

30 January 2023

DTI Planning Review, Expert Panel

Sent to: DTI.PlanningReview@sa.gov.au

Dear Expert Panel, Presiding Member Mr John Stimson, Ms Cate Hart, Mr Andrew McKeegan and Ms Lisa Teburea

Re: *Submission to Planning System Implementation Review*

We understand from the 'March 2022 State Election, a commitment was made to commission an independent review of the *Planning, Development and Infrastructure Act 2016* and the Planning and Design Code to ensure planning decisions encourage a more liveable, competitive and sustainable long-term growth strategy for Greater Adelaide and the regions.' It's been a welcomed sight to see the commitment established and that this process, consultation and future outcomes work towards continuing improvement and reform to keep ahead of planning and development issues.

We wish to thank you for the opportunity to submit feedback, host workshops, release discussion papers and consider the feedback from our 'on-ground' practitioners who work so hard to achieve the objectives outlined above, in the Act, Code, ePlanning System and PlanSA.

Please find below a 'Joint Submission' from eight Local Government Councils who form the Murraylands and Riverland region. The eight constituent councils include:

- Rural City of Murray Bridge
- Mid-Murray Council
- Coorong District Council
- Renmark Paringa Council
- District Council of Loxton Waikerie
- Berri Barmera Council
- District Council of Karoonda East Murray and
- Southern Mallee District Council

Details of the submission below is a combined response to support future reform to:

- *The Planning, Development and Infrastructure Act 2016*
- the Planning and Design Code and related instruments, as it relates to infill policy, trees, character, heritage and car parking
- the ePlanning system, to ensure it is delivering an efficient and user-friendly process and platform
- the PlanSA website, to check usability and ease of community access to information.

Together the Councils form the Murraylands and Riverland region and its boundaries aligns to the 'planning regions' for Growth Plans, albeit its prior reference as Murray and Mallee region.

The region has many note-worthy achievements and success, but some regional statistics include its GDP of \$4.232 Billion, 36,213 square kilometres of land, over 6,500 business' and close to 75,000 people and 8 Local Government Councils.

The submission was compiled through collaborative discussion with representatives from all Councils (specifically Accredited Professionals (Level 1) employed in the Local Government sector who perform the duties as an Assessment Manager). Everyone has united to work collaboratively at a Local Government level to advocate for system that serves the diverse needs of the community. We would also like to acknowledge the significant effort of the department in transitioning the State to the new system and there has, and is, general support for the reforms.

The submission has identified several issues that consistently occur not only for one Council, but several Regional Councils and we share them with you to raise awareness to the challenges or deficiencies and look forward to solutions being applied, either suggested here or by other means.

Councils welcome the opportunity to work with the Expert Panel to further enhance the planning and development system and thank you for your consideration of issues raised by the region.

On behalf of its eight constituent councils, this submission is lodged.

