to the assessment process that cannot easily be codified or weeded out through preliminary review. The proposed scheme doesn't account for the endless variety of unexpected issues, complications and delays that inevitably arise during the course of assessment.</p>

<p>Timeframe - Lodgement & Verification</p>	<p>The five-day timeframe prescribed for the lodgement and verification phase is a substantial concern, given the decisions that are required to be made within this phase and the pressure placed on Council staff to process applications accurately and efficiently. The level of knowledge required to make the determinations detailed in proposed scheme will likely require planning expertise, not general administration expertise.</p>
<p>Timeframe - Performance Assessed</p>	<p>One of the biggest changes and challenges introduced by the draft Regulations is the substantially reduced timeframe for assessing performance assessed development (currently known as merit development) from 8 weeks to 4 weeks. The overwhelming majority of applications lodged with the City of Burnside are for merit developments which is likely due to the highly tailored nature of these developments. Given the possibility of deemed consent notices and the difficulty in getting all aspects of an application correct during the lodgement/verification phase, there is a strong likelihood Council will have to contest deemed consent notices in the Courts, which will prove costly.</p>
<p>Signage for Public Notification</p>	<p>The signage requirement of public notification is a strong concern. This process appears unreasonably complex, unnecessary and fraught with challenges. The compliance aspect of this requirement alone is reason for concern. Will there be a requirement for a vendor panel for signage contractors? How do the signage requirements align with the strict assessment timeframes?</p>
<p>Lack of Impartiality in assessment</p>	<p>Council has significant concerns around the expansion of authority to the wider planning sector, particularly around “merit” based judgements in relation to planning matters. The potential for conflict and abuse of power is high. Councils are already challenged by the actions of private certifiers in the assessment and approval of development applications and the distribution of power under the new accreditation scheme would appear to pose further challenges for Councils. To preserve integrity under such an approach would require some sort of audit regime by a government agency and the cost of this should not be shifted to local government.</p>
<p>Lack of Information</p>	<p>Unfortunately, even with the release of the draft Regulations it is almost impossible to accurately gauge how the Planning Reforms will impact Council business, their communities and the natural and built form environments due to the fragmentary way in which documents are being released.</p> <p>For example:</p> <ol style="list-style-type: none"> 1. Public Notification: It is difficult to comment in a meaningful way about the true impacts of changes to public notification when we

	<p>do not know the type of applications (and how many) will be subject to public notification.</p> <ol style="list-style-type: none"> 2. We do not know how many applications will be deemed to satisfy and how many will be performance assessed? The answers to these questions will significantly impact the degree to which the planning reforms will positively or negatively affect applicants, planning authorities and neighbours and the wider community. 3. Significant Trees: We do not know whether the significant tree overlay will cover the entire Council area or select portions of it? 4. It is imperative that the content and intent of the current Burnside (City) Development Plan, Table Bur/4 – Schedule of Significant Trees, is transferred across to the new Code and specific reference to such be made in these regs.
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Issues Pertaining to Specific Regulations:	
Reference (Part/Division or Schedule)	Comments & Concerns
Reg 3F – Significant Trees	<ol style="list-style-type: none"> 1. What is the designated significant tree overlay and what areas will it cover? If only trees within a designated significant tree overlay are regulated/significant trees, how extensive is the overlay? What areas would be excluded? 2. If trees are defined as regulated/significant by means of size, what is the purpose of having a Significant Tree Overlay? 3. The overlay should be called Regulated Tree Overlay, as significant trees are a subgroup of regulated trees. 4. How will regulated/significant trees not included in the overlay be identified or managed? 5. How/where will the City of Burnside Schedule of Significant trees (Table Bur/4) be accommodated in the new system? 6. This section should be expanded to include various exemptions to the rule found elsewhere (i.e. Schedule 3 states not development to remove certain trees). It is currently too difficult

