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**The State Planning Commission
GPO BOX 1815
ADELAIDE
SA 5001**

Dear Sir / Madam,

RE: DEVELOPMENT ASSESSMENT REGULATIONS AND PRACTICE DIRECTIONS

Thank you for the opportunity to provide feedback on the State Planning Commission's draft Development Assessment Regulations and Practice Regulations.

Adelaide Plains Council (APC) provides specific feedback in relation to the *Draft Development Assessment Regulations* in Attachment 1, where further amendment to the Regulations is sought. Attachment 2 provides APC's feedback in relation to the *Draft Practice Direction: Notification of Performance Assessed Development Applications 2019*.

Although highlighted in Attachment 1, APC would like to reemphasise the importance of ensuring there are no references to 'District Council of Mallala' in the new Development Assessment Regulations, the emerging Planning and Design Code and any Practice Directions or relevant documentation relating to the new planning system. The name 'Adelaide Plains Council' was formally gazetted on 22 September 2016 and no reference to the old Council name should be present in the new planning system documents, as has been noted in the draft Development Assessment Regulations.

General comment is made below in relation to key areas of change as summarised by the *Guide to the Draft Development Assessment Regulations & Practice Directions*:-

Relevant Authorities

APC is pleased to note that private certifiers and land surveyors are now largely limited to undertaking deemed-to-satisfy assessments only. Concern remains that private certifiers will have a conflict of interest when making judgement based decisions as to whether or not an element of a development proposal can be considered as a minor variation.

In relation to the assessment of performance assessed development, there are concerns that if a CAP decides not to delegate any of its authority to a Council Assessment Manager, then

Councils will be under a significant resource burden dealing with the increase in applications that will need to be taken to a CAP meeting for decision. This burden would both remunerative in terms of additional CAP fees and in staff time with more CAP reports and administration required. There will also be additional issues in relation to meeting timeframes for decision making when these are reliant on presenting the application to a CAP.

Application Timeframes

APC is pleased to note that the clock for the assessment timeframes will not start until all the mandatory information for the application has been submitted. Once the relevant authority has checked the application (within the specified 5 business days), if the application is found to be lacking or incorrectly categorised, it is presumed that the application is put on hold until these issues are resolved. The relevant authority will then have an additional 5 days to check the application is correct before the clock starts?

Public Notification

See specific comment in relation to the draft Practice Direction: Notification of Performance Assessed Development Applications 2019 (Attachment 2).

Assessing Separate Elements of Development (in any order)

As identified in the 'Guide to the Draft Development Assessment Regulations & Practice Directions' (page 18), it makes good sense to apply for planning consent prior to building consent. Allowing consents to be acquired in any order risks additional delays to the applicant if their building consent needs amending as a result of the planning consent.

ePlanning

APC supports the anticipated fee to cover the administrative costs for an authority to lodge an application on the SA planning portal on the applicant's behalf. This is of particular importance to regional and small peri-urban Councils which will include a larger than average number of applicants who will not have access to the portal or will still favour hardcopy applications.

It is noted that there will be an option for an applicant to lodge their application without the mandatory information required. As per the comments made above, it is assumed that even if an applicant chooses to ignore the online prompts and submit their application, the clock will not start for the relevant authority until the mandatory information is received.

It may be helpful to separate the language used to avoid confusion about when an application becomes 'live'. For example, using the term 'registered' until an application has been checked by the relevant authority as being complete and categorised correctly. Once the clock starts, the application can be considered formally 'lodged'.

Definitions

It is understood that all definitions are being relocated from the Development Regulations to the Planning and Design Code (though it is noted that some definitions remain in the draft Development Regulations). It is important that any key terms currently in the existing Development Regulations 2008 and referred to in the new Draft Development Assessment Regulations or Code will be included. For example, the definition of 'natural ground level' set out in the Development Regulations 2008 Part 1 (3)(5) is not included in the Draft Regulations although reference is made to natural ground level within the Schedules of the Draft Regulations and is also used within the draft Phase 1 P&D Code without being defined. It is therefore anticipated that this definition will be included within the Planning and Design Code once finalised. It is recommended that relevant links are made within the Draft Development Regulations to the location of definitions within the Planning and Design Code.

Draft Practice Direction: Standard Conditions 2019

As a general rule, planning conditions should be tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. Despite this, APC understands the purpose of the practice direction in prescribing standard conditions in the event of a deemed planning consent where conditions are not imposed by the relevant authority.