Sincerely



Carron McLeod
Chief Executive Officer of MRLGA



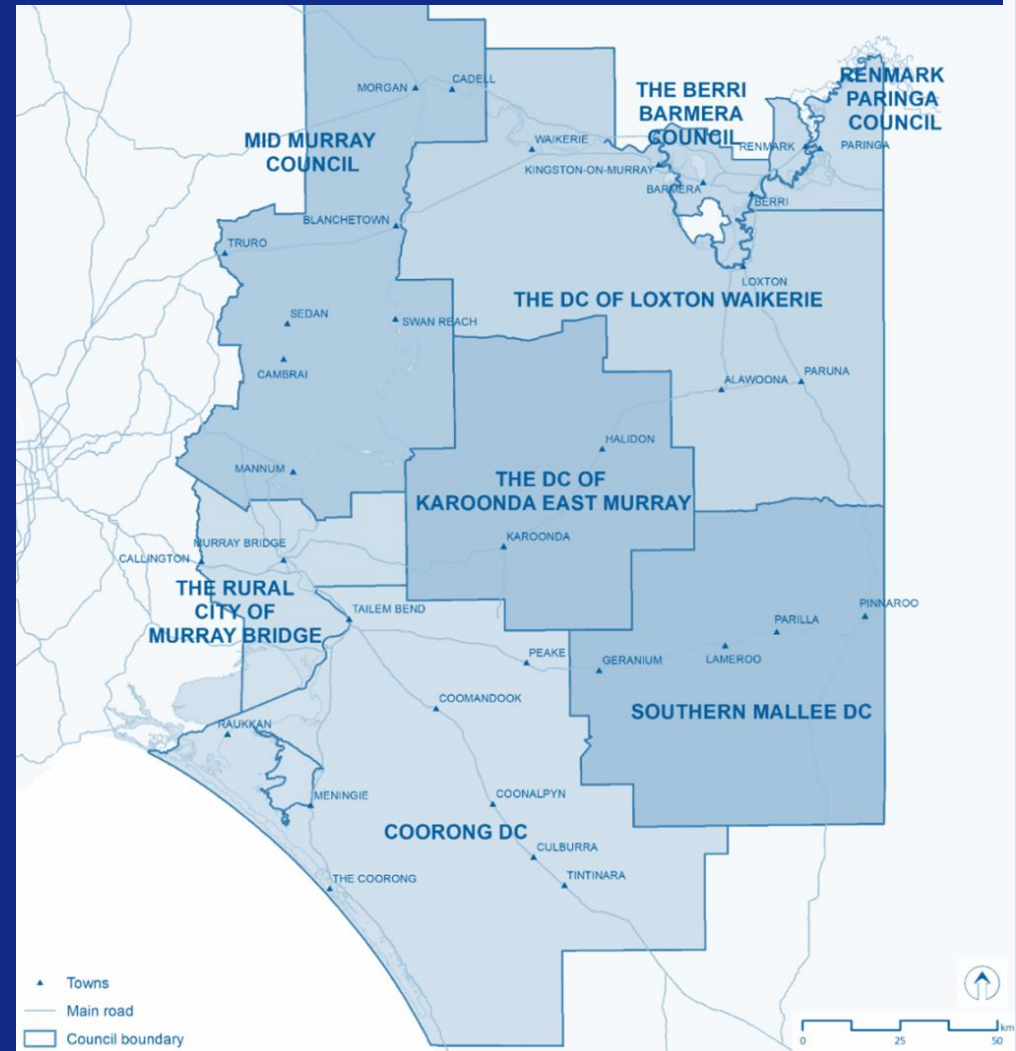


Planning System Implementation Review

Joint Submission from Murraylands and Riverland Region:

Rural City of Murray Bridge
Mid Murray Council
Coorong District Council
Southern Mallee District Council

Renmark Paringa Council
Berri Barmera Council
District Council of Loxton Waikerie
District Council of Karoonda East Murray



CONTENTS

1. Planning, Development and Infrastructure Act 2016
 - a. Deemed Planning Consent
 - b. Assessment time frames need to be increased for more complex Development applications
 - c. DAP and efficiencies

2. Planning and Design Code
 - a. Character and Heritage
 - b. Tree Policy
 - c. Infill Policy
 - d. Car parking Policy
 - e. Dwelling Excision
 - f. Housing affordability and temporary housing
 - g. Fees
 - h. Floodplain policy (MMC)

3. e-Planning System and the PlanSA Website
 - g. E-Planning and PlanSA Website

4. Economic / Broader issues that correlate to planning practices and reform
 - h. Finding Planners and other professionals
 - i. Certification and pathways

1. Planning, Development and Infrastructure Act 2016

The following feedback has been collected from Councils during the review process and is provided to the Panel as part of consideration and/or further discussions for reform, to support the continued improvement of the system and link between Act, Code and Implementation.

The following items were gathered through consultation and engagement with all eight councils via online meetings with responsible Managers and Officers for Planning.