	to track down all significant tree rules. All matters relating to significant/regulated trees should be in the one place.
Reg 3F(4)(a)	<p>The <i>30-year Plan for Greater Adelaide</i> recognises the value and importance of urban green cover through the objective (Target 5) to maintain and increase canopy cover. Recognising the importance of balancing tree protection and development needs, the proposed changes to the Draft Legislation are suggested to ensure that those trees of significance are protected in balance with the needs of future development. The following recommendation is therefore proposed:</p> <p>Amend 3F(4)(a) to read:</p> <p><i>To a tree located within 10 metres of an existing dwelling or an existing in-ground swimming pool, other than a tree within one of the following species (or genus) of trees:</i></p> <p><i>Corymbia (any tree of the genus)</i></p> <p><i>Eucalyptus (any tree of the genus)</i></p> <p><i>Remnant indigenous trees to a locality</i></p> <p><i>Trees registered on the National Trust</i></p> <p><i>Significant Tree Register (Schedule of Significant Trees); or</i></p>
Reg 3F(4)(b)	<p>Sub regulations (1) and (2) do not apply to the following species of tree.</p> <p>Aleppo pines should be included in the exemption list</p>
Reg 22(1)(d)	<p>Surveyors acting as relevant authority for giving planning consent in relation to land division applications – This is very concerning and poses potential risks to Councils. There are multiple aspects and potential unknowns in the land division process, much of which requires access to detailed Council information. To preserve integrity under such an approach would require some sort of audit regime by a government agency and the cost of this should not be shifted to local government.</p>

Reg 22(1)(ii)(F) Prescribed Scheme	<ol style="list-style-type: none"> 1. Assessment Panel will be relevant authority for demolition (whole or <i>part</i>) of a Local Heritage Place (LHP) or State Heritage Place (SHP). 2. Is it now intended that any alterations and additions at the rear of a Local or State Heritage Place that require partial demolition of the rear of the building will be required to go to the Council Assessment Panel? 3. Why can't the Assessment Manager act as relevant authority for partial demolition of LHP or SHP? It is not efficient for applications for alterations and additions go to CAP.
Reg 22 (1)(b) Prescribed Scheme	It is concerning that the private sector will be able to make determinations on any variations to deemed-to-satisfy applications. The potential for "bias" is high. To preserve integrity under such an approach would require some sort of audit regime by a government agency and the cost of this should not be shifted to local government.
Reg 25(2) Accredited Professionals	Accredited professional builder can now grant planning consent for deemed-to-satisfy. What is the reasoning and justification behind this power? To preserve integrity under such an approach would require some sort of audit regime by a government agency and the cost of this should not be shifted to local government.
Reg 25 Accredited Professionals	Can an accredited professional approve variations to approved development and if so, what restrictions apply? Do the variations need to comply with deemed to satisfy criteria or can they be performance assessed? To preserve integrity under such an approach would require some sort of audit regime by a government agency and the cost of this should not be shifted to local government.
Reg 27 Elements of development	Do we have a clear definition of what an element of development is now?
Part 7 - Assessment – processes and assessment facilitation	What is considered a "business day"? If an applicant submits something at 4:55pm does that count as a business day for lodgement/verification/assessment timeframe purposes?
Reg 30 – Application to relevant authority	30 (1)(b) What are the "requirements" of lodging with the relevant authority?
Reg 31(4) – Plans, Fees & related provisions.	If Council agrees to receive an application without a specific item of information prescribed in Schedule 8, the Council has to make a record of this decision and provide reasons for it.

	<ol style="list-style-type: none"> 1. This seems excessive and time consuming and at odds with the minimum requirements for lodgement. 2. If lodgement officers make this determination upfront, are the assessing officers then bound to it? A lot of the time you can only know what information you will need by visiting the site, initiating an assessment, discussing the proposal with the applicant, undergoing public notification or referrals, etc.
Reg 32 – lodging on the portal	The requirement to lodge within 5 days may have resource implications for Councils (depending on number of applications) to ensure that timeframes are adhered to.
Reg 35 - Verification of Application and determination of nature of development	<ol style="list-style-type: none"> 1. The draft Regulations suggest we have 5 days to verify an application once uploaded to the SA Planning Portal, but it is unclear whether this timeframe begins when a hard copy is received over the front counter. 2. We are very concerned that 5 days will not allow enough time to: <ul style="list-style-type: none"> • receive an application in hard copy • raise a lodgement invoice and monitor payment receipt • review all documents provided and determine whether lodgement requirements have been met • make determinations as to whether to forego the need to provide certain items of information and make official records confirming these decisions and the reasoning for them • determine the relevant authority • determine the assessment pathway • determine whether public notification is required • determine whether a statutory referral is required • determine the application fees to be charged and raise invoice • get the docs scanned locally on our system • get the docs uploaded to the portal • enter all relevant application details on the portal, including creating a user account for the applicant and conveying this information to them somehow (probably email) • issue an appropriate notice on the portal (presumably an acknowledgement of lodgement, confirmation of assessment pathway and request for assessment fees) 3. At the City of Burnside, the lodgement process for receiving a hard copy application involves output from three separate departments (Customer Experience, Records, City Development & Safety). It would not be possible to replicate the current processes for the new legislative framework and still provide suitable time to undertake all the above processes.