It is recommended that the Practice Direction permits a level of flexibility for the Commission to include additional conditions which may not have been listed in the Practice Direction at this stage but are found necessary in relation to the specific development proposals for which deemed planning consent is to be granted. For example, although there are standard conditions included for car parking, there are no specific conditions relating to truck parking. Flexibility should be included for attaching proposal specific conditions to the deemed consent notice regarding issues such as dust, noise, fumes and repair work to trucks. It may be that a standard condition protecting amenity values will cover a range of potential issues that can arise from this, and similar development proposals.

There do not appear to be any standard planning conditions specifically referring to horticulture, particularly enclosed green/glass house structures. There are no conditions regarding the storage of waste materials on such sites, including the disposal of vegetable matter, plastic twine (which needs separating to avoid burning issues) and the storage of hazardous chemicals. There is no requirement for a buffer zone to prevent chemical spray drift set out.

There are no conditions relating to development in flood prone areas. A condition should be included identifying the need for a hydrological engineering report for built structures on flood prone land to specify minimum floor levels and ensure any concerns regarding access and impacts on water flow can be mitigated.

There is the potential to include standard conditions from key referral bodies such as the Coast Protection Board and Environment Protection Agency to make the list of conditions more comprehensive.

APC looks forward to further engagement opportunities with the State Planning Commission and DPTI throughout the transition to the new PDI Act.

Should you require any further information from Council or have any queries regarding this consultation submission, please contact me on (08) 8527 0200 or info@apc.sa.gov.au

Yours sincerely,



Megan Lewis
Planning Policy Officer

Attachments

1. Clause Specific Response to Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019
2. APC Comment on Draft Practice Direction: Notification of Performance Assessed Development Applications 2019

ATTACHMENT 1

Adelaide Plains Council (APC) Clause Specific Response to Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019

CLAUSE	TITLE	CONTENT OF DRAFT REGULATION (SUMMARISED)	APC COMMENT	AMENDMENT SOUGHT
<i>Part 2 Variation of PDI (General) Regulations 2017</i>				
4 (1)	Variation of regulation 3—Interpretation	Reference to the Metropolitan Adelaide GRO Plan 639/93	If included in the new Regulations, this GRO plan needs to be made easily accessible for practitioners to view.	Ensure GRO Plan 639/93 is available via the SA Planning Portal, as a Dataset on the Location SA Map Viewer or within the Code.
4 (2)(3)	Variation of regulation 3—Interpretation	Reference to minimum finished floor levels	Flood prone areas within the APC area are a significant consideration during the assessment of new development proposals. It is imperative that flood mapping is included as part of the new Code to ensure that this is taken into account in development assessed under the new planning system.	Ensure APC flood maps are included as overlay in Planning and Design Code.
<i>Part 5 Relevant authorities and accredited professionals</i>				
22 (1)(ii)	Prescribed scheme (section 93)	Reference to 'code assessed' development	Use of the term 'code assessed' development is confusing as this can mean deemed-to-satisfy or performance assessed under the PDI Act.	Refer to either 'deemed-to-satisfy' or 'performance assessed' development rather than 'code assessed' for clarity.
22 (1)(ii)(B)	Prescribed scheme (section 93)	Definition of 'any work'	Need clarity as to whether 'the total amount to be applied to any work' refers to the value of the building work only or something broader.	Include definition of what 'total amount' of 'work' in this context to avoid disputes.
22 (1)(ii)(B)	Prescribed scheme (section 93)	CAP is relevant authority for development work exceeding \$5,000,000	Using a \$ value as a determiner for a development going to a CAP for assessment is not a good justification in planning terms.	Do not base CAP referrals on \$ values but rather refer to type of application, or to a floor space limitation.

CLAUSE	TITLE	CONTENT OF DRAFT REGULATION (SUMMARISED)	APC COMMENT	AMENDMENT SOUGHT
23 (2)(b)	State Planning Commission (section 94)	Timeframe of 15 days for Councils to provide report to Commission on restricted development within Council area.	<p>A timeframe of 15 days to provide a report on a restricted form of development is not sufficient to review an application, undertake any internal referrals (e.g. with infrastructure and engineering staff) and prepare a report in any but the most small and straightforward applications.</p> <p>Nor does this timeframe allow for the application to be taken to a CAP meeting for consideration.</p> <p>The timeframe currently provided for reports on assessment of development by Commission is 6 weeks, which is a more realistic and feasible period.</p> <p>Assessment of restricted developments does not need to be fast tracked. They are restricted for a reason and time should be allowed to adequately consider all relevant elements of the proposal during an assessment.</p> <p>It is noted that the under Reg 82 (2) that the Commission is given 30 business days to make a similar report to Council.</p>	Change the timeframe for providing the Commission with a report on a restricted form of development within the Council area from 15 business days to 30 business days to reflect the existing Regulations and to ensure consistency with the Commission's own requirements.
23 (3)	State Planning Commission (section 94)	Matters that a Council can respond to in a report to the Commission on a restricted development within the Council area.	Constraints on reports to the Commission do not presently exist. Council is likely to be severely criticised by the community if it does not provide a sufficiently comprehensive response to all relevant matters of concern on the development.	Remove constraints on the contents of reports made to the Commission by Council on applications for restricted development in the Council area.