Issue	Description of Issue	Case studies	Possible Solution or Next Steps
<p>1. Deemed Planning Consent</p>	<p>Deemed consents allow applicant(s) to deem a proposal as consented to if the timeframe for approval has expired. There is evidence of this provision being wrongly abused by applicants whilst in negotiation with council for improvements to the proposed development or awaiting further information. In such cases additional costs are imposed upon council as a result of having the decision to either issue a decision quickly or take the matter to ERD Court. This situation also may lead to poor planning outcomes by placing pressure on the Authority to process a complex application.</p>	<p>Additional panel meetings have had to be called in order to ensure a decision is made within the timeframes and to avoid a possible deemed consent. This brings about additional work for officers, further cost to Council and reliance on panel members being available.</p>	<ul style="list-style-type: none"> - Suggest it be revoked & replaced with better model. - There could be more rigour around deemed to consent provisions to deter the abuse of this mechanism i.e. substantial penalties for use whilst in negotiations with Council Assessment Manager / Panel for further information or design modifications. - Review of current assessment timeframes, particularly for larger more complex developments and land divisions and those required to be considered by Panels, would provide less stress for the assessing authority. This is then not conducive to achieving a good planning outcome but rather just seeking to meet a timeframe. - It's observed that other states such as Victoria, WA and Tasmania have adopted an approach to a review, whereby the respective courts determine an application based on merits of proposal and supporting principles, opposed to instant approvals due to timeframes. It sounds like in 'Description of Issue' that the VIC, WA and TAS systems all reflect something similar to what we had under the Development Act. Perhaps another solution would be to simply re-adopt the process established under the Devt Act. - Another possible solution could be that Deemed Consent Notices can only be used for Deemed-to-Satisfy applications

			<ul style="list-style-type: none"> - Deemed Approval / Minor Variations - This could be reversed to the old Complying Development requirements that allowed Private Certifier's to assess at least one minor variation. More than one results in the application becoming Performance Assessed. - This would ensure that Certifiers are not issuing consents to matters that do not achieve the relevant DTS criteria.
2. Assessment time frames need to be increased for more complex Development Applications	<p>There are essentially 3 assessment pathways for applications assessed by The Relevant Authority within a Council area (Accepted / Deemed to Satisfy/ Performance Assessed) each with timeframes which <u>in most cases</u> provide adequate time for assessment and approval.</p> <p>Performance Assessed development applications vary in complexity and when also notified can suffer in quality outcomes due the timeframe imposed for a decision. Better outcomes would be achieved if there was an ability when verifying a DA that its complexity can enable an extended assessment timeframe. Some level of check on the use of such provisions would be required (i.e. PLUS approval) but if allowed for would assist in overall better planning outcomes.</p>	<p>20 days may be a more appropriate timeframe or provide the ability to have more than one request for further information.</p>	<ul style="list-style-type: none"> - This proposed reform was widely adopted by councils within the region and is synonymous with the comments relating to deemed consents. - Extended timeframes, especially for request for information is particularly needed for more complex applications and land divisions where internal referrals are needed. - With respect to land divisions the additional time is needed when infrastructure agreements or land management agreements must be entered into to manage the expansion of major infrastructure particularly in regional or growth areas.
	<p>The current timeframes do not adequately differentiate the work that is required to properly assess more complex assessments such as larger commercial and industrial type applications, as the current assessment timeframes are not adequate and do not facilitate the promotion of high standards for the built environment.</p>	<p>It is considered unreasonable to have a process where an application for 19 plus dwellings or large scale warehousing is required to be assessed in 20 days, yet this is currently the case</p>	<ul style="list-style-type: none"> - It is recommended the assessment timeframes for complex development, not involving up to two (2) class 1 buildings or any class 10 buildings be amended to 8 weeks.
3. Poor outcomes from speedy outputs.	<p>The timeframe does not allow collaboration between AM and applicants and often results in poor outcomes rather than opportunities for collaboration and understanding that lead to higher quality outcomes.</p>		