	<ol style="list-style-type: none"> 4. It is suggested that councils have 5 days to upload any hard copy applications to the SA Planning Portal and then a further 10 business days, from the date the application is uploaded to the portal, to undertake the initial lodgement review and verification stage. 5. Our suggested 10-day timeframe for verification, <i>once fully lodged on the portal</i>, is a realistic reflection of the true workload and the importance of getting these critical initial determinations correct. If people submit paper applications, then an additional 5 days should be provided to allow for internal processing including scanning, record management, uploading to portal etc. (This additional 5 day ‘penalty’ could act as an encouragement for the public to lodge electronically themselves rather than deposit paper documents with councils.) 6. If the State government intends for everything to be electronically processed, our suggested 5-day timeframe for uploading hard copies to the portal is an incentive for applicants to do it themselves.
<p>Reg 35(2) – Verification of Application and determination of nature of development</p>	<ol style="list-style-type: none"> 1. The wording around relevant authority and correct entity is confusing. This should be reworded so that the entity receives and determines the relevant authority otherwise it assumes that whoever lodged the application is the relevant authority, even if this is incorrect. 2. (2)(c) – The wording is confusing. If an application is not required to be assessed against the Code, are we also not required to determine the nature of development?
<p>Reg 36 – Application and Further Info</p>	<ol style="list-style-type: none"> 1. Throughout the assessment process, different aspects come to light at different times and further information might be informally requested as other information is received – this flexibility often achieves better planning outcomes. Under the new Regulations this will be difficult due to the restricted assessment timeframes. 2. Currently it is only possible to have one formal Request for further information. If an applicant varies the plans, can further information be requested again? 3. This will be very problematic when applicants provide information in a piecemeal manner.

<p>Reg 37 – Period for additional info and other matters</p>	<ol style="list-style-type: none"> 1. This section is very concerning. Shortened timeframes are proposed and yet applicants have more time to respond to a Request for Information than a relevant authority has to assess the application as a whole. This may benefit the application but jeopardise the authority in undertaking a thorough assessment and achieving good outcomes. 2. 60 days is too generous for providing further information. Why has the timeframe for this doubled? There is no issue with the current 30-day requirement.
<p>Reg 40 – Regulated and Significant Trees</p>	<ol style="list-style-type: none"> 1. Requirement for increased qualifications is reasonable. 2. Does not specify when Arborist advice may be sought – currently only for significant trees but not for regulated trees – it is assumed that Arborist advice may now be requested for either? This should be clarified.
<p>Reg 41 – Withdrawing/lapsing application</p>	<p>Relevant authority can now lapse an application after 1 year as opposed to the current 2 years. This is a reasonable change.</p>
<p>Reg 43 – Referrals</p>	<ol style="list-style-type: none"> 1. The wording here is confusing. Is it saying referrals must be within 10-days of receiving the application? 2. Timeframes for sending referrals are concerning. Sometimes further information is requested before it is known whether a referral is required, and the timeframes do not appear to account for this.
<p>Reg 47 – Appeals</p>	<p>It may be problematic that no appeal lies against a condition imposed by Relevant Authority in accordance with direction by Commissioner of Highways.</p> <p>Sometimes conditions imposed by DPTI do not facilitate practicable outcomes. If appeals are not allowed, then directions issued by Commissioner of Highways will have to be more specific, rather than standard comments based on internal policy KPI's which may not be specifically relevant to a particular site.</p>