CLAUSE	TITLE	CONTENT OF DRAFT REGULATION (SUMMARISED)	APC COMMENT	AMENDMENT SOUGHT
<i>Part 7 - Division 1 Applications</i>				
30 (1)(b)	Application to Relevant Authority	Allowance for hard copy applications to be lodged with Council.	The administrative resources to upload an application may be significant and this burden is likely to fall more heavily upon regional and peri-urban Councils with fewer resources than inner-metro Councils.	A fee to cover the administrative costs of Council for entering a hard copy application onto the SA planning portal should be included in the Fees, Charges and Contributions Regulations.
36 (5)	Application and further information	Timeframe for requesting further information.	A timeframe of 10 days to ask applicants for further information is inadequate for significant development proposals which may include many complex elements as well as plans and documents to review. Internal referrals to Council infrastructure and engineering staff may also be required. As there is only one opportunity to ask for further information, this time period should not be so restrictive. Is this for requests for information made through the SA Planning Portal only? What if the request needs to be made via post? Is this timeframe included?	Change timeframe from 10 to 15 business days (for requests made via SA Planning Portal only). Requests via post mean the letter should be posted within 15 business days of lodgement.
38 (1) and (2)	Amended applications	Reset of timeframes if application is varied.	APC supports the amendment of assessment timeframes to reflect when an application has been varied. However, there is no definition of the term 'substantial' to differentiate when this can occur or not.	Provide definition of 'substantial' to provide clarity as to when an amendment to an application will reset the assessment timeframes.
<i>Division 3 Notice requirements and consultation</i>				
50 (4)(b)	Performance assessed development and restricted development	Fee to be paid by applicant to transfer responsibility for placing a notice of development on the land.	Will this fee be higher outside of Metropolitan Adelaide or based upon the distance of the development site from the Council's principal office to reflect the level of resources employed to meet with this clause?	Ensure proposed fee is reflective of level of resources required to meet with this clause.

CLAUSE	TITLE	CONTENT OF DRAFT REGULATION (SUMMARISED)	APC COMMENT	AMENDMENT SOUGHT
<i>Division 4 Determination of application</i>				
56 (1)(b)	Time within which decision must be made (section 125(1))	Timeframes for undertaking performance assessed development application assessments.	Performance assessed development applications can be complex. If building consent applications under 56 (1)(d) have 20 business days, 30 business days for performance assessed applications is more reasonable. Where timeframes are too limited, this will hit regional and smaller peri-urban Councils hard where resourcing can be challenging.	20 business days should be amended to 30 business days.
56 (2)	Time within which decision must be made (section 125(1))	Referrals and public notification can occur concurrently.	While it is appreciated that having referrals and public notification occurring simultaneously could speed up the assessment process, where a referral requires additional information or amendments to a proposal, this may result in having to re-notify the application with extra time and expense for the applicant.	Remove clause 56 (2)
60 (2)(b)	Notice of decision (section 126(1))	Timeframe for issuing the DNF for final development approval	2 days for issuing the DNF is too short a timeframe. More flexibility is need to take account of the limited resources of smaller and regional Councils.	Extend timeframe for issuing DNF from 2 business days to 5 business days.
<i>Division 5 Assessment Requirements – water and sewerage</i>				
85 (1) and (5)	Assessment Requirements – water and sewerage	Identification of bodies that can receive fees for the assessment of water and sewerage requirements.	Councils need to make assessments in relation to CWMS connection – e.g. need for and location of pump chamber, integration with underfloor drainage etc. and should therefore be included in this clause to cover the costs of assessment.	Include Councils under clause 85 (1) to allow for the assessment of CWMS requirements.