<p>4. DAP is not delivering efficiencies</p>	<p>Development Application Portal has not resulted in reduced timeframes for assessment and approval largely due to complexity of Performance Assessed DA's and whole of Code assessment. Whilst an online environment is modern and progressive Council has not experienced time savings in regard processing applications. This also relates to applicants requiring assistance using DAP.</p>		<ul style="list-style-type: none"> - There are a number of issues with the DAP however I believe these are constantly being worked on between PLUS and practitioners. We support the need to ensure that PLUS is resourced enough to manage the issues and to continue to make improvements as the system evolves. - LGAMF shared a copy of its feedback to councils on DAP and this matter. It notes several solutions to this item, that are supported.
	<p>'Mum and Dad' applicants often aren't aware of the DAP and how to use it. They continue to call Council for advice and updates, this can lead to confusion when they are not technically the applicant, ie they have engaged a builder to lodge the application on their behalf.</p> <p>Additionally it is not uncommon for Council staff to advise them to contact their builder so that the builder can provide them the login details so that they can access the DAP themselves to see the status of their application.</p> <p>Terminology in the DAP – applicants do not understand language such as “relevant authority”. An everyday person as an applicant will lodge and identify the wrong nature of development or wrong elements or alternatively describe their development within the wrong fields while working through the submission pages. Often the plans provided do not match the description provided and this can add unnecessary complexities when trying to determine exactly what they are applying for.</p>	<p>Examples of types of applications lodged with Council:</p> <p>Nature of development identified as “ <i>Grow vegetables in greenhouses, nursing decorative pine and cypress, grow grasses for silage and raise sheep pasturing</i>”</p> <p>Plans provided included generic images of “two types of greenhouses”, site plan not drawn to scale, lacking significant information. Documentation also included reference to “<i>managers accommodation, site office and toilet facility</i>” with no further detail provided, these elements are not shown on site plan and no elevation plans have been provided and no written explanation as to the relationship between the managers residence/ office and the balance of the development.</p> <p>Significant additional detail will be required before this can be verified, improved site plans and elevations, providing clarity as to which greenhouses will be located where, details on storm water management, details of additional structures (managers accommodation), waste control detail for this accommodation, site plan and storm water detail for this accommodation.</p>	
<p>5. Deemed Approval / Minor Variations</p>	<p>In reference to a discussion paper, there is an inference Councils may be inappropriately not accepting consents issued by private accredited professionals. Councils experience (in these instances) are</p>		

	<p>when there has been missed steps due to oversight of overlay requirements or other req's that have been overlook by the private professional. Councils often find they have to then perform further work that is there to safeguard future development from failure or non-compliance.</p>		
	<p>It feels this is also exacerbated by ambiguity in s106(2) of the Act. The ambiguity has created delayed approvals and often poor outcomes.</p>	<p>A cross sector working group, PLUS, defined a 'minor variation', but there is legislative ambiguity that is contributing to tension between Council and Private Practitioners.</p>	<ul style="list-style-type: none"> - Additional guidance/training would be a good start and could be provided for relevant authorities on respective roles and what constitutes a minor variation for Deemed to Satisfy developments to help address, what is currently seen as inconsistent approaches.
6. Verification	<p>The verification process is more resource intensive and places more burden on the assessor. The DAP does not prevent incomplete applications from being submitted and is resulting in double and triple handling of applications. In cases (of complex applications) where it will not be supported, full documentation and other costly reports are being requested at preliminary stages. In reference to a discussion paper and statistics on verification, it appears that a judgement of 84% compliance would warrant reform and the addition of penalty's appears slightly unsympathetic to Local Councils and the profession who at the time of data collection, endured a world wide pandemic, COVID 19.</p>	<p>The pandemic caused supply chain issues, work place/practice changes, delays in several industry's and professions, with many not keeping a service up to a 84% rate. Also adding to the conditions of this rate included a Gov. stimulus package, that saw application numbers increase by 30%.</p> <p>At the same time, organisations were adapting to several work place changes, working from home, lock downs, loss of staff to isolation rules and more.</p> <p>It was also observed there are reasons behind verification delays, including pre-emptive land divisions for lots/roads not yet approved, or others unique situations occurring from the 30% increase in future applications.</p>	<ul style="list-style-type: none"> - A more comprehensive understanding of the causes would be good to start with (ie COVID 19, the day it measured, poor quality, was it centric to a development type or location etc). - Training and support to industry (before imposing penalties) would likely create more positive outcomes, a more educated industry, better foundations for reform and a better culture of practice.
7. Fees	<p>Fees and assessment relating to agriculture appear high and excessive.</p>		
8. Public Notification	<p>The 60 metre rule is not appropriate within the rural areas as this quite often means that the adjoining owners are not being notified due to the size of the property on which the development is occurring.</p> <p>However in an urban context the 60 metre rule is too far as sometimes the proposal being notified only affects the immediate neighbour.</p>		<ul style="list-style-type: none"> - In both scenarios there needs to be an ability for the accredited professional to make the decision on who is going to be reasonably impacted by the development. There should be automatic notification of adjoining land owners for any development and then within an urban context either a 30 metre rule and/or a sign on the land, and in a rural context discretion as to who will be impacted based on the activity being notified – different scenario for tourist accommodation versus a poultry farm.

