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28 Feb 2019
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Draft Planning, Development and Infrastructure (General)(Development Assessment) Variation Regulations 2019

City of Tea Tree Gully Submission

Clause	Title	Content of draft Regulation (summarised)	City of Tea Tree Gully Comment
4	Variation of regulation 3—Interpretation	This Regulation contains defined terms to be inserted into the existing General Regulations.	Consider including the following definitions in this section: • Notification Period • Bushfire Zones Within the definitions of *designated building* and *designated building product*, the references to Schedule 8 clause 4(1)(j) do not correspond to Schedule 8 of the draft regulations. The definition of *essential safety features* should refer to *essential safety provisions* as per regulation 100.
5	**Insertion of regulations 3A to 3I**		
Reg 3B	Additions to definition of development	This Regulation replaces previous Development Reg 6 and Schedule 2	Refer to comments made at Schedule 3 below.
Reg 3C	Exclusions from definition of development	This Regulation replaces previous Development Reg 7 and Schedule 3	Refer to comments made at Schedule 4 below.
Reg 3E	Change in classification of buildings	Prescribes that work resulting in a change to the classification of 'a building' under the Building Code, is building work.	Good inclusion. This will enable swifter and more direct enforcement action for undertaking development without authorisation pursuant to section 215 of the PDI Act.
Reg 3F	Significant trees	Replaces previous Development Regulatio 6A. It is generally consistent with the existing wording, but refers to "significant tree overlay" rather than a "designated area".	Subregulation 3F(4) – The State Planning Policies provide intent to increase canopy and green cover by 20% by 2045, and to support urban biodiversity. The Department should be confident that the above objectives can be achieved with the clearance exemptions for regulated trees outlined in Subregulation 3F(4) . The current legislation is resulting in the clearance and elimination of larger trees across Adelaide. Most trees not cleared by the development assessment process can be removed at anytime because they fall within 10 metres of a dwelling or swimming pool.

			The trees which remain protected from this exemption are any species of *Eucalyptus* and the *Agonis flexuosa* (Willow Myrtle). It is unclear why the *corymbia* genus is not be included within the exemption of this subregulation. Many species such as ghost gums, spotted gum and lemon-scented gums possess environmental significance equivalent to Eucalyptus species. In addition, there are numerous species that may not be native, but are valuable in an urban environment and make an essential contribution in maintaining and increasing canopy cover. It is considered that the State Planning Policy objectives cannot be achieved by planting and maintaining large trees on public land alone. Subregulation 3F(6) – It is difficult for councils to monitor the extent of tree pruning undertaken without an approval mechanism. The 30% threshold is too great. Often a tree damaging activity that removes 30% of a tree ultimately results in the death of the tree and subsequent complete removal. For example when the removal of 30% occurs from one side of the tree only, causing imbalance/warranting removal after the fact. Technical comments include: Given both regulated and significant trees are regulated trees, the title should be shown as “Regulated Trees”. Then the regulations should clearly define significant trees as a subset to regulated trees. If this does not occur, at the very least, the title should be “Regulated and Significant Trees” to avoid confusion. This Subregulation should also be moved to Schedule 4, which lists all manner of exclusion to the definition of 'development', including to regulated and significant trees. It is confusing having exclusions in several placed in the Regulations.
8	**Insertion of Parts 4 to 18 and Schedules 1 to 1**		
Reg 22	Prescribed scheme (section 93)	Developments for which accredited professionals may act at the relevant authority. Applies to assessment managers, Accredited professionals - planning level 3 and 4 and Accredited professionals.	This will result in a higher number of applications to the assessment panel, rather than applications remaining with an assessment manager. This is on top of the assessment panel’s new responsibility of undertaking reviews of decisions by the assessment manager upon application by the applicant (Section 202(1)(b)(i)(A) of the Act). The exclusions at subregulation 22(1)(a)(ii) are considered too broad. In 2018, the City of Tea Tree Gully forwarded 39 items to the CAP for decision. Subregulation 22(1)(a)(ii)(A) would add another 33 applications based on the current volume of notified development unless the level of notification is to be altered via the Code. Only 6 of 39 notified went to the CAP. There should be an additional regulation to regulation 22 that

