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Dear Sir/Madam

**Adelaide Hills Council Submission on the Assessment Pathways Technical Discussion Paper**

Adelaide Hills Council is grateful for the opportunity to provide feedback on the the Assessment Pathways Technical Discussion Paper released for community consultation by the State Planning Commission on 23 August 2018.

In preparing this submission a comprehensive review of the Discussion Paper was undertaken including consultation with relevant Council staff.

We wish to highlight that among those consulted there was a feeling that the complexity of a number of the changes envisaged have the potential to create confusion for all users of the new system, particularly if the entire suite of reforms is switched on together. In particular we suggest the deemed consent and outline consent process should be delayed to a later date in the transition when the issues we raise in this submission have been addressed.

Suggested changes to address this point have been provided under the summary of issues section below.

**Support of Intent of changes to Assessment Pathways**

At the outset Council would like to acknowledge that the new assessment pathways as proposed in the discussion paper certainly creates an interesting and new dynamic for development assessment system within South Australia.

The ambition to improve the way all applications are assessed to facilitate faster approvals, better design and more consistent development outcomes, and greater investment in South Australia is understood and supported.

Notwithstanding, there are some ideas within the discussion paper that are a cause for concern to Council which are discussed in more detail below.

- I. Council has concern with the concept that consents can be given in any order as this places an onerous obligation on councils to ensure they are consistent with one another prior to Development Approval being issued. It is pointed out that the current system has failed as a very limited number of privately certified consents are consistent with the previously approved Development Plan Consent documents. Further there has been a significant increase in Council's workload due to having to constantly follow-up with applicants on variations and debate the scope of minor variations in some cases. It is considered that if councils are to be expected to undertake such consistency checks, then there must be an appropriate fee payable to councils for this service to ensure development consents and plans are coordinated and consistent with other previous consents, plans and documents.
- II. With regard to land divisions, the courts have established that land division should occur prior to dwelling approval on new allotments. However, the new system seems to have no regard for this judgement and it is considered that this must be recognized in the new planning system.
- III. There is a concern with some poor design outcomes for complying and Rescode developments. A key issue that therefore needs to be addressed is how the new planning system will ensure that the character of neighborhoods is not eroded due to poor design outcomes and that the impartiality of Accredited Professional is monitored in order to take action against those issuing poor decisions.
- IV. There are questions around the multiple roles of the Assessment Manager. DPTI staff have advised that the roles can be spread across several individuals. However, the advice from a well-respected lawyer is that this is not contemplated in the legislation as it is currently written. There seems to be potential conflict for Assessment Managers to be a relevant authority in their own right and to also manage the affairs of the Council Assessment Panel as another relevant authority. Further questions arise when appeals against the Assessment Panel are considered. It is unclear if appeals are against the person or the position of Assessment Manager of a specific Council. If it is the former, then the question is how will such appeals be managed when that individual leaves the council. This therefore requires clarification.
- V. The documentation indicates that an Assessment Manager will be able to delegate functions, powers and duties. Council planning staff will then have delegations from the Assessment Manager under the PDI Act and also from Council directly under the PDI Act in relation to issuing Development Approvals. Council building staff will have delegations directly from Council under the PDI Act. It remains unclear if the delegation for coordination of various consents and subsequent compliance follow-ups is directly from Council or from one of the relevant authorities. Council's ability to undertake development compliance and enforcement varies with the current quality of private certification documentation. The ability to resource compliance and enforcement is very much based on the income raised from fees. If fee income is to be reduced in a variety of ways as suggested in the new reforms (i.e. as a result of more

development being privately certified or assessed by SCAP), then this erodes the ability of a council to resource the compliance and enforcement function, which is a fundamental community expectation.

- VI. It is noted that public notification is to involve notices being placed on the subject land and that seems to work interstate. However, it is unclear how such notices are utilised in areas where the speed limits exceed 60kph. It is considered that where such notices are required to be placed on the subject land, that the applicant be required to provide a statutory declaration and photos of the on-site notice to demonstrate that it complied with the legislative requirements and was posted for the required period. Further, with regard to letters to adjoining landowners and the notice, it seems that the coordination, preparation and placement of these notices is to be the responsibility of councils and SCAP planning staff. This requires therefore clarification. If it is to be a responsibility of councils, then councils should be able to charge a fee for this service as it will have both financial and human resource implications. Further, guidelines for preparation and placement of such notices are recommended to ensure consistency in their appearance and visibility.
- VII. Lastly, it is considered that the details of the Assessment Pathways would be easier to understand if these were released concurrently with the Code details in order to fully understand how they are going to operate.