			<ul style="list-style-type: none"> - It is queried if the need for the sign being placed on the land particularly when there are no third party appeal rights. It opens up objections from people that are not impacted by the development.
	<p>This 60 metre rule also proves problematic in rural areas should there be an application for some form of animal husbandry, such as a piggery or chicken farm. Given the size of the allotments associated with such developments it is unlikely that adjoining owners will receive notification. This type of applicant can have significant impacts on adjoining owners in terms of potential odour/ noise impacts.</p>		
9. Wastewater Requirements	<p>There is concern that the requirement to provide wastewater information is being waived by private certifiers under Schedule 8.</p>		<ul style="list-style-type: none"> - This should not be possible as the ability to provide on-site waste water or a septic tank is critical to many developments within rural townships and areas. It is accepted that they must be dealt with under another Act however it is integral to a development and provides better outcomes if it can all be managed at the same time. Evidence of a waste control application being lodged or at least a site plan that demonstrates its ability to function on the site should be a mandatory requirement.
	<p>There have been examples in the past whereby a dwelling has been approved prior to the WCS being assessed, this can lead to issues whereby the location approved dwelling and proposed WCS will not enable the WCS to manage properly and often results in the need for variation applications to amend the location of the dwelling. Leading to additional costs for the applicant and additional work for Council</p>		
10. Planning and Development Fund	<p>This should not be used for any other purpose than for what it was established for, which was to provide and improve quality public open space. Such a fund will be critical for Council's if trying to increase urban tree canopies particularly within infill</p>	.	<ul style="list-style-type: none"> - Quarantine this fund for open space purposes

	areas or high growth areas where sporting grounds and facilities are required.		
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2. Planning & Design Code

Issue	Description of Problem	Case Studies	Possible Solution or Next Steps
11. Character and Heritage	Character and Heritage	Support the proposal to elevate character areas to historic areas and updating the character area statements.	
	Expert Panel Paper Question: What are your views on introducing a development assessment pathway to only allow for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved?		Don't agree with this as there is no guarantee that the approved dwelling will be built thereby resulting in the loss of an historic building.
12. Tree Policy	Tree Canopy		
	Expert Panel Paper Question: What are the implications of master planned/greenfield development areas also being required to ensure at least one (1) tree is planted per new dwelling, in addition to the existing provision of public reserves/parks?		The planting of trees and the integration of green spaces is critical for any development with it being more readily achieved in greenfield developments than in the in-fill/brownfield scenarios. I think this is a small contribution and perhaps could be more.
	Expert Panel Paper Question: If this policy was introduced, what are your thoughts relating to the potential requirement to plant a tree to the rear of a dwelling site as an option?		This is dependent on the size and configuration of the allotments. It would be difficult to see this working for a greenfield development with allotments under 400m ² . However support for such a proposal is there as it assists with creating a cooling environment for the residents and the general community. Provision could also be made with respect to the tree species to ensure that they are endemic to the area.
13.	Strategic Planning		
14.	What should the different roles and responsibilities of State and local government and the private sector be in undertaking strategic planning?		There could be a collaborative approach to this given the ability for land owner initiated Code Amendments which can lead to ad-hoc spot zonings that do not fit within a local strategic framework or does not consider local infrastructure requirements. Hopefully with the regional planning framework being rolled out now this will enable planning strategies to align better.

