

Doc ID: 339917

17 October 2018



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Dear Rhiannon,

Assessment Pathways Discussion Paper

Thank you for the opportunity to review and provide feedback on the Assessment Pathways Technical Discussion Paper (Discussion Paper).

The commentary herein is provided from a Council and Council Officer perspective rather than responding to all of the broader considerations and related questions as posed at key points in the Discussion Paper.

Background

Council recognises that under the *Planning, Development and Infrastructure Act, 2016* (the Act) it has a continuing role as a relevant authority for building-related matters, administrative responsibilities with respect to production of approvals and inspection/ enforcement responsibilities.

Further Council recognises that it may appoint an assessment panel as a 'designated authority' (either itself or as a part of a Joint Planning Board) with an 'Assessment Manager' appointed by the Council's Chief Executive Officer (in the case of a Council Assessment Panel – CAP). Indeed, in the case of Light Regional Council, this occurred from October 2017.

The need for Accredited Professionals to be appointed in these key roles (all panel members (other than one Council representative) and the Assessment Manager) is acknowledged.

In terms of functionality, it is noted that the Assessment Manager may also elect to delegate their power of assessment to a Council staff member for certain 'low-impact' types of development.

Assessment Pathways (Pathways)

The Pathways explained in the Discussion Paper are generally recognised as a reflection of the related content of the Act.

'Exempt' and 'Accepted'

It is noted that the 'exempt' category is not expressly reflected in the Act, but is a carry-over of Schedule 3 of the *Development Regulations, 2008* (D Regulations). Similarly, 'accepted' development is connected in the Discussion Paper to Schedule 1A of the D Regulations.

The connection of these to their current 'equivalents' is understandable. If going this way, it is noted that some elements of the exemptions/ allowances are technical and/or require adherence to quantifiable measures, so for practical purposes there will remain a need for clarity so that there can be a level of assuredness that projects 'qualify' as either category, which will need to somehow be considered in the implementation as this is progressed.

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Council is mindful that section 144 of the Act outlines that the Commission, “*must issue a practice direction that will require councils to carry out inspections of development undertaken in their respective areas*” which a receiving Council must comply with. There are separate questions that arise with respect to how consultation will occur with the respective Councils for the Commission to ascertain some of the matters to be considered in determining the Practice Direction.

However, in terms of the questions posed in these parts of the Discussion Paper, if these respective categories are broadened/ expanded, which may be practical in terms of the system upgrades being contemplated, Council is nonetheless concerned that there will likely be a commensurate expansion of inspection/ compliance/ enforcement activities required of it, creating a resourcing consideration. Again, land use/ development explanations and policy expression will require adequate consideration and clarity in order to mitigate this possibility.

Code-Assessed Development

It is recognised that any activities involving the CAP (for ‘Performance Assessed’) and associated Assessment Manager (for ‘Deemed-to-satisfy’) will fall into this category. It is further noted that future regulations and the Code will assign development types to these categories and others.

Notification

It is recognised that some ‘Performance Assessed’ components may require public notification, and further that any representations are to be limited to what the decision of the relevant authority should be with respect to granting planning consent of those parts of the development in an assessment of its merits.

With notified applications, Council has a standard (probably common) practice that where third-party representations are received noting objections, the application is considered by its CAP. It is considered that a community expectation has developed in this respect and accordingly this is a practice worth retaining, notwithstanding representors will no longer have the opportunity be heard by the CAP in support of their representation. Similarly, any recommended refusals are normally considered by the Council’s CAP and it is recommended that this practice is also retained.

With respect to the notification, it is considered that placement of the notice on the affected property should be the responsibility of the relevant authority. Ensuring that the notice remains in place should also be the responsibility of the applicant and/ or the relevant authority. Council would be strongly opposed to any suggestion that, due to distance or any other factors, Council/s should somehow become responsible for ensuring that notices remain in position for all sites within its area for the duration of any required notification, regardless of who is acting as the relevant authority.