### **Response to the Questions in the Discussion Paper**

The following responses are provided in relation to each of the questions contained in the Discussion Paper:

#### **Relevant Authorities**

##### **1. Code Assessed Applications – what should be assigned to the Assessment Panel, an Assessment Manager or an Accredited Professional**

- a. It is considered that all Code Assessed development should be assigned to an Assessment Manager with the exception of the matters recommended below for consideration by an Assessment Panel.
- b. **Publicly notified Development Applications** - It is considered that publicly notified Development Applications where there are representations in opposition should be assigned to an Assessment Panel. Publicly notified Development Applications with no representations or representations in support however should be assigned to the Assessment Manager to avoid delays with such matters having to be submitted to a Panel. It is considered inappropriate for Accredited Professionals not employed by a council or the State Planning Commission, to determine publicly notified development applications in order to avoid potential compromise of individuals' private information held by councils and the State Planning Commission.
- c. **Major Development Applications** – It is considered that large land divisions (10 or more allotments) and developments with a construction value over \$2.5 million (or such other value as determined by the State Planning Commission) should be assigned to an Assessment Panel with Development Applications with a value below this threshold being assigned to an Assessment Manager.

- d. ***Development determined by the State Coordinator-General to be development of economic significance*** referred to a council for comment is considered to be major development and should be assigned to the Assessment Panel for consideration.
- e. ***Land Division applications (including boundary realignments) in the Watershed (Primary Production) Zone*** creating rural living allotments of 2 hectares or less except where all the existing allotments in the locality are 2 hectares or less should be assigned to an Assessment Panel.
- f. It is considered that an Accredited Professional should only assess deemed to satisfy and not Code Assessed Development, given the potential for inconsistency between different consents.

### **Assessment Categories**

#### ***2. Should the current scope of 'exempt development' be expanded to capture modern types of common domestic structures and expected works?***

Yes structures such as aviaries, tree houses, fixed umbrellas, privacy screens, bed and breakfast facilities in existing dwellings currently considered air bnbs (but not outbuildings) where hosted by the occupant of the dwelling, home activity or home business and the expansion of activities which are reasonably incidental to residential living, including some of the minor structures that have gone through the court system and have been deemed to be development, should be listed as exempt development.

It is considered that this is also an opportunity to review works that are currently development in the Hills Face Zone, such as earthworks less than 9 cubic metres, for exemption.

It is also considered that forestry and the planting of vegetation associated with carbon off-set schemes setback a minimum of 20 metres from property boundaries should also be given consideration as exempt development.

#### ***3. Should the scope of 'building consent only' development be expanded to allow for more types of common development with minor planning impacts?***

Yes this is again an opportunity to review for example development in the Hills Face Zone that is currently excluded from Schedule 1A, such as domestic outbuildings, carports, garages and swimming pools/spa pools which have little impact on the character of the Hills Face Zone.

#### ***4. How should the scope of a 'minor variation' to deemed-to-satisfy development be defined?***

It is considered that a minor variation should be "black and white" and be no more than a 10% deviation from the defined criteria for deemed-to-satisfy development. The scope of a minor variation should also be limited to no more than two elements of variation. The proposed 'partial' performance assessment of a development is confusing for practitioners and the community and requires further clarification with regard to how this will operate.

#### ***5. Are there some elements of a project that should always be notified if the deemed-to-satisfy criteria are not met (e.g. buildings over height)? Are there other things that don't matter as much for the purposes of notification?***

There is some confusion over what is defined as an “element” of a development. It is considered that a development made up of several elements such as for example a dwelling with deck, outbuilding and swimming pool might be separated so that only one element is publicly notified (e.g. dwelling with attached deck) and not the other elements (e.g. outbuilding and swimming pool). The notion of notifying only the element of a development which does not satisfy all the criteria of deemed-to-satisfy has potential to cause community consternation if the notification is limited to the criteria that are not met. As planners we consider development holistically and do not break it down into isolated components and it is considered that the entire development should be notified and the adjacent landowners provided with the opportunity to comment on the whole proposal. Limiting comment from adjacent landowners to only those components that trigger notification as performance assessed due to for example the height of a structure, will be difficult to control and describe. Further there is also the potential to have four relevant authorities assessing the various elements of a development proposal (i.e. Accredited Professional [Planning] for the deemed to satisfy element, Assessment Manager for the publicly notified element and an Accredited Professional [Building] for the building rules consent, and council for the Development Approval). This seems to overcomplicate the process and is not considered to be an improvement and needs further thought and consideration in order to address this issue.

