

18 November 2022

Mr John Stimson
Presiding Member
Expert Panel
Planning System Implementation Review

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Dear Mr Stimson

This submission is made by the recently formed Local Government Assessment Manager Forum (LGAMF). The LGAMF represents Accredited Professionals (Level 1) employed in the Local Government sector who perform the duties as an Assessment Manager.

As a key group of accredited professionals within the planning system, the members of the LGAMF has a strong interest in facilitating the delivering a system that serves the diverse needs of the community. The LGAMF acknowledged the significant effort of the department in transitioning the State to the new system. There is general support for the reforms. This submission is focussed on specific matters of interest to the LGAMF that are considered to require further consideration in development assessment.

The LGAMF welcomes the opportunity to work with the Expert Panel to further enhance the planning and development system. In particular, the LGAMF request the Expert Panel consider the following matters.

- Deemed Planning Consents
- Deemed Development Approvals / Minor variations
- Assessment Timeframes
- Development Assessment Portal
- Verification

Deemed Planning Consent

The need for an efficient and responsive development assessment process is supported. However, the Deemed Planning Consent provision is having extremely negative impacts on workplace culture, and contributing to staff leaving the local government sector. This, combined with very short assessment times for what can be quite complex matters, results in a greater likelihood of applications being refused, or substandard designs that do not meet the provisions but are just good enough being approved to avoid a deemed consent rather than working with applicants to achieve a design that can be supported to better deliver the intent of the policy. This is inconsistent with the objects of the Act to promote *high standards for the built*

environment. It is a severe penalty that does not adequately consider the consequences for the community for development that is inappropriate.

It is noted in the discussion paper there have not been many deemed planning consents issued. It is not the case that the number of those issued reflects the considerable stress that sits with every application to avoid this occurring. Planning staff do not feel they can take extended leave due to the potential that one of their applications will tick down to a deemed consent and the workloads associated with other planners in the team do not facilitate easy management of applications when others are away. Councils have had to take on more planning staff to keep workloads to a level that allow timely interaction with applications and does not result in time overruns to assess the same or similar application numbers overall to those managed with fewer planners under the Development Act.

Assessment Managers are of the view the deemed consent approach does not provide a basis for collaborative relationships with applicants that in turn deliver more appropriate planning outcomes. This provision does not take into consideration the well documented shortage of professionals within the sector and the challenges in establishing a sustainable work environment for the relevant assessing officers where they can apply their skills to the delivery of outcomes that benefit all, in line with the relevant assessment policy.

The consequence of this provision is to extend the assessment times for simpler development applications, as greater attention is required on the more complex developments that generally have the same assessment times. Furthermore, this is leading to less capacity to provide preliminary advice to applicants which is a highly valuable non-statutory service to assist applicants.

It is noted in the jurisdictional comparison contained in the Panel's discussion paper, only Queensland utilises this mechanism and New South Wales has adopted a deemed refusal mechanism. Other jurisdictions such as Victoria, Western Australia and Tasmania have taken **a more balanced approach, whereby a review is undertaken by the respective courts on the facts and the court makes a considered and independent determination on the application.** This is considered to be a more equitable approach that will safeguard the community against potential poor development outcomes while removing the risk of instant approvals for inappropriate outcomes.

Deemed Approval / Minor Variations

The discussion paper identifies instances where planning and building consent has been issued for a development application, but councils are not accepting the planning consent issued by the private accredited professional. The paper assumes the council as the *problem* and does not examine the reasons why the approval is not being issued by the council. The Act requires a council to check that the appropriate consents have been sought and obtained for a development application. This is an important mechanism that safeguards applicants / owners from commencing development with inconsistent or invalid consents. The absence of this important check is likely to result in non-compliances being identified during construction, leading to more significant and costly delays.