Minor Variation

Council Officers do not have an opinion or recommendation to offer with respect to the criteria for a ‘minor variation’ in the context of this section. It is considered that this would depend on the type of activity/ proposed construction in particular.

In Council Officer’s previous experience/s, assessment of (for example) residential development against prescribed minimum width, allotment size/s, setback requirements and height limitations has regularly led to the need to consider variations from the established minimum expectations. A seemingly minor variation (e.g. a reduced two-storey setback from a side or rear boundary, or an increased height of a wall section at a reduced setback from a neighbour’s boundary) can sometimes have a significant impacts.

To reduce the likelihood of appeals under Part 16 of the Act, in Council Officer’s view it would be clearer to provide that any variation requires an assessment of that particular component via the Performance Assessment Pathway, as is otherwise provided for.

‘Impact Assessed’ Development

Restricted development

Council Officers note that Council will no longer be responsible for processing non-complying (now ‘restricted’) development and further that Council will no longer have a role in this process (in terms of providing concurrence), unless it is the owner of an adjacent or affected piece of land.

Council Officers observe that the Development Plans presently contain a number of development types that fall into the ‘non-complying’ category, potentially leading to a number of such applications becoming ‘restricted’ in the new system (and therefore the assessment responsibility of the Commission). It is recognised however, that ‘principles’ are to be developed to determine ‘restricted’ development types in the Planning and Design Code (Code) and that, accordingly, the number of

types of restricted development will likely be reduced in the new system from the current 'non-complying' equivalent.

Section 110(10) of the Act is curious in that in its assessment of restricted development, the Commission must take the relevant provisions of the Code into account, but is not bound by these. The previous standard, section 35(2) of the *Development Act, 1993* (D Act), that, "a development that is assessed by a relevant authority as being seriously at variance with the relevant Development Plan must not be granted consent" is therefore no longer a relevant contemporary comparison.

In terms of the questions posed in this section of the Discussion Paper, it is not clear to Council what other considerations (beyond the Code and any related Practice Directions/ Guidelines) can be recommended to guide the Commission's assessment of a restricted development.

Impact assessment by the Minister

Council Officers interpret that this Pathway will apply to 'State significant' development proposals such that would otherwise be subject to *Division 2 – Major developments of projects* in the current system.

Council notes that it will receive an Environmental Impact Statement (EIS) with respect to any Impact-assessed development that is proposed in its area and provided with an opportunity to comment. Council also notes that, if the development proceeds, the Commission will provide Council with a copy of EIS, the proponent's response to any submissions (and or matters raised by the Minister or State Government) and the relevant Assessment Report.

General Comments

Council Officers:

- Generally expect that more informed feedback can be provided once land use codes are determined and the assignment of Code-assessed development to relevant authorities via the regulations is progressed;
- Support clear and consistent parameters for information required to be submitted with applications. Discretionary allowances with respect to supplying mandatory information are not supported;
- Support a practical approach to seeking further information/ clarifying details in order to assist with addressing any unclear aspects. Certainly there should be an opportunity to request further information if plans have been amended sufficiently to require it;
- Council Officers recognise that an 'Outline Consent' is likely to be desirable where a proposal fails to meet one or a number of relevant Code criteria. Accordingly it is considered that the Practice Direction for Outline Consents needs to be specific to a limited number of proposals and types of criteria that can be considered in this way. Further, a sufficient level of detail is essential to assess the (presumably) non-conforming component that is proposed. Outline Consents should have a limited life-span and should be conditional and voided if any design elements subsequently change;
- Consider that assessment timeframes should be at least consistent with the Development Act/ Regulation equivalents. Certainly adjustments need to be allowed for relevant special circumstances, such as a referral agency needing more information and in light of the new 'deemed approval' approach;

Thank you again for the opportunity to provide comments with respect to these matters. If you have any questions or would like to discuss the content of this letter, please contact the undersigned at [REDACTED] or on [REDACTED]

Yours sincerely,



Craig Doyle
General Manager – Strategy & Development