

Wednesday 17 October 2018

Mr Michael Lennon
Chairperson - State Planning Commission
Department of Planning, Transport and Infrastructure
GPO BOX 1815
ADELAIDE SA 5001

Via email - DPTI.PlanningEngagement@sa.gov.au

Dear Mr Lennon

Assessment Pathways

The Planning Institute of Australia (PIA) welcomes the opportunity to provide feedback on proposed assessment pathways as part of the new South Australian planning system. This submission has been prepared based on the Assessment Pathway Technical Discussion Paper following consultation with PIA members, including a formal webinar and comments received from various individual members.

Overall, PIA is comfortable with the way in which the proposed Assessment Pathways are structured, and we note that this proposed contemporary model it is quite similar to development assessment processes in other states.

To assist the further development and refinement of the Assessment Pathways, the following comments are offered, based on the various themes as detailed in the discussion paper.

DEEMED PLANNING CONSENT

PIA members would like to understand more about the practical implications of Deemed Planning Consents and suggest that it would be helpful for a practice direction to be issued when operation of the new system commences.

Initial issues raised by planners, are that where insufficient information has been provided and the prescribed timeframe is about to expire, assessment planners will need to refuse applications to avoid triggering a Deemed Planning Consent. There is some concern that this may create rushed or poor outcomes that may be damaging to the community and the perceptions of the planning system. There are also concerns that this process could, at least in the initial year of its operation, result in an increase number of applications in the Courts (and the other appeal authorities) which may slow down the overall development assessment system.

It is also noted however, that where this system operates elsewhere including in Queensland, over time applicants learn to provide sufficient information with their application to avoid a refusal, and assessment planners in relevant authorities speed up their processes to avoid Deemed Planning Consent being required.

Notwithstanding, it is relevant that these concerns are noted and that DPTI is aware that there may initially be some unintended consequences with the introduction of this proposal and that issuing a practice direction may assist to allay concerns.

REFERRALS AND RESERVED MATTERS

PIA supports the notion of a rationalised approach to referrals, with the focus on referrals being only on matters for 'direction' and 'concurrence'. PIA also supports the use of the Planning and Design Code to address policy matters that would currently be addressed through referrals for 'regard' and 'advice'.

In principle, PIA supports the concept of 'staging' the development assessment process, to break down one onerous process into smaller more manageable stages for larger developments. Clear guidelines should be issued as to when this type of staging can be used and also how it should be used. There are some questions about the practicalities and process of deferred referrals. There are many instances when referrals are critical to the viability of a development must be considered during, the assessment process and should not be deferred, for example, a dwelling in a high bushfire prone area, or a potentially polluting industry in the metropolitan area.

Clarity on matters that are suitable for a deferred referral is required. They must only be matters of detail that are not material to the development, as where referral agencies have direction, the applicant may not even be able to proceed with the development if there is a likelihood that the referral agency could recommended for refusal.

The discussion paper states that 'should the applicant choose to defer a referral, they would need to accept any risk that the future referral advice may require amendment to the reserved consent'. While deferred referrals may avoid initial time delays there is some risk that confusion or delays could occur later in the process. As indicated above, greater clarity on matters suitable for deferred referral should assist in addressing these concerns.

Similarly, if the referral occurs through a reserved matter, where a consent has essentially already having been provided by the relevant authority, the concept of a referral where the professional advice of an expert is incorporated into a planning decision becomes redundant. It is unclear how this approach will provide any benefit.

Key matters related to development applications which should be able to be reserved upon the request of an applicant include detailed design elements, where a sufficient concept plan has already been provided and is considered adequate for assessment.

PRACTICE DIRECTIONS

The paper speaks of the Commission issuing a Practice Direction which will generate standardised conditions for common forms of development. PIA believes that there is merit in this approach so that planners can use this suite to save time when assessing common forms of development which require specific conditions of approval.

This will also improve consistency across the state, and assuming that these standard conditions are legally verified at the front end, this will reduce the chances of conditions being challenged. Further, it is assumed that this will also assist with compliance matters.