			Critical to this is the ability to align infrastructure with growth areas and the commitment required by Council's and developers to contribute to this.
15. Dwelling excision policy	In regional areas many people experience constraints when wanting to excise a dwelling from a farm block to sell or have for use by family member.		A fresh look at Dwelling Excision policy with view to rural community needs is recommended. Questions should be asked is the policy resulting in economic use of rural land whilst still prioritising retention for Primary Production and directly related land uses.
16. Housing affordability and temporary accommodation needs	<p>Whilst appreciating that Land Use Policy should provide for orderly and economic development under normal circumstances, there should be consideration of how policy either does or does not support the ability for people in an emergency situation (i.e. housing crisis) to provides adequate housing for themselves and family in times of crisis.</p> <p>Councils come under great pressure to either approve non-compliant accommodation such as caravans or modified sheds or alternatively to take action against people living in such accommodation following receipt of complaints. Consideration should be given to some level of legislative attention to temporary housing / accommodation to allow individuals and families with little alternative the lawful ability to be accommodated in a caravan or modified shed or other suitable housing alternatives subject to appropriate water, wastewater, power and safety considerations.</p> <p>This issue is prevalent in most regional councils and is of significant difficulty to manage given Development legislation largely ignores any alternatives to a traditional dwelling and offers little room for compromise during a housing crisis.</p>		<p>The affordable housing overlay is not addressing the current housing affordability crisis. This needs to be addressed through State Government partnership with not for profit organisations who can manage affordable housing programs. Eg Junction Housing. Planning policy needs to address and allow for housing diversity options.</p> <p>To achieve affordable housing within a standard residential development there should be mechanisms to ensure the development is joined with an affordable housing organisation.</p>
17. Floodplain overlay policy	The way the policy is worded has resulted in refusals.		This affects a lot of holiday homes.
18. Building inspections are hard to meet the timeframes	Further resources need to be put into the DAP to ensure that all building assessments and inspections can be managed within the new system. It is difficult to manage inspections within the current system.		

	Building inspection notifications are not required to be lodged on the DAP, meaning that many builders continue to email Council and then Council is required to upload this information onto the DAP.		
19. Design Policies	There are some dwelling design policies that relate to energy efficiency that do not get called up when assessing a dwelling application. Need to further enhance the design side of the Code.	.	Further look at the call up function for dwelling applications to ensure design policies are considered for all assessment pathways. S121 (2) Design Review, a person undertaking specified forms of development should be required to undertake design review, rather than being a voluntary process

3. e-Planning System and PlanSA Website

Issue	Description of Problem	Case Studies	Description of solution(s) and/or next steps
20. PlanSA website could be more user friendly	<p>Numerous applicants encounter difficulty navigating and using the Plan SA website. This can be particularly so where internet access does not exist.</p>		<p>Plan SA could conduct more consumer testing and seek feedback from consumers. It could be better designed to meet online website accessibility standards as there are a wide range of people in South Australia who access the website and wish to seek information to submit an application or develop their land</p>
	<p>The language used and process for submitting an application is not user friendly and does not provide simple English or 'lay mans' terms for 'mum and dad' applicants. Council staff spend considerable time on enquiries assisting applicants with understanding how to submit an application on the Plan SA Portal or alternatively assisting applicants with understanding the hard copy forms to submit an application. Additionally, the general public does not understand the process. There is no user friendly guidance on how the system works, explaining the verification process and indicating that an application is not formally lodged until this occurs.</p>		<p>There should be examples and guidance of the quality of documents required. The portal has not resulted in an improved quality of application rather it has led to continued requests for better quality plans during the verification phase.</p> <p>The website could be good if regular updates to Fact Sheets could be made. And packages of branded documents sent to Councils or able to be ordered by Councils so that people without access to the internet can simply walk in to Council and grab what they need.</p>
21. Automatic issuing of Decision Notification Form	<p>This could create a problem as who/how would be no ability to do a final check of an application.</p>		
22. ePlanning Levy	<p>The contribution payable is based on development values which can force Council into higher payment categories, which is caused by either unprecedented development levels that has occurred over the last two years or because of one significant development. This can have significant impacts on budget allocations.</p>		<p>It is questioned as to whether Local Government should still be paying this levy given that the system is now up and running and significant fees are now being generated and retained by State Government. Section 56 of the PDI Act should be repealed or if it is to remain amend the requirements so that the payment categories are based on an average development cost over five years rather than annually, and then reviewed every five years to assist with budgeting.</p>
23. Verification	<p>A question has arisen as to whether there should be a penalty for not meeting the verification timeframe?</p>		<p>These timeframes are not being met due to workload at the moment and there not being sufficient resources, however it is also because</p>

