From: Anthony Marroncelli [redacted]
Sent: Thursday, 28 February 2019 4:44 PM
To: DPTI:Planning Engagement
Subject: Development Assessment Regulations and Practice Directions - Submission City of Holdfast Bay
Attachments: City of Holdfast Bay Submission - Development Assessment Regulations.pdf

Follow Up Flag: Follow up
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Dear Sir/Madam,

Thank you for the opportunity to provide comments on the Development Assessment Regulations and Practice Directions. Please find attached the comments from the City of Holdfast Bay.

Please contact me should you have any queries regarding the submission.

Regards,

CITY OF HOLDFAST BAY

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Relevant Authorities		
Assessment Panels to self-determine whether they assess development applications where public notification is required.	There is a degree of subjectivity that provides great uncertainty through this approach. Leaving this decision to individual Panels will create inconsistent assessment pathways throughout the Metropolitan area. The Regulations need to clearly define whether the Panel is the authority or not.	The Regulations need to clearly define whether the Panel is the authority or not so that communities can have confidence and certainty in the assessment pathways for each type of development application.
Accredited professionals who are qualified land surveyors would be able to assess land division applications for planning consent where such land division is deemed-to-satisfy.	Under the current system, only councils (either through their Panel or under delegation) have the authority to assess land division applications. Opening the approval process to the private sector is fraught with danger.	The private sector should not be authorised to assess and approve land division applications, irrespective of their complexity, as decisions relating to density and allotment patterns should be left to local government to determine.
Private certifiers (accredited professionals) appointed as the relevant planning authority for minor variations to existing development approvals.	Empowering private contractors to 'revisit' and grant an approval for a variation to an application previously assessed and approved by a Council Assessment Panel or delegate could lead to poor development outcomes.	Only the original assessing authority (i.e. Council) should consider applications to vary its own approvals, as a means to ensure consistent decision making and also prevent the approval of a series of incremental concessions by a private certifier.
Definitions		
Changes to the definition of the various development categories are proposed.	The amendments primarily change the terminology at this stage, but in the absence of knowing the types of development that would be assigned	Further details are required as to the types of development that would be assigned to each definition, as only then can an informed comment be

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	to each definition, it is impossible to determine the merits of such a move.	provided on the merits of the various classifications.
Application Timeframes		
Approval must be issued within 10 business days for 'deemed-to-satisfy' proposals.	A decision within 10 business days is consistent with timeframes currently achieved for minor development applications.	A decision within 10 business days for 'deemed-to-satisfy' proposals is considered reasonable.
Approval must be issued within 20 business days for 'performance assessed' applications where no public notification and no referral is required.	A decision within 20 business days, which although consistent with average timeframes currently achieved for merit-type development applications, may not always be achievable as there will be applications that are complex and require referral to council's external agents (e.g. arborist, traffic consultant, heritage advisor, legal advisor etc).	Some flexibility is required, having regard to Councils that undertake comprehensive assessments and dutifully refer applications to experts in heritage, traffic and arboriculture (which takes time).
Approval must be issued within 40 business days for 'performance assessed' applications where no public notification is required but where agency referral is required, or where the Council Assessment Panel is the authority	A decision within 40 business days, which although consistent with average timeframes currently achieved for development applications that are determined by the Panel, may not always be achievable as the Panel meets monthly, so the overall timeframe is dependent on the timing of the receipt of an application.	Some flexibility is required, having regard to the timing of Council Assessment Panel meetings, and the unnecessary cost of hosting 'special meetings' to accommodate the tight timeframe.
Approval must be issued within 60 business days for 'land division' applications where public notification required.	A decision within 60 business days is consistent with timeframes currently achieved for land division applications.	A decision within 10 business days for land division proposals is considered reasonable.

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65 business days for 'performance assessed' applications where public notification required.	A decision within 65 business days, which although consistent with average timeframes currently achieved for notifiable development applications that are determined by the Panel, may not always be achievable as some written objections require an informed response with specific input from external experts.	It is imperative that responses to written representations are of a high standard so as to properly inform the assessment process. Some flexibility is required, having regard to the need for some stakeholders to engage experts in the preparation of a response for council's consideration.
Approval must be issued within 90 business days for 'restricted' applications where public notification required.	A decision within 90 business days is consistent with timeframes currently achieved for equivalent *'non-complying'* development applications.	A decision within 10 business days for 'restricted' proposals is considered reasonable.
Additional Information Requirements		
Level and quality of information required with development applications to be prescribed (i.e. not at the discretion of councils).	The level and quality of information established by the baseline information using basic guidelines as an all-encompassing guide. This approach does not cater for applications that require unspecified accompanying information.	It is imperative that if the objective is to make quality decisions and provide quality plans for Councils to assess and the community to view, then the standard of information required with development applications needs to be determined and guided by the relevant planning authority, and specific to the development application under assessment, not by a generic guide.
Introduction of a maximum timeframe of 10 business days in which to request information from an applicant.	It is unclear whether this timeframe applies from the moment a council receives an applications in the mail or only from time that it is uploaded to the portal.	To avoid any confusion as to when timeframes start and end, the responsibility for lodging applications to the portal should not rest not rest with Councils. Otherwise, 10