			requires that a CAP must delegate to an Assessment Manager in the circumstance where there are no representations in response to a notice of application under section 107(3) of the Act. Subregulation 22(1)(a)(ii)(B) would add 3 items to the workload with 5 submitted last year and only 2 presented to CAP. In addition, there should be clarification on what is meant by "total amount" and "work" to avoid disputes. Does this mean the value of the building work only or is it broader? If it is broader, what does it include? Subregulation 22(1)(a)(ii)(C) will need a definition of "storey"; is it a level of habitable rooms as per the National Construction Code or should it be linked to visual appearance? A maximum height limit should be included within the definition. Subregulation 22(1)(a)(ii)(D) – A consequence of this application is that applicants may lodge several smaller applications to avoid a panel assessment. Application of less than 20 allotments will also avoid the public open space trigger. Subregulation 22(1)(d) refers to an accredited professional – surveyor, who is the relevant authority for planning consent for deemed-to satisfy land divisions (no minor variations). This type of accreditation was not included in the draft Accreditation Scheme. It is noted that accredited professional – surveyor decisions are limited to Development Plan Consent only. Notwithstanding the fact that even simple land divisions can have complex planning considerations, this subregulation is considered to have little timing benefits given Council planning officers currently (in the vast majority of cases) grant Development Plan Consent and Land Division Consent (and thus Development Approval) at the same time.
Reg 23	State Planning Commission (section 94)	Sets out procedural requirements for Councils to provide information to the Commission in connection with a proposed development which the Minister calls in for assessment by the Commission and specifies certain developments that are excluded from these requirements.	Subregulation 23(2)(b) – 15 business days is not sufficient time for the CEO to provide meaningful comment of a development which by its nature would be more complex. Internal technical advice will most likely be need to be sought and it may need to go to a committee, depending on Council's delegations. Subregulation 23(3) – These constraints do not presently exist and limits role of councils. It is suggested that an additional criteria be inserted to allow Council to make submissions on any other matters that Council considers to be relevant.

Reg 27	Elements of development	Notes that where a development involves 2 or more elements, the relevant authority should clearly identify each element for the purposes of assessing the development against the Planning and Design Code.	It is suggested a Practice Direction on the concept of an 'element' be developed. The Regulations provide no definition or further guidance on this issue currently.
Reg 30	Application to relevant authority	Notes the required methods of lodgement of applications for development authorisation to a relevant authority or accredited professional.	All applications should be lodged electronically onto the SA Planning Portal. In terms of subregulation 30(1)(b), a development application should not be able to be "lodged with the relevant authority." This implies that a member of the public can drop off plans at the Council office, at which point the application is "lodged." The use of the term "lodged" should be amended to "submitted," as lodgement does not occur until fees are paid. It is very important to be clear about which point the application is actually "lodged" given the strict timeframes. The applicant should be responsible for the lodgement of the application by uploading, however a officer could assist a member of the public to submit their application at the Council office upon payment of a fee. Subregulation 30(2) is not supported. The process for lodging an application on the SA Planning Portal should be the same no matter which relevant authority is assessing the application to ensure transparency and consistency.
Reg 31	Plans, fees and related provisions	All applications must be accompanied by plans, drawings, specifications and other documents, as well as information and fees, in accordance with Schedule 8.	As per the comment above, all applications should be lodged electronically. Council has already implemented an online lodgement system whereby most applications are received electronically. Subregulation 31(4) is a good inclusion as it applies to all relevant authorities. Creates additional accountability for Accredited Professional-planning level 3 and level 4.
Reg 32	Lodging application on SA planning portal on behalf of an applicant	A relevant authority who receives an application under regulation 30(1)(b) or (2) must lodge the application on the SA planning portal within 5 business days after receipt of the application.	If council officers were to lodge the application on behalf of an applicant, this should require a fee. Also- does the 5 day timeframe refer to the verification period or is this in addition to the verification period? The latter is suggested to be achievable.

