



14 March 2019

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DPTI Planning and Reform Engagement Team
Department of Planning, Transport and Infrastructure
Level 5, 50 Flinders Street
ADELAIDE SA 5001

RECEIVED
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DPTI

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

Dear Sir/Madam

Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019

1. I refer to the Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 ("the draft Regulations"). The draft Regulations support the *Planning, Development and Infrastructure Act 2016* ("the Act") to prescribe further detail on the operation of the new development assessment framework, covering planning, building and land division assessment.
2. In addition to the draft Regulations, there are also four practice directions that have been included as part of the draft Regulations consultation. They are in relation to Notification of Performance Assessed Development Applications; Restricted and Impact Assessed Development; Deemed Planning Consent – Standard Conditions; and Conditions.
3. The Society has considered the draft Regulations and practice directions and provides general comment below with respect to the regulations and specific comment with respect to the restricted and impact assessed development practice direction.

General comments

Assessment manager

4. The Society notes that Regulation 24 provides that an assessment manager can consent to an encroachment of a building over or under a public place. The Society seeks further information and clarification as to how this provision will intersect with other property rights in relation to the encroachment area?

Notification of application of tree-damaging activity to owner of land

5. The Society notes Regulation 51 provides that the relevant authority must give notice of an application for a tree-damaging activity in relation to regulated trees to the owner; and give due consideration in its assessment of the application to any submission made by the owner within 10 business days. The Society suggest that further consideration could be given with respect to this

regulation, to ensure that the owner's property rights in relation to the tree/s are given adequate protection.

Consideration of other development authorisations

6. The Society notes Regulation 66 provides that a relevant authority must, in deciding whether to grant a development authorisation, take into account any prior development authorisation that relates to the same proposed development under the Act, and any conditions or *notes* that apply in relation to that prior development authorisation.
7. The Society considers that this provision attempts to give legal status to 'notes' which has not generally been the case in the past. The Society seeks further information as to what is the legal status of 'notes' with respect to this regulation.

Time limits

8. While the Society acknowledges that the inclusion of many time limits is typical of any planning scheme, consistency with respect to time limits is crucial in ensuring that the scheme is not confusing for applicants. The Society supports the use of the term 'business day' as it clearly identifies which days can and cannot be counted in any given circumstances. While the Draft regulations largely refer to 'business days' there are still some inconsistencies. The Society notes an inconsistency in Regulation 120 (which relates to section 225(3)(a) of the Act and Schedule 16) with respect to civil penalties. The time limit of 21 days needs to be clarified as to whether or not this is 21 business days or not.

Drafting issues

9. The Society notes below a number of potential drafting or typographical errors for your information:
 - 9.1 The Society notes what appears to be some cross-referencing errors in Regulation 4, where there is reference to Schedule 8, clause 4(1)(j). There is no clause 4(1)(j) in Schedule 8 contained in the draft Regulations.
 - 9.2 Regulation 40 contains a reference to section 39 of the Act, this appears to be an incorrect reference.
 - 9.3 Regulation 65 contains a reference to Regulation 3F(5)(b), this appears to be an incorrect reference.
 - 9.4 Regulation 132 contains a reference to section 8(3)(b) of the Act, this appears to be an incorrect reference.
 - 9.5 The Society considers that way in which Regulation 37 and Section 119 of the Act are drafted may lead to confusion regarding calculation of the time limit and should be better clarified.
 - 9.6 The Society notes that Regulation 50 and sections 107 and 110 of the Act include different references to notice to the 'public' and 'public generally', the Society considers such terminology inconsistent and suggests this should be clarified.

- 9.7 The Society notes that it is unclear in Regulation 60 as to whom notice of a decision is being given. The presumption is it is to the Applicant, but neither the Act nor Regulations specify this.
- 9.8 The Society notes that the Act refers to "Greater Adelaide", where as the Regulations refer to "Metropolitan Adelaide", this needs to be clarified for consistency.
- 9.9 The Society considers that Regulation 118 needs rewording, as at present it is overly repetitive and in places appears to be missing key words.
- 9.10 The Society notes that Regulation 131 provides that authorised officers are designated persons who may give expiation notices under the Act or these regulations. While authorised officers are defined in the Act, they are not defined in the draft Regulations. The Society suggests the relevant definition be included in the draft Regulations.

Restricted and Impact Assessed Development

- 10. The Society notes the Restricted and Impact Assessed Development Practice Direction. The Society considers that the practice direction does not make it clear whether the environmental impact assessment (EIA) procedures that are to apply are the same for both state and Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* ("EPBC Act") developments, or whether there is meant to be a separate set of procedures for each jurisdiction. It is our understanding that the bilateral agreement was meant to provide for one EIA assessment process at both state and federal level with the state managing that process.
- 11. The Society considers that given the practice direction is meant to guide a range of end users, the process and requirements could be better defined and outlined.

Matters for future regulations

- 12. The Society notes the omission of a number of key provisions from the regulations. Such provisions include those which prescribe accepted development (i.e. where planning consent is not required), activities of environmental significance and the nature of the referral process. It is noted in the Guide to the draft Development Assessment Regulations and Practice Directions ("the Guide") that these matters will be the subject of further regulations. The Society would be grateful for the opportunity to consider these regulations once drafted.
- 13. Furthermore, if it is intended by the Department to remove altogether the requirement for Activities of Environmental Significance (currently set out in Schedule 21 of the *Development Regulations 2008*) to be referred to the EPA for comment that will be a retrograde step and not in the best interests of the environmental health of the state.
- 14. The Society notes that the Guide provides some description as to what are elements of development, in that the term 'element' relates to a component part of a development. The Society considers that there may be some potential issues that arise with respect to this issue and suggests that further information is required with respect to elements of development, in addition to the Guide. For example, information should be provided as to when something is considered an element of development compared to simply a development. Furthermore, information should also be provided with respect to whether a decision about an element is reviewable. The Society suggests that perhaps a practice direction elaborating on the material in the Guide may be a useful guide for applicants, decision makers and the community itself.

15. The Society notes that the Guide refers to a number of additional regulations which also have to be prepared for the purposes of implementing the new planning system. This will add a level of detail and complexity not previously seen in the South Australian planning system. At the time of the introduction of the Act, it was noted by the Planning Minister at the time, John Rau, that the new scheme would be simpler and more efficient. The Society is concerned that by having a number of separate regulations, each addressing separate aspects of the development assessment process, may be contrary to the provision of a more efficient and streamlined system.

Yours sincerely



Amy Nikolovski

PRESIDENT

T: [REDACTED]

E: [REDACTED]