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		business days is considered reasonable.
Councils have a maximum period of 10 days to request further information from an applicant, but conversely must, in return, allow a lengthy and uncertain period for the receipt of that information from the proponent (60 day period is filled with disclaimers which stretches to 12-months, and even then Councils must demonstrate sensitivity to the developer's needs and wants before finally lapsing an application).	The process is unfairly tailored to suit and satisfy the developer, forcing Councils to rush their decision in 10 days whilst granting indefinite grace to proponents. Bearing in mind that councils are reliant on a poorly formulated Schedule 8 to guide developers with respect to the quality and level of information required.	There should be a broader timeframe for Councils to properly consider an application and then request information from a proponent. There should also be a maximum 60 day period for the proponent to provide the additional information requested by the council. The minimum requirements proposed under Schedule 8 should be revisited to give Councils a fighting chance to receive quality information from the outset.
Councils have one opportunity for requesting further information. The application may then be deemed approved (upon serving of a notice by the developer) without actually having undergone a planning assessment. The onus to challenge the defacto approval then rests with Council through the Court.	Further requests are geared to solely serve the proponent and are a recipe for poor planning decisions (i.e. decisions by default).	It is untenable that a developer dictates whether information required by a Council to make a proper assessment is provided or not. A planning system must not allow developers to dictate the terms of an assessment and take advantage of loopholes where approvals are issued by default.
Public Notification		
Placement of a notice on the development site inviting comments from neighbours and passers-by.	This change requires that a sign I placed on the site of the proposed development. This is standard practice elsewhere across the country, as it provides those who will be most interested in a proposal - the locals -	Placement of a notice in lieu of a newspaper advertisement is a more transparent and sensible approach, which is supported.

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	visibility on what is proposed in their local streets and neighbourhoods.	
Prescribed 60-metre notification range to neighbours.	Properties within 60-metres of the site must be formally notified by post. The new sign and notification process will replace newspaper advertisements, which can be easily missed.	A 60-metre notification range is consistent with current legislation, although clarity is required as to the definition of 'adjacent' land, which differs in the Draft Regulations.
Changes to the timeframe for neighbours to submit a representation.	The time that the community has to have their say for complex applications is 20 business days; and for more straightforward applications, the community will have 15 business days.	The 15 and 20 day periods represent an increase to current notification timeframes, both of which are viewed as reasonable increases.
Responsibility for notifying the public.	The Draft Regulations place the responsibility for notifying the public with the developer, unless council is requested to do so.	It needs to be made clear whether developers or Councils take responsibility for notifications. This is important from a consistency point of view, but also to ensure that the development is accurately described to the community.
Councils must make plans that are the subject of public notification available for copying.	The whole premise of the SA Planning Portal or ePlanning (paperless planning system) was to create a 'single contact point' for applications, and presumably for those wanting to view plans also.	Prospective representors should be given access to view and download information online. This will ensure greater efficiencies and transparency, and reduce the administrative costs on Councils in extracting and printing plans.
Councils must forward copies of the representations to the developer.	Presumably representations must be uploaded directly to the portal and	Councils should not be required to collect/collate/distribute representations for the developer

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	therefore available for access by the proponent.	when the portal is designed to accept and distribute representations directly. The system should be designed to streamline assessments, yet this step places the burden and responsibility on Councils. Bearing in mind that Councils are forced to contribute vast amounts of income to create and maintain the portal on behalf of the development industry. The portal must work for Councils too.
Installation of notification signs.	Not all sites that are the subject of a development application are in the ownership of the applicant/proponent. Many applications are speculative, contingent to an approval before changing ownership.	Clarification and direction is required as to how signs can be installed on an unassuming person's property, and how council then manages access rights over such land (particularly where resisted by the landowner). If the alternative is to place the sign on the footpath, Council's liability needs to be understood.
Assessing elements of development separately		
Approvals can be issued in any order, including the issuing of building consent prior to planning approval.	It is unclear whether a planning authority would be bound by the preceding decisions of a building certifier. If a building consent is found to be flawed against a planning assessment, then what?	Presumably the intent of this change is to hasten development approvals through concurrent assessments, irrespective of the confusion and uncertainty caused to planning authorities. This is a deeply flawed approach to what should be a planning reform agenda that supports