Reg 33	Notification of acting (accredited professionals—planning)	Accredited professionals (other than assessment managers) to give notice of an application for planning consent to the assessment panel for the area via the SA planning portal within 5 days of receipt of the application, together with a copy of the application and relevant supporting documents. The relevant fee is payable to the assessment panel at the time the notice is given.	There should be no requirement to provide copies of the application documentation - everything is available on the SA Planning Portal. The fees should be sent to Council separately via the established fee transfer system. Does the Assessment Manager need to report every application to CAP? Why can't the accredited professional give notice to the Assessment Manager as opposed to CAP?
Reg 34	Notification of acting (accredited professionals—building)	Accredited professionals (other than assessment managers) to give notice of an application for building consent to the Council for the area via the SA planning portal within 5 days of receipt of the application, together with a copy of the application and relevant supporting documents. The relevant fee is payable to the Council at the time the notice is given.	As per comments for Regulation 33. Council only requires the notice as the plans will be available on the SA Planning Portal and fees will be via established fee transfer.
Reg 35	Verification of application and determination of nature of development	Requirement for the relevant authority to assess received applications as to the completeness of information and the determination of the correct entity to assess the application (and to refer or assess accordingly) within 5 days of receipt of the application.	5 days is too short a period for consideration, cross checking and allocation. A minimum 10 business days would be more reasonable for what could be a large task (depending on the application size/complexity). If all relevant authorities are operating through the SA Planning Portal, transmission of the application and supporting documents is not required to take place; the relevant authority simply logs on and proceeds to consider the application as uploaded by the applicant.
Reg 36	Application and further information	Prescribes developments in relation to which requests for further information may be made and relevant timeframes for making such requests.	Subregulation 36(5) prescribes a period of 10 business days from the date of lodgement for the purposes of section 119(5)(d) – request for further information for applications that are performance assessed and some deemed to satisfy. This is too short a period for more complex applications where there may be a need for fairly complex review of the information provided prior to determining whether additional information is required (including seeking internal expert advice on specific matters). The current provision under the Development Act allows 15 business days which is often difficult to achieve.

Reg 38	Amended Applications	Prescribes the relevant start date of an application made, where the application has been varied (unless the variation is not substantial in which case, it has no effect).	A definition of what constitutes a “substantial” variation. A practice direction is suggested.
Reg 40	Regulated and significant trees	This Regulation prescribes qualifications of a person providing expert of technical report in relation to a significant tree.	Section 39 is an incorrect cross-reference to the PDI Act. To assist with navigation, it is suggested that all regulated and significant tree provisions are placed in the same Part of the Regulations.
Reg 43	Referrals	Specifies the prescribed bodies to which a relevant authority must refer prescribed classes of developments within prescribed periods (all defined in Schedule 9 of the Regulations).	Unable to comment as the content of Schedule 9 has not been provided.
Reg 44	Form of response	This Regulation states that prescribed bodies may provide a joint response to referrals, noting that the response may be provided via the SA planning portal.	With respect to Subregulation 44(2), "may" should be changed to "must" so that all responses are viewable on the portal.
Reg 50	Performance assessed development and restricted development	Provides the requirements for notices to be given to the public, who is responsible (the applicant in first instance) and penalties for damaging or destroying etc a relevant notice.	Subregulation 50(1) (d) - No hard copy documents should be provided (except potentially complex plans that are sizeable and easier to decipher in hard copy) – those notified can view the plans on the Portal. Subregulation 50(2) – Suggestion to include definition of “notification period”. This regulation could then have an additional subregulation requiring the notice to stay in place for the whole of that period. It would be easier to coordinate the letters and placement of the notice if the relevant authority was responsible for both (hence the commencement of the notification period is confirmed). The notice requires the authority to specify a date by which a representation must be submitted. The notice, which would have already been posted, will state a specific date, but in actual fact the public may have more time if the applicant was late placing the sign. This could lead to confusion as to when the notification period concludes.
Reg 52	Public inspection of applications	Outlines the method in which the relevant authority must make	As previously stated, the public inspection of documents should take place through the SA planning portal.