CLAUSE	TITLE	CONTENT OF DRAFT REGULATION (SUMMARISED)	APC COMMENT	AMENDMENT SOUGHT
<i>Schedule 4 Exclusions from definition of development</i>				
2 (1)	Council works	Specification of works that can be undertaken by a Council	The ability to undertake Council works should be expanded to include those bodies that carry out work on behalf of Councils including consultants and community groups.	Amend 2 (1) to “The construction, reconstruction, alteration, repair or maintenance undertaken by or on behalf of a Council of –”
2 (1)(f)	Council works	Installation of playground equipment	A definition of 'playground equipment' should be inserted for clarification. The concept of what may now constitute playground equipment can be quite broad and varied. For example, does this include skate parks or 'rage cages'?	Include definition of 'playground equipment' either in Regulations or P&D Code.
5 (2)(a)	Use of Land and Buildings	Reference to home activity	'Home activity' is currently defined in Schedule 1 of the Development Regulations 2008. There is no corresponding term in these regulations, leaving it open to interpretation.	Include definition in Regulations or a reference link in Regulations that definition is in P&D Code.
<i>Schedule 7 Complying Building Work</i>				
5 (d)(ix)	Haysheds etc	Erroneous reference to 'District Council of Mallala'	Council name changed to 'Adelaide Plains Council' on 22 September 2016 (date of Gazette notice)	Change any and all references from 'District Council of Mallala' to 'Adelaide Plain Council' in new Development Assessment Regulations, PDI Code and relevant Planning Directions etc.
<i>Schedule 15 Mining production tenements</i>				
1	Adelaide and Environs	Erroneous reference to 'District Council of Mallala'	Council name changed to 'Adelaide Plains Council' on 22 September 2016 (date of Gazette notice)	Change any and all references from 'District Council of Mallala' to 'Adelaide Plain Council' in new Development Assessment Regulations, PDI Code and relevant Planning Directions etc.

Practice Direction – Notification of Performance Assessed Development Applications 2019

Adelaide Plains Council (APC) makes the following comments in respect of the public notification procedure specified in the draft Practice Direction for the notifying of performance assessed development applications:-

Part 2 – Notification of Performance Assessed Development Applications

7 – Responsibility to undertake notification

7 (3)(b)

APC is keen to emphasise the importance of having a fee paid by the applicant to cover the costs of preparing and installing a notice, should an applicant wish to defer responsibility for putting the notice on the development site to the local Council. Will this fee be reflected of the true level of resources required to take on this responsibility? i.e. will the fee differ based on the size and number of signs required and the distance that Council staff have to travel to erect the sign? A single standard fee would adversely affect regional and peri-urban Councils that have further to travel to install the signs and are likely to require more signs to cover larger site areas. APC is concerned that a single ‘one size fits all’ fee will be favoured towards Councils in Metropolitan Adelaide that are generally already better resourced than regional and peri-urban Councils.

11 – Notice on land

11 (1)(a)

APC notes that where development sites front roads of over 90 mph, which is a significant number of roads in both the APC area and more regional locations, it will be difficult (and potential unsafe) for drivers to see and stop to look at the development notices. APC requests that this issue is considered when setting the parameters in the P&D Code for the notification of performance assessed development.

11 (1) (b), (c) & (d)

The minimum requirements set out in the practice direction are onerous and difficult to comply with for the average resident, not to mention a local Councils. If APC is required to

take responsibility for putting up a development notice under Draft Regulation 50 (4) on behalf of an applicant, it will either be required to employ the services of an external sign maker or invest in its own sign making facilities e.g. A2 sized laminator.

Will the proposed fee cover the whole cost of this? It is noted that in other locations (such as the UK), it is acceptable to print off an A4 sized paper notice and place this in a plastic folder for attaching to a fence, gate or light pole. This can be easily complied with by everyone.

APC is hesitant to support the introduction of a procedure that the average resident in its district will be unable to comply with unless they pay a fee to Council or employ external help.

14 – Interpretation

It is noted that the Commission is able to determine what form of notice is required and is therefore not under the same obligations as other relevant authorities. For example, the Commission does not have to take responsibility for putting a public notice on the development site, even if the applicant requests it does so. Local Councils are not able to refuse this responsibility.

15 – Attachments

Attachment 3 – Template – Notice on Land

APC does not agree with the need to include an image of the proposed development on the notice. What image will be chosen? An elevation? Site plan? The choice of image could discourage potential representors from looking at the full application and judging the application on a single image. The inclusion of an image on the notice is also likely to require colour printing which will further increase the sign expense.

Recommended Amendments

As a consequence of the above comments, APC makes the following suggestions to improve the operation of the Practice Direction:-

1. Make the size limit for the sign more flexible depending on the size and nature of the site (i.e. remove the A2 minimum requirement).
2. Remove the requirement to have an image on the sign.
3. Make the required fee paid to the relevant authority under draft Regulation 50 (4)(b) flexible to account for the number and size of signs required for the development site.
4. Remove allowance for Commission to refuse responsibility for putting up a development notice if requested to by an applicant or alternatively provide local Councils with the same power to refuse the same.