**6. What types of performance assessed development should be assessed by an Assessment Panel?**

- a. **Publicly notified Development Applications** - It is considered that publicly notified Development Applications where there are representations in opposition should be assigned to an Assessment Panel. Publicly notified Development Applications with no representations or representations in support however should be assigned to the Assessment Manager to avoid delays with such matters having to be otherwise submitted to a Panel for consideration. As stated earlier, it is considered inappropriate for Accredited Professionals not employed by a Council or the State Planning Commission, to determine publicly notified development applications to avoid potentially compromising individuals’ private information held by councils and State Planning Commission.
- b. **Major Development Applications** – It is considered that large land divisions (10 or more allotments) and developments with a value over \$2.5 million (or such other value as determined by the State Planning Commission) should be assigned to an Assessment Panel with Development Applications with a value under this assigned to the Assessment Manager.
- c. **Development determined by the State Coordinator-General to be development of economic significance** referred to for Council comment is considered to be major development and therefore appropriate for such to be submitted assigned to the Assessment Panel for consideration.
- d. **Land Division applications (including boundary realignments) in the Watershed (Primary Production) Zone** creating rural living allotments of 2 hectares or less except where all the existing allotments in the locality are 2 hectares or less should be assigned to an Assessment Panel.

**7. *What types of principles should be used when determining 'restricted' development types in the Planning and Design Code?***

Development specifically not envisaged in the Zone or Policy Area or development which is contrary to all of the objectives for the Zone or Policy Area, and where there are impacts on the environment or adjacent land, are considered to be reasonable principles to apply for determination of 'restricted' development.

There is concern that there is currently no requirement for concurrence of councils for 'restricted development' noting that such proposals will be one of the most complex levels of development assessment. It is therefore considered that councils should be a referral body for 'restricted development' at a minimum, with the right to provide comments and refer the application to a Council Assessment Panel where it involves a major form of development. Additionally, it is submitted that councils should also be afforded the right to be heard by SCAP in support of their responses, particularly where the planning recommendation of DPTI staff is contrary to one or more comments in the council's response.

**8. *How should restricted development be assessed? What other considerations outside of the Code should be taken into account?***

Restricted development should be assessed against the Planning and Design Code in the same way as Code Assessed development. Other considerations that might be taken into account would be councils' comments, Codes of Practice and Practice Directions. Further timeframes for councils to provide comments should allow additional time for major developments to be referred to the Council Assessment Panel for consideration. With no concurrence being required from councils under the new planning system, this could set up a situation for conflict where councils could potentially appeal a decision of SCAP on such proposals. This again requires further consideration to address this issue.

**9. *What scale of development and/or impact types would be suited to the impact assessment (Not restricted) pathway?***

It is considered that impact assessed development would be major projects that have wider impact for a region or State and which are not of a type envisaged in the Zone or Policy Area.

**Public Notification**

**10. *Should accredited professionals/assessment managers have the capacity to determine publicly notified applications?***

It is considered that assessment managers should have the capacity to determine publicly notified development where there are no representations or, only representations in support or, representations with conditional support and where an applicant is willing to amend the proposal to address that representor's concerns.

It is not considered appropriate for accredited professionals to determine publicly notified applications as they do not have access to adjacent property owner's contact details. There would be privacy concerns with releasing this information and the additional costs for local

government/state government to prepare and provide the details to such accredited professionals.

**11. Who should be responsible for placing a notice on the subject land?**

It is considered that there are three options in this instance, namely councils, applicants or an 'accredited' signage company could be responsible for placing a notice on the subject land at the primary frontage, in a manner as determined by the legislation similar to real estate signs. There are pros and cons for each option which are discussed in greater detail in question x below.

**12. How would that person/body provide/record evidence of a notice being placed on the land throughout the specified notification period?**

It is considered that if the notice is placed on site by a signage company or applicant, then they should be required to take photos of the notice placed on the land, sign a statutory declaration that the notice was erected and in place for the entire prescribed notification period. This information would then need to be provided to the relevant authority. If this is the responsibility of councils, then they should also take photos of the notice and keep a record to demonstrate that the notice was in place in accordance with the prescribed requirements and period.