		applications available for inspection during the notification period.	
Reg 53	Representations	Notes procedural requirements for representations to be made to a relevant authority including the timeframe for lodgement, details of the representor to be provided, ability for relevant authority to allow a representor to appear to be heard and the response from an applicant.	Subregulation 53(1)(b) – a representation must also include an email and phone number as well to ensure that the person making representation needs to be easily contactable. Subregulation 53(2) – clarification: does this mean that the notification period commences 3 business days from the day on which the notice is sent?
Reg 56	Time within which decision must be made (section 125(1))	Provides the prescribed timeframes within which a relevant authority should deal with a planning application, calculated from when the relevant authority has verified the application and the relevant fee(s) have been paid. Regulation 56(1)(k) and 56(3) provide for an extension of the timeframe within which a relevant authority should deal with an application the subject of proceedings and permits the relevant authority to decline to deal with an application until such proceedings are concluded.	The point at which the clock starts in relation to an application is crucial - especially given the ability to obtain a deemed consent under section 25 of the Act. This date should be given a definition to make it very clear. Subregulation 56(1)(b) – the time frame for performance assessed applications (merit based) does not encourage the achievement of best practice planning outcomes. These applications can be complex, requiring consultation with multiple technical experts and negotiation with applicants. Strict timeframes with the threat of a “deemed consent” notice will result in reduced opportunities to negotiate best practice planning outcomes and an increase in adversarial practices. Subregulation 56(1)(f) – currently the City of Tea Tree Gully CAP meets once a month and draft reports need to be finalised by staff (to enable time for editing and authorisation, agenda preparation and distribution to members for consideration) two weeks prior to the CAP meeting. Should and application miss this deadline, the application would essentially have up to a six week wait until it can be heard at the next CAP meeting. There is the potential that Council’s current schedule of CAP meetings would not meet the prescribed timeframes even with the additional 20 business days afforded to applications that are assigned to CAP.

			Council will be forced to hold more frequent meetings, requiring increased resourcing to cover members' sitting fees and staff time. Subregulation 56(2) - Concurrent timeframes for public notification and referrals may be difficult to achieve in some instances where the referral agency requires amendments to the application, and the plans end up differing to the notified plans.
Reg 57	Deemed consent notice (section 125(2))	A deemed consent notice must be in a form determined by the Commission, published on the SA planning portal and issued to the relevant authority by lodgement via the SA planning portal or by registered post.	Subregulation 57(2)(b) – notices should only be issued through the SA Planning Portal.
Reg 58	Notification of decision—accredited professionals (section 89)	This Regulation requires an accredited professional to give notice of a decision to grant a planning or a building consent in relation to a proposed development to the council for that area. Notice must also be given when the accredited professional assigns a classification to a building; issues a certificate of occupancy; and receives a Statement of Compliance.	This regulation should specify that an accredited professional should provide documentation to Council via the SA planning portal. Otherwise, Council officers will be required to scan and upload everything (if received in hard copy) or in received emails, transfer attachments to the portal.
Reg 60	Notice of decision (section 126(1))	Prescribes timing for a notice of a decision on an application and details to be included in such notice.	With respect to subregulation 60(2)(b), Council should have 5 business days to grant Development Approval in alignment with all other consents, especially considering consistency checks need to be undertaken. Will there be two sets of plans – one for building rules consent and one for planning consent sitting on the Portal? Or is the Council expected to combine the plans? It is unclear as to why Council would not endorse a single set of plans with a development approval stamp. This assists with the applicant (and builders/contactors) understanding exactly what is approved and with enforcement proceedings if required.

