

1 March 2019

Ms Sally Smith
Executive Director, Planning and Land Use Services
Department of Planning, Transport and Infrastructure
GPO BOX 1815
ADELAIDE SA 5001

Dear Ms Smith

Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 and Practice Directions

Thank you for the opportunity for the Planning Institute of Australia SA (PIA SA) to provide the Department of Planning, Transport and Infrastructure to provide feedback on the draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 (the draft regulations) and Practice Directions.

PIA SA acknowledges the consultation undertaken so far on relating to the implementation of the *Planning, Development and Infrastructure Act 2016* (the PDI Act) and its ability to have a voice through its regular meetings with yourself and with the State Planning Commission.

Attachment 1 contains feedback PIA SA has received from its members. PIA SA recognises that much of the current Development Regulations have been transferred across into the draft regulations. It commends DPTI on this approach as it enables the profession to transition to a new system with a degree of familiarity. However, PIA does hope that the reform continues as and when the profession has had time to adjust to those currently being undertaken.

Council Development Assessment Panel

PIA is concerned with the level of applications that a Council Development Assessment Panel (CDAP) is the relevant authority for. There seems to be an extremely high number. Whilst it understands the CDAP can delegate its decision making this would be Council by Council and at its dissection. This would not only create a difference in decision making from Council to

Council on similar application types, a primary reason for the planning reform, it may create a bottle neck in the system if the CDAP is only meeting monthly or even fortnightly. PIA considers an Assessment Manager who is required to have a high degree of experience would be more than able to undertake the assessment of some applications currently draft ad being assessed by a CDAP.

Climate Change

PIA considers as a matter of priority, the importance of addressing the effects of climate change. Adelaide is rated as one of Australia's hot spots for urban heat islands. Additional issues are heat waves, drought, bush fires, floods, reduction in green canopy and rising sea levels.

With the advent of the *Planning, Development and Infrastructure Act 2016* and its Regulations, Practice Directions and the Planning and Design Code, this is the ideal time to legislate effective management of state assets to achieve the best outcomes and reduce carbon emissions, which are increasing instead of decreasing.

There is an opportunity to target solar energy, water sensitive urban design and green canopy in both greenfield and infill development with legislation, which would assist in ensuring the achievement of the visions of the 30-Year Plan for Greater Adelaide.

There are no provisions within the draft Regulations and Practice Directions to effect this.

Further, it is critical that these matters are appropriately addressed in the Planning and Design Code, especially with regards to the design criteria applied to Deemed-To-Satisfy and Accepted development.

If the State is determined to address these issues, the most effective way is to do this through legislation.

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

Yours sincerely



Kym Pryde RPIA
PIA President SA

Attachment 1 – PIA Member comments

Relevant Authorities

An increase in Deemed-To-Satisfy developments (without any variation from the Deemed-To-Satisfy criteria) being assessed by level 4 accredited professionals will result in the further reduction in the quality of residential design in our public realm, a matter of great concern.

Dwellings are likely to be designed to specifically meet Deemed-To-Satisfy criteria, resulting in an intensified cookie cutter approach, as they can be quickly and easily approved without question.

If all dwellings fall into the Deemed-To-Satisfy category, what happens in instances where civil infrastructure is impacted, an on-site waste control system is required or overlooking occurs? Even if Deemed-To-Satisfy developments are similar to the Residential Code and only occur in certain areas, these critical factors must be dealt with by the Planning and Design Code.

Regulation 22 (1) (ii) - proposed delegations for Assessment Panels - development costs (in this instance \$5 million) do not necessarily align with complexity in terms of a planning assessment. A better approach may be use floor area of proposed developments.

Clarification required regarding the role of councils in the vesting of assets through the land division process. Land divisions, particularly large-scale land divisions, are complex and require negotiation with developers around numerous matters including public open space, streetscapes, stormwater infrastructure and roads.

Land Division and the Role of Land Surveyors

Strongly oppose accreditation level for surveyors to provide Land Division Consent for Deemed-To-Satisfy applications.

Land division is the foundation of development and, if a mistake is made, it can cause an urban design catastrophe.

Proposed Application Timeframes

Performance assessed applications which do not require public notification, any referrals and where an Assessment Manager is the relevant authority should be increased from 20 business days to 30 business days, unless the ePlanning system will be relied upon to take into consideration all delays.