In many instances where development approval has not been issued, it is evident some private accredited professionals have acted outside their powers under the Act. This issue is directly related to the accredited professionals incorrect assessment which missed or dismissed key assessment criteria, including the application of Overlays such as the Historic Area Overlay. There are some examples of accredited professionals interpretation being such that they have effectively undertaken a performance assessed development, including on notifiable development.

This issue is exacerbated with the ambiguity that is created with s106(2) of the Act in relation to minor variations. The Deemed to Satisfy (Minor variations) is subject to various interpretations and has created uncertainty and delayed approvals, as identified by the Panel's discussion paper. This varying interpretation has resulted in poor outcomes for applicants. The difficulty with the interpretation was highlighted when a cross sector working group established by PLUS was unable to define what constitutes minor variations.

This legislative ambiguity is contributing to a tension between the practice of some private accredited professionals and council practitioners. **There needs to be greater guidance/training for relevant authorities on respective roles and what constitutes a minor variation for Deemed to Satisfy developments to address the current inconsistent approach.** This could be informed with clear parameters such as a minor variation may only be granted:

- by an Assessment Manager at council, or
- by privately certifiers where the element does not have an impact beyond the site. E.g. excludes site area, frontage, setbacks, building heights, length on boundary and the like; and there is accountability / transparency with clearly documented justification for any minor variations.

Assessment Timeframes

The discussion paper suggests a review of assessment timeframes. This review is supported as 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. **It is recommended the assessment timeframes for complex development, not involving up to two (2) class 1 buildings or any class 10 buildings, should be 8 weeks** as the current assessment timeframes are not adequate and do not facilitate the promotion of high standards for the built environment. It is not reasonable to expect an application for 19 plus dwellings or large scale warehousing to be assessed in 20 days, yet this is currently the case. The Panel may wish to also consider the gross time for the completion of assessments to gauge the overall impact of the new system and whether there are broader legislative / DAP enhancements that may be necessary.

Development Assessment Portal

The Development Assessment Portal, while having developed some positive change, **has not yet delivered the efficiencies that were expected from the reform**, notwithstanding the many enhancements that have made since its introduction. The local government sector has contributed significant resources towards supporting the identification of issues and enhancements in the DAP. PlanSA has been provided with an extensive list of issues and it is acknowledged the department has generally sought to progress enhancements. Critical changes are however urgently required, as the

Discussion Paper – *ePlanning System and PlanSA website Reform Options* has identified. **It is essential that urgent enhancements are prioritised as the current DAP limitations are significantly affecting the performance of the development assessment process.** For example:

- The current DAP is too linear and does not facilitate multi process actions across planning and building. Staff cannot easily update basic data, such as add addresses after verification or continue to assess an application when the application is on hold. This is resulting in double or triple handling of development applications. **A relevant authority should be able to efficiently complete all aspects of an assessment at one point, regardless of status of the application and should be given administrative control to change data in the DAP as required.** There is significant inefficiency in administrative functions being undertaken only by PlanSA.
- The current DAP is too complicated for simple development applications. **The DAP should be streamlined for simpler development applications and should allow authorities to concurrently assess planning consent, building consent, and issue development approval.**
- Assessment timeframes do not accurately capture when a request for information has been made – **the DAP should accurately measure the assessment time.**
- The system does not have a robust document management system, the current approach is convoluted and complicated. **A contemporary document management system should be adopted for the DAP to reduce the administrative burden for all users.** This should include generating emails within the DAP, which is a standard expectation of a contemporary digital solution.
- Dashboards to monitor volumes of work are not working and cannot be readily relied upon. **Dashboards should be provided to readily monitor and track development applications, without having to generate a PowerBI reports.**
- Reporting function is confusing and not accurate. **PowerBI Reporting should be simplified, accurate and relevant authorities should be given full access to all their data to generate bespoke reporting.**
- A large number of submitted proposals are not progressing past the submit stage, as required information is not provided and this is contributing to unnecessary burden on the system. **Submitted proposals, where required information has not been provided during verification, should be withdrawn by the system automatically after a certain period of time and applicants should relodge when ready to proceed.**

Given the critical role of the DAP in the system, the Expert Panel is requested to **review the governance and resourcing that is necessary to sustain the DAP.** There appears to be an inherent limitation with the current governance model of PlanSA determining and progressing enhancements. While there have been many enhancements, acknowledging the efforts of the department to address what they can, there remain many more that are outstanding. As the current governance model requires all ideas to be funnelled through PlanSA and prioritisation of enhancements need to fit within the available resources & understanding of the issues by the department, the most common problems are the focus, not innovation.