Reg 61-63	Notice of decision to various parties	These Regulations state that a copy of a notice issued by a relevant authority must be given to other parties as prescribed.	All notification should be though the SA Planning Portal where possible.
Reg 64	Notice of conditions	A notice of a decision on an application must be accompanied by details and the reason for the imposition of the condition (including receiving directions from a prescribed body).	Not all authorities include reasons on the conditions they impose, including SCAP, State referral agencies and the ERD Court. Consistency is required at all levels.
Reg 65	Regulated and significant trees	Prescribes the number of and criteria for replacement trees to be planted, and the amount payable for each replacement tree that is not payable.	Clarification is sought on whether the replacement trees to be planted are expected to be mature specimens. In addition, the fee will require confirmation – noting that the current fee prescribed in the Development Regulations is considered too low to counter the loss of a regulated tree.
Reg 71	Variation of authorisation (section 128)	Replaces Development Reg 47A - with amendments to provide that an application for variation of a development authorisation is not required where the authorisation was granted by an accredited professional.	Overall, a good inclusion requiring a relevant authority to endorse notice of the minor variation, keep a record of what was considered minor and make other consequential amendments, with the ability to receive a fee for the service. With respect to subregulation 71(4)(a) – there should be a reasonable limit of the number of minor amendments being sought. There is potential to get around what may be considered a major variation and another application by applying for a series of minor variations.
Reg 82	Advice from Commission	Replaces Development Reg 29 with respect to applications that involves the division of land.	Notices should be distributed via the SA Planning Portal. There is no need for another option as allowed for in subregulation 82(3)(b); there should be one consistent way to transfer plans and information relating to development applications.
Reg 85	Assessment requirements – water and sewerage	This Regulation replaces Development Reg 118 - same wording.	Councils that are entities under the Water Industry Act 2012 for the provision of sewerage services should also be included within this regulation. Council takes on the same assessment as SA Water when the subject site is connected to Council's Community Wastewater Management System. Inclusion within this regulation would allow for a fee of an assessment of requirements (just as SA Water charges), and enable the condition of connection fees payable prior to the issue of clearance for the purposes of a land division certificate.
Reg 86	Prescribed requirements	Refers to matters against which land division must be assessed and land division certificate requirements.	This regulation should include telecommunications, lighting, street furniture and landscaping.

Reg 99	Notifications during building work	Replaces Development Reg 74 - generally same wording with the exception that differing notice periods apply for intended commencement of any stage building work in and outside Metro Adelaide.	Subregulation 99(3) - With the view to consistency, notices should be lodged via the SA Planning Portal only. To encourage a greater number of notifications, an app could be developed to enable builders to notify council using their smart phones.
Reg 109	Statement of Compliance	Replaces Development Reg 83AB - same wording	The builder and/or land owner should upload the Statement of Compliance onto the SA planning portal.
Reg 117	Register of land management agreements (section 193)	Replaces Development Reg 100 - same wording	Land Management Agreements (LMAs) should be available to the public via the SA Planning Portal. This replaces the need for an LMA register and hard copies should not be held by Councils.
Reg 122	Rights of review and appeal	Prescribes matters for which a person who has applied for a development authorisation may bring an application or proceedings under section 202(1)(b) of the Act.	It is noted that the prescribed matters that an applicant can request a review of are present in the Development Act. These matters are very broad. In a potentially more adversarial environment (due to strict timeframes and risk of deemed consents) this may be an option frequently adopted by applicants, further putting resourcing and timing strains on managing assessment panels. It is recommended that the prescribed matters be clearly defined to avoid frivolous and unnecessary time consuming reviews. The process by which reviews are managed should also be prescribed in a practice direction.
Reg 126	Register of applications	This Regulation replaces previous Development Reg 98 - same wording.	The SA planning portal replaces the need for an application register. Councils should only be required to retain a register of applications lodged under the Development Act.
Reg 127	Documents to be provided by an accredited professional	This Regulation replaces previous Development Reg 102 - same wording.	It is envisaged that all documentation will be held in the SA Planning Portal, so there will be no need to request this from an accredited professional. However in any case, a member of the public should be able to seek this information directly from the accredited professional, not through Council.
Schedule 3 – Additions to the definition of development			
1	Excavation or filling in identified zones or areas	Identifies the volume of excavation and fill that constitutes development in prescribed zones or areas.	This provision cannot be properly considered without knowing the content of the Planning and Design Code. The Code should be provided for review prior to the final closing of public comments on these Regulations.