With the deemed consent system in place, the additional time will assist relevant authorities and support a quality over quantity approach and still be faster than the current two months.

Regulation 35 which provides 5 business days for a number of administrative checks to occur prior to the commencement of any assessment beginning is supported.

Of concern is the following statement in the practice directions under ePlanning, which is related;

"It is anticipated that while the SA planning portal will prompt information from an applicant when lodging an application to assist in its categorisation and allocation to the relevant authority, there will also be an option for the applicant to lodge their application without this information. In such cases, it is likely that the application will be automatically allocated to the assessment manager or assessment panel relevant to the location of the proposed development".

This contradicts much of the material previously released regarding the reforms which suggested that an applicant would not be able to lodge unless all relevant information were to be submitted.

There should not be an option for applicants to be able to submit applications without the minimum baseline information being provided. If applicants were able to lodge without the predetermined minimum, it would also open up new issues in relation to further information requests and how many times a relevant authority can request additional information. If mandatory information is not submitted, the clock only should start once this has been received.

Application Information Requirements

Schedule 8 list should include civil works plans containing site levels. Such information is vital when dealing with matters of retaining and stormwater which, if not assessed appropriately, can detrimentally impact upon developments, neighbouring structures and the streetscape.

10 business days to request internal referrals and gather responses for additional information requests may be problematic.

Concept of Deemed Planning Consent and Standard Conditions

Strongly opposed to the concept of 'deemed consent' which will result in additional financial and resourcing pressure on local government, with expected increased legal fees and staff attendance caused by court action if an applicant serves notice under Section 125 of the Act.

The current "deemed refusal" process works well, promoting negotiation with applicants to achieve good outcomes. The new process will enable applicants to easily serve a notice on the relevant authority, even if the development is unsatisfactory, which will require relevant authorities to defend their position.

Although of the opinion that the 'deemed consent' process is fundamentally flawed, feedback is provided below in relation to the standard conditions in the practice direction which would be applied 'where appropriate' in the instance of a 'deemed consent' approval:

- References to application numbers should also include plan reference numbers
- Any references to Australian Standards should simply state 'in accordance with the latest Australian Standard' instead of referencing specific standards which are subject to ongoing amendments (unless these conditions are to be updated every time an Australian Standard is updated)
- Who determines what good condition is? It should read "to the reasonable satisfaction" of the relevant authority
- If the Code anticipates landscaping, one would assume this is a crucial component of the assessment. It does not make sense to condition the requirement for a landscaping plan, when at that point you can't really assess it against the provisions of the Code
- Single storey dwellings where overlooking occurs as a result of site works (particularly if retaining walls under 1m are not considered development with a fence on top). Overlooking and stormwater are probably the top 2 complaints that council receive about development applications and it appears poor practice to simply condition these aspects of development
- Where an application proposes commercial or industrial development on a site exceeding 1000sqm – stormwater is an issue for all development with hard-stand surfaces, not just commercial and industrial developments exceeding 1000sqm
- Issues concerning site contamination should be considered at the assessment stage, not just noted. This is a key assessment consideration, particularly for sensitive development, especially residential
- Standard conditions which refer to developments such as retaining walls and water tanks should include provisos to preclude such developments (of size) at the front of dwellings
- Any conditions which raise ambiguity throughout the document need to be further refined and reduced
- Consistent terminology should be used
- The proposed conditions should be reviewed by a specialist solicitor to reduce and or refine the conditions prior to implementation

Public Notification

Imagery is likely to add cost for applicants, reduce the possibility of total or partial reuse, may not be available and could provide images of a development which may still be subject to change. Imagery will be available via the QR codes which are proposed to be placed on these consultation signs.

The relevant authority should be responsible for the sourcing and placement of the notice on the subject land for public notification at the expense of the applicant.

Assessing Separate Elements of Development (in any order)

Clarification has been provided on this matter through this latest suite of consultation material, confirming that it will ultimately be councils' responsibility to ensure that all approvals (Planning and Development) of a proposed development are consistent prior to issuing a full development approval under section 99(3) of the *Planning, Development and Infrastructure Act 2016*.

Applicants being able to obtain staged consents in any order is seen to be problematic in most scenarios and generally unwarranted.

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 application 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 could also potentially increase costs for applicants seeking variations to their applications. Perhaps it should be limited to Deemed-To-Satisfy applications.