The DAP should offer full Application Programming Interface (API) Based Product Integration (open data) so that authorities and other relevant stakeholders can move towards business to business transactions. This will facilitate innovation as it will incentivise authorities to evolve their business processes and the learning can be shared across all stakeholders. Enabling all stakeholders to shape direction and priorities of the core DAP functionality, together with the full API based Product Integration the DAP could realise its full potential as a digital platform.

Crown development applications should also be processed within the DAP as working between two systems is inefficient, overly complex and is likely to result in errors. It is also confusing for customers who do not understand why there are still two systems in place. Crown developments were due to be included in the DAP by mid-2022.

Verification

Unlike the previous requirement under Development Act, **the Verification process under the PDI Act is much more resource intensive. The increased requirements are not equally placed on an applicant to submit a complete development application** – the DAP does not prevent incomplete applications from being submitted. Therefore, all the expectation is placed on the relevant authority. Furthermore, the resource intensive process is exacerbated when an applicant provides a partial response to a request for information to form a complete application. This is double, triple handling of the application. The consequence is that greater attention is required on the more complex developments and simpler developments take longer to process.

The system also fails to account for the nuanced link between requesting from an applicant the full documentation for an application, when at a preliminary stage, it is apparent the development proposed will not be supported in that form. Providing relevant authorities the time to provide a preliminary guidance to an applicant early, will save the applicant time and money. This is particularly relevant for more complex development applications. Not providing advice about significant issues but seeking possibly expensive technical mandatory information only to then advise after lodgement has occurred that there are significant concerns does not build a constructive relationship and often leads to complaints about staff action.

The Expert Panel is invited to also consider that the data collected to form its initial perceptions of verification was over a period of extraordinary development activity as a result of government stimulus to facilitate construction activity during peak Covid-19. Some Councils experienced over a 30% increase in development applications in this period while at the same time many workplaces were required to adapt to significant changes, lock downs and loss of staff due to isolation rules. There were also many instances where new lots from approved land divisions were not created in the DAP and applications could not proceed past the verification stage. Further it is not uncommon for applicants to submit applications for new housing reliant on lots and roads that have not been approved in a land division and these may then need to wait longer before they can be verified and submitted. In this context, 84 percent of verifications within time is considered to be reasonable. The suggestion of penalty in the context of the environment at the time of the data collection is not considered reasonable. It is likely to lead to more refusals.

Moreover, it would also seem appropriate to explore the data from the DAP in more detail to determine if the applications that fell outside the 5 days were verified on day 6 or 7; or was this an issue for a particular application type or region; or how affected were these authorities by Covid-19; or was the timeframe due to the poor quality information submitted with the application. A more complete understanding of the issues behind the headline metric is warranted. Furthermore, **the Expert Panel is encouraged to consider training for all participants in the industry, education, and DAP system solutions, ahead of imposing penalties on a sector that is facing the same resourcing challenges as other sectors.**

The proposal within the *E-Planning System and the Plan SA website* paper to explore combined verification and assessment processes and to remove Building Consent verification for simpler applications has merit and warrants further consideration.

Local Policy

It is recommended the Expert Panel also give consideration to the inclusion of additional local policy in the Code. The announced changes to heritage and character to bring strong controls is welcomed and this initiative should be extended to consider other policy gaps / deficiencies in the Code that have been identified by various stakeholders.

Local Government Assessment Manager Forum