Schedule 4 – Exclusions from the definition of development			
1	Advertising displays	Outlines the types of signs that are not development. Sch 4(1)(e) - Signs on the front of a building used primarily for retail, commercial, office or business purposes that are not development.	For the sake of clarity, public notification signs under the PDI Act should be expressly excluded from the definition of development. Sch 4(1)(e) -It would be useful to include buildings used for "community" uses (to capture signs on the front of community/recreation centres).
2	Council works	Describes the types of council construction and maintenance works that are not development.	Sch 4(2)(1) should be amended to rear "undertaken by or on behalf of a council." This would make it clear that this provision includes the construction and maintenance works of council assets undertaken by third parties (such as sporting clubs) on behalf of a council.
4	Sundry minor operations	Minor works that are not development. Sch 4(4)(1)(d) - a spa pool constructed in association with a dwelling for use by the occupants, and which does not exceed a capacity of 680 litres. Sch 4(4)(1)(h) - a structure which includes a retaining wall up to 1 metre + a fence if it is less than 3.1m is not development. Sch 4(4)(1)(m) - a tree house that is ancillary to a dwelling and that has a total floor area not exceeding 5 square metres.	Sch 4(4)(1)(d) - These spa pool requirements don't specify a requirement to have fencing or depth limits. This inconsistent with the swimming pool conditions listed. Sch 4(4)(1)(h) – wall heights and lengths are generally limited to 3m and 8m respectively on a boundary. It would be difficult to limit wall lengths in a planning assessment when a 3.1m could be constructed the entire boundary by right. In any case, fencing at this height should at least require a building rules consent. Sch 4(4)(1)(m) – suggest amendment to "cubby house" and clarification that a cubby house can be located on the ground or in a tree. Many cubby houses are constructed on stilts (elevating their height) – it should be clarified that these are also included.
Schedule 8 – Plans			
1	Plans for certain types of development	Outlines the plans and information required to lodge a development application.	A Certificate of Title should be required to lodge a development application to ensure that the boundaries are correct, any easements/rights of way have been taken into account and any other caveats/agreements identified.

6	Plans for application for consent for tree-damaging activity	Lists the requirements to lodge a tree-damaging activity development application.	Sch 8(6) should be amended to require the provision of an arborist report in support of an application for tree-damaging activities, and a plan showing the proposed location for any replacement trees.
Practice Direction - Standard Conditions for Deemed Planning Consent			
5	Conditions of Deemed Planning Consent	This practice direction prescribes standard conditions (in Attachment 1) that will apply to a deemed planning consent in cases where conditions are not imposed by the relevant authority within 10 business days.	*Attachment 1 – Standard Conditions* The standard conditions do not include reasons as per Regulation 64. *Site Management conditions* Only refers to developments of an industrial or commercial. Should also refer to other types of development. *Construction Management conditions* These conditions require plans to "prepared and implemented." Who checks the quality and effectiveness of these plans? *Regulated / Significant Trees conditions* Payments should be made into the Urban Tree Fund of the relevant council (which every council should have), as opposed to the Planning and Development Fund whereby funds could be used for other purposes in any area.
Practice Direction – Notification of Performance Assessed Development Applications 2019			
5	Notification of Performance Assessed Development Applications	This provision with the practice direction allows for the relevant authority to determine that a kind of development is of a minor nature only and will not unreasonably impact adjacent owners or occupiers, and to dispose of the requirement for public notification.	This power is not referenced in the regulations. Is it a valid clause in the practice direction? Council is not opposed to the concept in principle (assuming its operation is akin to the current Development Regulations in Schedule 9, clause 2(g)), but it does bring in an element of subjectivity into determining whether an application is subject to notification. This contravenes one of the main objectives of the reform in providing clarity of the assessment pathway up-front. In any case, there should be clear criteria as to which circumstances a relevant authority can dispose of the public notification process to assist with consistency across relevant authorities.

			As the relevant authority for all notified applications is an assessment panel, will it be the assessment panel that decides if a development is "minor" for the purposes of notification? The CAP should be able to delegate this decision.
11	Notice on land	Outlines the parameters around placing a public notice on the premises.	In addition to the comments made for Regulation 50, the regulations states that if the Council is the entity responsible for putting the notice up, the Council is responsible for ensuring it is maintained. It is considered that the applicant must be responsible for maintaining the notice in a legible state as it is impractical for council officers to frequently check up on the notice. What happens if the notice is found not to be maintained for the entire notification period? Does the notification period start again? How does this affect the relevant authority's timeframes? If any vandalism notice removal is not addressed expeditiously, the notification period should be extended with no penalty to the relevant authority's timeframes. This provides the applicant with an incentive to maintain the notice. Where the council places the notice on the land, council should be able to recover the entire cost of providing this service – including production of the sign and time it takes to place a notice on the land. *Attachment 3 – Template – Notice on land* Why do we need to insert an image? What image is expected? An image doesn't seem necessary given all the plans will be available for viewing online or at the council office; a single image would not be able to convey the same level of detail, and there could foreseeably be disputes about which image best represents the development.