			<p>inadequate information is being provided and must be chased up. Therefore there should not be a penalty or any publication of data around the compliance of this timeframe as this is not necessarily a reflection of the assessing authority and would further exacerbate the stress levels already associated with the time clocks.</p> <p>As noted above the verification process is being hampered by the poor quality of plans lodged.</p>
	<p>The verification process is very complex for the 'mum and dad' applicant. It can be difficult to understand the process or the level of detail required. It is not uncommon for applicants to upload hand drawn plans often lacking any of the required detail. This often results in Assessment Officers having to go back to the applicant on a number of occasions just to obtain the detail required before they can verify an application.</p> <p>Then they assume that the verification notification is the approval, or alternatively they become confused should they receive a request for further information during the assessment phase, as they assume that this was provided during the verification process.</p> <p>Applicants submitting applications that cannot make it through verification (i.e. hypothetical applications) are content with leaving those applications in the verification workflow indefinitely, which clogs up the task list of assessment officers.</p> <p>It would be great if there was a solution to this that does not involve the need to request the applicant withdraw the proposal. If there was a fee paid at verification, it may discourage applicants from submitting applications that are not ready for assessment.</p>		
24. Building Work Notification	<p>Still receiving notifications via phone calls, emails and written notes directly to Council.</p> <p>Supportive of mandating building notifications being submitted through PlanSA without the need of a login. Also, could Reg 93 (2) be modified to</p>	<p>Some builders or owners have tried to submit the notifications though PlanSA directly, but there can be a series of barriers for them. For example, if the applicant was the private certifier or the architect, the owners/builders will not have login details to submit notification on the portal. Also, if a footing contractor wants to submit</p>	

	<p>further simplify the submission process on the DAP?</p> <p>It is understood that not all people have the ability to do the online submissions, however if they do need council to submit through PlanSA for them, a processing fee should be charged.</p> <p>As this information is still required in the portal Council is obligated to accept this and then must enter into the portal. Given the amount of information required to be entered this process can take up to 15 minutes to submit a single notification. If sufficient information is not provided then this requires follow up and then redoing the submission in the DAP again.</p> <p>If any non-compliance issues have been identified during the inspection, some builders still prefer to send emails directly to the council notifying of the rectifications. In that case, I will have to upload all these details/documents onto the portal again.</p>	<p>commencement and footing notifications on the portal, they probably won't be able to do it successfully, as the portal will ask many questions, such as who will sign off Part A & B of the Statement of Compliance.</p>	
25. Modifying Assessment Information	<p>There could be an ability as a relevant authority to modify information or make corrections to DNFs and ESP forms even after Development Approval has been issued.</p>		<p>This would allow previous tracking and the DAP system to keep an event audit history. It could be expanded to have an amendment function.</p>
26. Managing Inspections in DAP	<p>There should be a mechanism to prevent the applicant/owner/builder from seeking a Certificate of Occupancy if there is still any outstanding unsatisfied inspection issues or un-submitted notifications.</p>		
27. Removing building consent verifications, combining planning and building verification/assessment and charging fees on submission	<p>Not supportive of this as would be difficult to control particularly if applicants haven't decided whether they are using a certifier or council for assessment and often the structural drawings have not been done as needing planning approval first.</p> <p>May be possible for Class 10 developments provided all information is provided.</p>		

4. Systemic issues relating to administering planning services

Issue	Description of Problem	Description of solution(s) and/or next steps	Examples
Finding Planners and other professionals	Recruiting Planners (in particular regional locations) is a problem that is becoming increasingly 'high risk' to servicing the industry/act/legislation.		
Certification and pathways	The culmination of certification process and lack of university degree's to support the profession is becoming a problem that will impact the development industry in having good practices, and good outcomes.		