**13. For how long should an application be on public notification (how long should a neighbour have to provide a submission)? Should a longer period apply for more complex applications?**

It is considered that the current 10 business day period for public notification is adequate. Impact Assessed development should be on public notification for a longer period perhaps for 20 business days.

**Provision of Information**

**14. What type of information should be submitted with deemed-to-satisfy applications? Are the current requirements in Schedule 5 of the Development Regulations 2008 sufficient/too onerous?**

It is considered that the requirements of deemed-to-satisfy need to be fully reflected on the plans provided (with an appropriate scale), including the requirement to reflect existing structures as well as proposed structures, the location of on-site waste control systems, site contours, the extent of earthworks in relation to natural ground level, the location of trees, watercourses, and vehicle access. Additionally a Certificate of Title and external materials and colours should be provided along with a completed application form and checklist of the information submitted.

It is further considered that the current requirements of Schedule 5 are not considered sufficient to meet the needs for such applications to ensure the required level of detail and appropriate quality of plans is supplied without resulting in delays due to requests for further information.

## **Assessment Categories**

**15. *Should relevant authorities (including accredited professionals) be allowed to dispense with the requirement to provide the mandatory information listed by the regulations/code/practice directions?***

It is not considered appropriate or good practice to permit relevant authorities to dispense with requirements for mandatory information to be supplied as part of a development application. Doing so allows for subjectivity and potential inconsistency in instances where some authorities are stricter than others in this regard, leading to poor customer service outcomes and unnecessary conflict. If there is no information or insufficient information attached to a development application, then an assessment cannot be undertaken. We find very little can be approved without requiring further information.

**16. *Should a referral agency or assessment panel be able to request additional information/amendment, separate to the one request of the relevant authority?***

Yes, a referral agency or an assessment panel need to be able to have the option of requesting further information. Referral agencies often have a particular focus on a specific aspect of a development proposal (e.g. water quality) and may require further detail not supplied in order to assess such impacts. Further, an assessment panel are a group of independent experts who may require further detail to mitigate concerns or issues with a proposed development. As it is not possible for the planners to second guess what information the panel members might require, such requests for additional information should be permitted.

**17. *Should there be an opportunity to request further information on occasions where amendments to proposal plans raise more questions/assessment considerations?***

In short yes as this is considered to be critical when amendments are made or the detail provided is inadequate and therefore additional information is required in order to comprehensively assess a proposal.

## **Outline Consents**

**18. *How long should an outline consent be operational?***

Outline consents should have a limit of no more than 12 months and be permitted to be extended subject to the Planning and Design Code not having changed in the intervening period in relation to that specific type of development.

**19. *When, where and for what kind of development would an outline consent be appropriate and beneficial?***

It is considered that outline consents could apply to the following where the development is Code Assessed:

- Major developments
- Mixed use development
- Developments involving multi storey buildings

- Land divisions over 10 allotments

**20. What types of relevant authorities should be able to issue outline consent?**

The relevant authorities of SCAP, an Assessment Panel and Assessment Manager should be able to issue outline consents.

**Referrals**

**21. What types of development referrals should the regulations allow applicants to request for deferral to a later stage in the assessment process?**

Referral agencies responses may inform the location of a development on the subject land, and have particular requirements that are essential in the assessment of a development. In such instances the deferral of referrals is not supported. However, should liquor licensing become a referral for a licensed premises, then this would be considered to be appropriate to be deferred to a later stage before building rules consent is issued.

**Preliminary Advice**

**22. The Act stipulates that preliminary advice may be obtained from agencies. Should there also be a formal avenue for applicants to seek preliminary advice from the relevant authority?**

Applicants regularly seek preliminary advice from agencies and this often involves meeting developers on the subject land. It allows the matters that need to be addressed in a proposal to be identified by planning staff and advice is often provided in writing or summarised in a file note. Whilst this may reduce with the progression of the E-Planning solution which will list design requirements in a spatial sense, in the short term the majority of councils will continue to provide this kind of advice via their duty planners.

**23. Should there be a fee involved when applying for preliminary advice?**

In short yes, given the time commitment involved in providing preliminary advice (which reduces the assessment time), and the practice of asking a council for advice and then going to a private certifier, the establishment of an appropriate scaled fee for preliminary advice is strongly supported.