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		orderly development decisions. The current practice of issuing planning approval prior to issuing building approval is sequential, and limits the number of inconsistencies.
The Council will ultimately be responsible for ensuring that all elements of the development have been approved before issuing development approval.	Councils are given little input to decisions but burdened with full responsibility for the final outcome.	Councils will be required to put all the pieces of this messy puzzle together (where private planning and building certifiers make separate decisions), presumably carrying the responsibility for challenging any inconsistencies through the court system. At least the current system provides an orderly progression from planning to building assessments and therefore should be retained.
Building Assessment Matters		
The most significant change to building assessment matters in the Draft Regulations (compared to regulation 83 under the *Development Regulations 2008*) is the requirement for a certificate of occupancy for class 1a buildings, which are single dwellings.	This change will enable owners to receive confirmation that their dwelling is suitable for occupation upon completion.	This change is supported as it will bring South Australia into alignment with other jurisdictions, whilst providing owners with peace of mind that their dwelling is fit for habitation.
Exempt Developments		
Certain developments have been exempted from requiring a development application, including: combined fence and retaining wall to	These developments will have negligible impacts and are standard, expected development commonly undertaken.	The exemptions have merit, although the maximum fence height is quite high. It is important that the system empowers neighbours to be involved

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3.1 metres in height, demolition of certain single-storey buildings, children's cubby houses and tree houses, small verandas, aviaries, cat runs and wood fire pizza ovens.		in the choice of fencing materials/colours.
Exempt State Agency development		
This change allows all classrooms and learning areas to be exempt (subject to conditions), not just those of a temporary/transportable nature.	It is unclear what has prompted this amendment, but given that these classrooms will house a large number of young people, there is a risk that exemptions from a full and comprehensive assessment will result in deficient building standards.	It is imperative that buildings designed to accommodate the most vulnerable members of our community (the very young and very old) undergo the highest standards of assessment. Granting exemptions to classrooms and school buildings is not supported.
Development assessed by the State Commission Assessment Panel (SCAP)	'Restricted development' is effectively the new definition for the current 'non-complying' development. As per 'non-complying' development, the SCAP is assigned as the relevant planning authority.	In the absence of draft land use policy (i.e. the Design Code), it is difficult to provide comments as to whether there is sufficient scope within the meaning of 'restricted development' to ensure that inappropriate proposals for the use of land is assigned to the highest assessment category (as is the case with the current 'non-complying' lists in Council Development Plans).
	'Impact assessment' is effectively the new definition for the current 'major development' definition. These are typically developments of major economic, social and environmental impact (i.e. akin to the Adelphi Terrace hotel proposal, which was	With the Governor seemingly no longer involved in the decision making process for major developments, it is essential that an accompanying Environmental Impact Statement is provided to local Council's for comment prior to a decision by the

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	assigned 'major development' status). The main change here is that the Governor no longer appears to have a role in the decision, with the Planning Minister and SCAP bearing responsibility for the assessment and decision.	Minister. The public must have confidence that the assessment process is not politicized.
Building Regulations		
Provision of Essential Safety Provisions (ESPs) within prescribed timeframes	This will address the lapses of the building industry providing documentation to council's within a reasonable timeframe.	The prescribed timeframe for the provision of ESPs is supported).
New notification and inspection system will be integrated with the ePlanning system.	It is imperative that the inspection process is transparent and available for viewing online.	Inspections integrated with the ePlanning system is supported.
Glossary of terms		
Adjacent land in relation to other land, means land that is no more than 60 metres from the other land.	The definition is significantly different to that found in the current Development Act 1993, which prescribes land that abuts on the other land or that is no more than 60 metres from the other land and is directly separated from the other land only by— (i) a road, street, footpath, railway or thoroughfare; or (ii) a watercourse; or (iii) a reserve or other similar open space.	Clarification required for the purpose of the notification threshold, whether it is to be taken as a 60 metre radius from the site (if so from what part of the site).

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Approval by default		
Approvals can be assumed by default if certain assessment timeframes are not met.	If a relevant authority does not decide an application for planning consent within the prescribed time, the applicant may, before the application is decided, give the relevant authority a deemed consent notice that states that planning consent should be granted.	Councils must be afforded sufficient time to properly assess a development application. Complex applications often require referral to external experts, which takes time. There needs to be greater thought given to redressing the imbalance in the Draft Regulations where the push for rapid assessments outweighs the pursuit of quality decision.