Planners should be provided the opportunity to modify these proposed conditions as required, for developments that are not standard e.g. commercial developments, complex residential development. If a stringent approach is taken where planners are not able to provide any flexibility to these anticipated conditions, it may create poor outcomes and not fit specific unique circumstances

PIA also supports the issuing of Practice Directions to provide guidance to the profession as to how the new legislation, regulations and Code should be interpreted. PIA would also like to ensure that these Practice Directions are reviewed regularly, and where required, issued regularly on an as needs basis

STAGED CONSENTS

Staged consents can save an applicant time if their application contains all the required level of detail and plans and presents no complexities, however this is often not the case. It is unclear as to the intent of this change and PIA members hold concerns about the

unintended consequences of seeking consents out of sequence. If an applicant were to obtain building consent prior to planning consent and then, as a result of the planning assessment process, changes to the design of the development were required, that applicant would then be required to go through the process of a variation to the building consent. Such an approach is likely to clutter the system and unnecessarily confuse applicants. It may also lead to an increase in illegal development and/or development built at variance to the approved plans.

To avoid unintended consequences, PIA recommends the development of appropriate Practice Directions for the 'best practice' method for the order of consents, which would be to seek Development Plan Consent prior to Building Rules Consent. User-friendly information online (and/or information sheets) to inform the public and professionals would be beneficial.

RESTRICTED AND IMPACT ASSESSED DEVELOPMENT

PIA agrees with the proposed pathways for development applications being categorised as either Restricted or Impact Assessed, which are to be assessed by the Minister or Commission respectively.

As part of this process however, PIA sees strong merit in Local Government being involved with a referral role, given their depth of knowledge of their local areas and their understanding of the needs of the community. A referral role is the preferred mechanism, rather than the proposal for feedback to be given through regular public consultation avenues.

ROLE OF ACCREDITED PROFESSIONAL WITH CODE ASSESSED

While the discussion paper indicates that private accredited professionals can be a relevant authority for performance assessed applications (which includes notification), it is understood through advice from DPTI that this is no longer the intention. Confirmation that private accredited professionals will not be able to assess any application which requires any form of public notification is required. PIA acknowledges that this is a practical outcome, given the logistical and transparency issues that may become apparent with private certifiers running public notification processes. For clarity, PIA recommends that this be prescribed in Regulation or within the content of the Planning and Design Code.

In relation to Performance Assessed applications assigned to accredited professionals, in place of an assessment panel via new regulations, the following aspects should be taken into consideration when determining the details of this assessment pathway:

- Complexity of the assessment
- Scale of the proposed development

- The level of conflict with the Planning and Design Code
- How the development relates to existing referral requirements, as well as Schedule 10 forms of development.

Further, it is understood that private certifiers will not be able to assess a Performance Assessed development application and thus it will only be assessed by a Council appointed Assessment Manager or Council Assessment Panel.

Without seeing the draft regulations, from PIA's perspective there is the potential for private accredited professionals to have a substantial role in relation to Deemed-to-Satisfy Development. PIA is of the preliminary view that any development considered to be "Residential Code" at present could easily be transferred into the Deemed-to-Satisfy pathway. In addition, any form of domestic outbuilding under a prescribed size could also fall under this pathway and there is also scope to allow more dwellings to be considered under the Deemed-to-Satisfy pathway, provided that they meet relevant performance criteria. Transferring more matters to the Deemed-to-Satisfy pathway and allowing private accredited professionals to address them will provide Council Planning staff greater opportunity to focus on the larger, more complex development applications.

ASSESSMENT CATEGORIES

When considering whether or not a development is Deemed-to-Satisfy or Performance Assessed, constraints of the land should be used to determine the relevant authority. Other aspects such as interfaces, flood areas, bushfire risk areas, water protection areas, if a referral is required and if public notification required, should also factor into this process.

The current scope of Exempt development should not be expanded to any large degree, however there may be room to reduce the amount of inconsequential development applications that are lodged for minor forms of building work, and other types of structures that should be being encouraged (e.g. solar panels, rainwater tanks).

In terms of determining if an assessment panel should become the relevant authority, the view of PIA is that any application which receives a representation made against it, should qualify for an assessment panel. In addition, it may be that certain forms of development (based on size rather than a development cost amount) be assessed by a panel. Notionally this may include items such as a Shopping Centre over 10,000 square metres, a Nursing Home with over 100 residents or a land division with over 50 allotments as examples. All other developments will be assessed by an Accredited Professional, Assessment Manager, the Minister or the Commission.

Principles which should be considered when categorising applications as Impact Assessed, both Restricted and Impact Assessed kinds of development could include:

- Seriously at variance with the Planning and Design Code.
- Development which exceeds the capacities of existing infrastructure.

While the advice of professionals beyond the skill set of urban planners is a beneficial and an integral part of a thorough assessment, there needs to be clarity in the referral process. PIA supports the change to 'direction' only for referral agencies as an improvement to the system, as advice for 'regard' could previously be disregarded during assessment and thus a waste of agency resources. Relevant authorities (including Accredited Professionals) should not be allowed to disregard the requirement to provide mandatory information listed by the regulations/code/practice directions.