**Decision Timeframes**

**24. How long should a relevant authority have to determine a development application for each of the new categories of development?**

The current timeframes are considered adequate where the development does not require public notification. However, for major developments, timeframes for Council comments should allow additional time for major developments to be referred to the Assessment Panel for

consideration given this can add up to 4 – 6 weeks to the processing timeframe in order to report such matters to a Panel. Further, the practice of extending the timeframe where further information is inadequate or required by an agency or an assessment panel is considered appropriate.

**25. Are the current decision timeframes in the Development Act 1993/Regulations 2008 appropriate?**

The current 8 weeks to assess a development that has public notification is not considered sufficient. An extra 8 weeks should be permitted to allow an applicant to respond to representations, provide amendments to representors where permitted, and preparation of a delegate report or a report to the Assessment Panel.

**Deemed Planning Consent**

**26. Should a deemed planning consent be applicable in cases where the timeframe is extended due to:**

- **a referral agency requesting additional information/amendment**
- **absence of any required public notification/referral**
- **any other special circumstances?**

It is considered that that a deemed planning consent should not be permitted in circumstances where an applicant has failed to provide the further information requested or the information is inadequate to allow a full and proper assessment of a development proposal, as it provides an opportunity for an applicant to essentially circumvent the process. That is, an applicant could deliberately with-hold providing all the information requested until the assessment period has expired, give notice of deemed planning consent and thereby deny the opportunity for public notification or an agency response. Planning appeals have reduced significantly over the years for our Council with the establishment of an independent CAP, and the Deemed Planning Consent could add an element to the process which may see an increase in the number of appeals as applicants challenge Council in this regard.

**27. What types of standard conditions should apply to a deemed consent?**

It is considered that the relevant authority should not be directed to apply standard conditions to a deemed consent as no one site is the same. The imposition of appropriate conditions should be a matter for the relevant authority to decide on based on the site specific circumstances. However, there could be a minimum suite of recommended conditions for Accredited Professionals to use subject to specific criteria being met for such deemed consents.

**28. What matters should be addressed by a practice direction on conditions?**

Matters which have off-site impacts, such as noise, light spill, light glare, overlooking, overshadowing, emissions, spray drift, odour, ancillary special events, capacity and stormwater drainage erosion management plans and construction environmental management plans are considered as suggestions for inclusion in a practice direction on conditions. Additionally

prescribed land division requirements could be addressed in a practice direction to ensure there is a consistent approach between councils.

**29. *What matters related to a development application should be able to be reserved on application of an applicant?***

Matters which are traditionally reserved matters in our Council area are the provision of a detailed landscaping plan, provision of a stormwater management plan and upgrade of existing on-site waste control system. There may be others as suggested by other councils.

**Variations**

**30. *Should the scope for 'minor variations' - where a new variation application is not required - be kept in the new planning system?***

The minor variation system is becoming unmanageable with multiple variations being lodged for the same development application. There has been scope creep on what is a 'minor' variation and some private certifiers don't appear to have even sighted the stamped Development Plan Consent plans before they issue their consents for the variations. It should therefore only be permitted if a minor variation was limited by regulation (e.g. to staging, deletion of an element or to a minor floorplan or elevation change with no more than two elements at any one time). Further, it is considered that an appropriate assessment fee should be payable to councils for the work they required to undertake to assess such minor variations.

**31. *Should a fee be required to process 'minor variations'?***

Yes, as stated above, an appropriate fee to compensate councils or SCAP for the time spent working out the extent of the minor variation and the processing of such applications should be established if the minor variation system is to be implemented as part of the new planning system.

**Crown Development and Essential Infrastructure**

**32. *What types of Crown Development should be exempt from requiring approval (similar to Schedule 14 under the current Development Regulations 2008)?***

It is considered that essential infrastructure Crown Development should be exempt from requiring approval.

**33. *Are there any other forms of development/work that should be included in the definition of 'essential infrastructure'?***

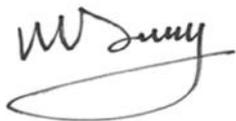
The existing definition for essential infrastructure seems adequate.

**Summary**

The Adelaide Hills Council is generally supportive of the new direction for procedural pathways for development under the new PDI Act and looks forward to having the suggestions as tabled in this submission reviewed and included where appropriate in the final version.

If you have any queries regarding the above comments then please do not hesitate to contact either Ms Deryn Atkinson, Manager Development Services, or myself on [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Salver', with a large, sweeping underline.

**Marc Salver**  
**Director of Development and Regulatory Services**

cc: Stephen Smith - Local Government Association