Variations

Administration fees should be charged for minor variations, as they require time and resources to assess and relevant authorities should be compensated for this service.

The impending practice guideline which is to clarify what constitutes a minor variation will be a key document.

Exempt Development

Fencing / retaining wall combinations – Opposed to the proposal of a 1 metre retaining wall with a 2.1 metre fence (total 3.1 metres) as an exempt form of development. Could have a detrimental impact upon streetscapes as such development can completely dominate the front of a dwelling and could reduce a relevant authority's ability to guide earth works through the construction phase.

Should such development remain as exempt, it should be limited to the rear of allotments. From a building perspective a retaining wall with a 2.1 metre fence mounted on top of it will be subject to significant wind loads and as a result building rules consent for such development should be required to ensure the structure is of sound construction.

Water tanks – the installation of water tanks is supported due to environmental benefits, as well enabling greater on-site bushfire protection. Should not be located at the front of dwellings due to streetscape impacts.

Tree Houses (Cubby Houses) – Agree that small cubby houses (less than 5m²) built for children should not require development approval, however height and setback distances should apply.

Demolition – demolition of certain single-storey buildings should be exempt from requiring development approval. Suggest where demolition is exempt from requiring development approval, a notification of proposed demolition is required to Council prior to commencement. This would assist in identifying heritage buildings in cases where applicants/owners may be unaware of their status.

Exempt State Agency Development

In regards to telecommunications facilities, an assessment where such facilities are to be located in residential zones would be beneficial.

A number of potential locations are examined and the most appropriate chosen. Case law essentially deems this infrastructure as essential and these applications are almost never refused. Nevertheless, by working with the relevant authority, the system currently gets the best outcome for the local community by minimizing the amenity impacts.

Site Contamination

Schedule 8 of the draft regulations seeks to introduce a site contamination declaration for residential alterations, additions and new dwellings. This this provision has been modified from the existing provision relating to Complying Development (see clause 2B(4), schedule 4, *Development Regulations 2008*). As drafted under new schedule 8, the provision relating to a declaration regarding potential site contamination would apply to all Code assessed development. This provision was only ever intended to be used in connection with Complying Development.

E-Planning

In terms of the e-planning system Council is keen to receive greater detail in relation to records storage, particularly with regards to large scale land divisions, which can generate thousands of documents throughout a projects lifespan. Council is wanting to have a better understanding of what capacity the system will have and what capabilities an in-house systems will still require.

As discussed above, Council is opposed to the notion of applicants being able to lodge applications via the e-planning system (the portal) without providing all of the baseline information required. This opens up a number of new questions and opposes previous principles, highlighted through the reform process, to generate a system which allows for quicker assessment time due to having all of the relevant information at hand.

Business days

There is general support for the use of 'business days' (as defined in the PDI Act) however, with a 24/7 accessible Planning Portal PIA SA is concerned without clarification of business hours that form 'business days'. This clarification is required to ensure there's clarity around this matter.

What is not in the Regulations

The guide document contains a summary section which discusses 'what is not in these (draft) regulation'. Council's take away message from this section is that the Department and Commission should aim to minimise the number of separate documents and regulations to be released e.g. fee regulations and referrals.

Our recommendation is that, as and when these regulations are drafted, they be integrated into the one set of regulations, in an effort to minimise confusion and the number of documents which practitioners will have to work with once the new system is implemented.

Further to this, the use of Gazette notices to declare classes of development as impact assessed seems awkward and cumbersome for practitioners and should also be included into the regulations.

Other

- In relation to part '3F – Significant Trees' of the draft regulations, it should be titled 'Regulated and Significant Trees' to avoid confusion.
- Regulation 3F(6)(a) could benefit from detail concerning the pruning of the tree canopy and the 30% allowance. Additional guidance is desirable to assist in promoting favourable pruning e.g. not creating a lopsided tree.
- There needs to be a definition for the term 'storey', which potentially provides guidance in relation to heights.
- Regarding section 23(3)(a) of the draft regulations, this section should be expanded to include general planning assessment comments.
- Where the draft regulations assume notices via the postage system will reach their destination in 3 business days, this is unlikely unless utilising Priority Post. May be safe to assume 5 business days.
- Concerning draft regulation 89(5) should be expanded to include street lighting,

furniture and landscaping in a manner satisfactory to the Council.

- The definition of 'Home Activity' from the current set of Regulations should be transferred into the new Regulations.