<p>Reg 50 – Notice Requirements and Consultation Signage on the land in addition to letters</p>	<ol style="list-style-type: none"> 1. There are concerns with this requirement. Do timeframes consider how long it will take for the sign to be made? 2. There are many variables in this section. The regulations say that fines will be imposed for tampering with the signs. How will this be monitored? 3. The signage process has the potential to be very messy. There is little information on the logistics and practicality of the notice and signage provisions other than references to how it has worked interstate. More information is needed about this, particularly around management and compliance.
<p>Reg 50 (1) and (2)</p>	<ol style="list-style-type: none"> 1. Suggests there may be more than one form of notification. Is this the case? 2. Is a sign required on the land for all notified applications? Reference to practice direction and separation of Reg 50 (1) and (2) suggests there may be more than one form of notification? 3. Where should the public notification sign be located when the development is occurring on a site within a community title division?
<p>Reg 50 (5)</p>	<p>Sub regulation (4) does not apply if the relevant authority is the Minister or the Commission.</p> <p>Does this mean Council is responsible for the sign even if the Minister or Commission is the relevant authority, or just that the applicant doesn't have the option of asking the Minister or Commission to organise it?</p>
<p>Reg 56 – Time within which a decision must be made</p>	<ol style="list-style-type: none"> 1. All of these timeframes are too tight. The halving of existing timeframes, especially with deemed consent scheme is too restrictive. 2. Also raises issues from an internal resourcing perspective when factoring in leave, absences etc. as well as other expectations such as customer service levels.
<p>Part 8 (74)(2)</p>	<p>How is Council made aware of any fees the Minister has allowed the Council to retain? It is difficult to find any other sections of Regulations or Act that refers to providing notification re fees.</p> <p>Reference should be made to the relevant section which discusses this, or if not included, this information should be added to the clause.</p>

Part 8 (75)(e)	Referral to Council for feedback on EIS is 20 business days. Does this timeframe allow enough time for Council to meet?
Part 8 (79)(1)	No timeframe specified for Minister to provide Council notice of decision. Timeframe should be added.
Part 9 (85)(3)&(4)	What implications may any changes to an assessment have on the conditions of an approval?
Part 14 Land Management agreements	<ol style="list-style-type: none"> 1. Chief Executive must ensure that the agreement is entered in a register kept on the SA planning portal for the purposes of that section within 10 business days after the agreement is received by the Minister under paragraph. Does this responsibility need to be the CEO? 2. Can the Land Management agreement be viewed by anyone for free at the council or on the SA portal or will there be an associated cost?
Schedule 3	Commencement of a third party advertisement should be considered as development, even if it is on an existing sign.
Schedule 4 -	<ol style="list-style-type: none"> 1. Is there an exemption planned for these public notification signs? 2. Will a separate application be required for a public notification sign?
Schedule 4 (4) – Sundry minor operations	<ol style="list-style-type: none"> 1. (4)(1)(f) – Is this saying all fencing in a Historic Conservation Zone is development whether it be a side, rear or road boundary? 2. (4)(1)(h) – Combined height of 3.1m high for a fence and retaining wall is completely unacceptable and far too high for the promotion of good neighbourly relations 3. (n) – Inclusion of screening fixed to structures is good. – Are freestanding screens to be treated the same way? Are screens to be treated like fences or will they remain undefined? 4. Addition of tree houses may cause some concern as they can be contentious if there is the potential for privacy issues and/or overlooking. 5. Addition of screening to pergolas and verandahs for privacy may lead to complaints of unsightly materials or colours.

	6. Do these provisions exclude the Hills Face Zone (H)
Schedule 4	Onus lies with applicant/developer to ensure that the building and/or trees on site to be demolished are not heritage listed or protected. This is concerning.
Schedule 7	Terminology is not consistent within the new system. If any of these items do not require Building Rules Consent, it would be more appropriate to title it “Accepted Building Work”, and have development approval issued straight after planning consent is granted.
Schedule 8	<p>1. There is no specific section or detail required for earthworks associated with proposed with development – only in Schedule 8(9)(4)(a) the following RE ex and fill is mentioned.</p> <p><i>“An application for the assessment of proposed building work in stages must— (a) in the case of an application for consent to the siting of, excavation and filling for, and general arrangements of, a proposed building, be accompanied by...”</i></p> <p>2. The schedule should include a requirement that a Certificate of Title be provided with all DA’s.</p> <p>3. The schedule should include a section which clearly sets out information to be provided for excavation and fill (that is considered development). The following wording has been used in Sch 8(9)(4)(a)</p> <p><i>“Plans and specifications showing the extent of excavation or filling to be carried out”</i></p> <p>4. In addition to a Site Plan, it would be helpful to have section drawings, elevations and calculations detailing the amount of soil for cut or fill included as mandatory information for a DA inclusive of excavation and fill.</p>
Schedule 8 (6)	No arborist report required to be supplied. An arborist report should be provided addressing, health and other attributes of the tree as well as the relevant regulated or significant tree criteria in Planning and Design Code.
Schedule 8 (8)	The word “ <i>certain</i> ” should be removed from title. Additional information should be provided where any development application includes building work that is visible from the streetscape.

If you have any questions regarding Council's submission, please contact Magnus Heinrich, Group Manager City Development & Safety on [REDACTED] or [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Cooper'.

Martin Cooper
General Manager Corporate & Development