As discussed earlier, greater clarity is needed regarding the use of deferred referrals. It is not considered appropriate to defer an agency referral on material matters and clear practice directions are required. As a new best practice planning system, we should seek to reduce the exposure of applicants to unnecessary risk. As such it is important to obtain advice from the agencies at the front end of the assessment process, to avoid situations where a development should not have proceeded and has increased level of risk for the applicant exponentially.

PROVISION OF INFORMATION

In addition to a single information request from relevant authorities, it is considered appropriate that referral agencies and/or assessment panels also be permitted a single request for additional information, separate to the request of the relevant authority. This is a practical approach which ensures that adequate information can be provided for the relevant authority to assess the application. In instances where a substantive amendment has been made to a proposal that changes the nature of the development, its position, scale or impact, PIA believes that it is appropriate for a relevant authority to request further information where said amendments have in fact raised more questions and caused confusion. Practice directions to guide this matter may be of value.

Quality assessments completed in sensible timeframes are largely a result of clear and comprehensive information being provided by applicants to the relevant authority. It is expected that the ePlanning system will reduce deficiencies in submitted documentation. The retention of the current Schedule 5 provisions under the *Development Regulations 2008* is supported to ensure Deemed-to-Satisfy development application fidelity. PIA seeks that mechanisms are built into the SA Planning Portal to ensure that these types of applications cannot be uploaded and sent for processing before the relevant level of information is provided by the applicant.

PRELIMINARY ADVICE

The provision of preliminary advice to applicants, especially regarding major projects, is a great and useful tool, however if the process is to be formalised for relevant authorities, the process for such needs to be well documented, transparent and guided by the Regulations and/or a Practice Direction. In addition, cost-recovery for this process needs to be factored in to this initiative. In current practice, it is extremely common for applicants to change plans between receiving preliminary advice and lodgement, and as a result potentially alter the nominated assessment pathway and creating angst amongst all stakeholders.

DECISION TIMEFRAMES

The timeframes currently enforceable under the *Development Act 1993* for merit developments are appropriate. There should be no reduction of time in the transition to the Code for like assessment pathways.

Of note is the lead time required to present applications to the Council Assessment Panel, which does not currently trigger a clock stop. In view of the expected increase in applications and the introduction of appeals going to the CAP, especially with the proposed “deemed consent” implementation, it is suggested a clock stop or extension of time be applied in such instances. Alternatively, a prescribed format of Assessment Panel report and associated timeframes for providing the agenda to members and the public may lead to increased efficiencies and consistencies across the state.

As previously mentioned, PIA holds some concerns about the concept and practical application of deemed consent. PIA recommends triggers in the ePlanning system to ensure the relevant authority is aware of the imminent expiry of the prescribed timeframe. In addition, PIA seeks Practice Directions on this topic and an acknowledgement that this matter has the potential to have unintended consequences in its implementation that will need to be monitored.

Other decision timeframes in the *Development Act 1993* are considered mostly appropriate except for the assessment of large scale land divisions, which involve a higher level of consideration and negotiation with developers. All timeframes should be expressed in a consistent format (unlike the *Development Act 1993*)

PUBLIC NOTIFICATION

To ensure that the placement of the public notification sign is suitably located, meets the relevant requirements and is visible to the public, there should be clear guidance provided. The relevant authority should be involved in at least providing guidance on the location of the sign on the site, particularly on large sites or those with multiple frontages. The sign should be at the cost of the applicant and the mechanisms for obtaining and installing the

signs should be explored further with Councils, but the key issue is ensuring that the signs are of a suitable size, position, appearance and contain the specified content.

As it will be difficult to monitor the placement of signs for the duration of the prescribed period and to ensure that they are not vandalised, removed or become illegible, photo evidence is likely to play a crucial role throughout this process. This may be able to be provided by the applicant or the Council. PIA also suggests that the concept of sign vandalism and/or premature removal could become an offence and legislatively enforceable. This could potentially act as a deterrent. In regard to the length of time a sign should be placed on a portion of land, it would not be inappropriate to propose a notification period of 20 business days, however shorter timeframes may be more suitable for smaller forms of development.

The Planning Institute of Australia supports the development of new assessment pathways and would like to remain engaged in the continuing development of this important aspect of our planning system.

Please feel free to contact the undersigned if any further comment is sought via sa@planning.org.au

Yours sincerely



Kym Pryde, RPIA

President, SA Division