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Engaging for Reform
Community Alliance
South Australia

15 March 2019

Mr Michael Lennon
Chair, State Planning Commission
Department of Planning, Transport and Infrastructure
Email: DPTI.PlanningEngagement@sa.gov.au

Dear Mr Lennon

SUBMISSION
DRAFT PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) (DEVELOPMENT ASSESSMENT) REGULATIONS AND PRACTICE DIRECTIONS 2019

The Community Alliance SA is an umbrella organisation for resident and community groups from Adelaide and other areas of South Australia, whose aim is:

'To Put the People Back into Planning and Development in SA'

Thank you for the opportunity to provide a submission to the draft Planning, Development and Infrastructure Regulations and Practice Directions. The extension to 15 March was welcomed by our members as the original six-week consultation period was unachievable for many of us.

As you are aware, the vast majority of our members found the complexity of the regulations and technical language used in the communication materials extremely challenging. We are not confident that we are fully abreast of the impact that these regulations will have on our residents and to this end, we are limiting our response to aspects of the regulations that we have the most understanding of.

Regulated and Significant Trees (Regulation 3F)

The 30% threshold should be reduced, as often a tree damaging activity that removes 30% of a tree ultimately results in the death of the tree and subsequent complete removal. Also, there is no maximum number of times a tree can be pruned defined in the regulation. The risk is that someone can keeping pruning 30% of a tree until it disappears. There needs to be better protection spelled out in plain English.

Relevant Authorities (Regulation 22)

If the new planning system is going to be 'simpler and more streamlined', it is not clear why developments over three storeys and exceeding $5 million still need to be referred to the State Planning Commission for assessment instead of the Council Assessment Panel. We do

not support this as it is very arbitrary. We would like to see decision-making stay at a local level by those who understand the issues, local infrastructure and community needs.

In addition, we are vehemently opposed to the regulation which exempts the Commission from referring these applications to the relevant Council for comment. Councils are the only authorities that know the detailed site history of land use, storm water management, local heritage, etc. Why not get all the information possible in order to improve decision making? This regulation makes no sense and is so obviously included to promote the interests of private developers instead of the community.

Private surveyors and land divisions (Regulation 22)

We strongly oppose the privatisation of land division approvals. The proposed inclusion of a land surveyor accredited professional stream in the draft regulations is surprising and disappointing. The decision making in this area should remain with independent authorities who do not personally profit from land divisions. It increases the risk of poor outcomes for the public and for the environment.

The 'What We Have Heard' report of June 2018 described overwhelming support for removing approval of land divisions by accredited professionals due to there being too many complex issues to take into consideration. The draft Accredited Professionals Scheme released in August 2019 *did not* make reference to accredited professionals or surveyors doing land division approvals and therefore we consider the current draft to be misleading. We *do not* believe that it is appropriate for land surveyors who undertake land divisions to be approving land divisions.

Fencing (Schedule 4)

We strongly disagree that no planning approval will be required for combined retaining wall and fences up to 3.1 metres in height, as that can be quite high in some areas and could have unreasonable impacts on adjoining properties. This height is far greater than what would ordinarily be expected in most residential areas.

Demolition of single storey buildings (Schedule 4)

This regulation will increase the risk of unlawful demolitions when Councils are removed from the approval process.

We understand that demolition is proposed as being exempt from the definition of development, meaning no application is required for single storey buildings. The draft Regulation states this exemption does not apply if it is a Local Heritage Place in a zone, subzone or overlay set out in the new code.

We vehemently disagree that demolition of single storey buildings may be exempt from requiring development authorisation.

It is particularly alarming that this may include Contributory Items, as the planning policies are silent on their continuing protection and the Code has not yet been drafted for the metropolitan area. If Contributory Items are allowed to be demolished, it will undermine the entire Historic Conservation Zone framework in which dwellings in those zones can not be demolished 'as of right'.

We request that Contributory Items, which could later be listed as local heritage in a zone, subzone or overlay, be protected the same as State and Heritage listed properties.

Assessment timeframes

We strongly disagree that a 'deemed consent' notice is the default for delayed decisions, and the fact that a planning authority has to apply to the Court within just 30 days to cancel the 'deemed consent'. Councils who inherit poor planning outcomes will be forced to take legal action which may lead to unhelpful adversarial approaches.

We also disagree that the timeframe has been reduced for applications that do not require public notification which will place additional pressure on development assessment staff. Good planning is the most important outcome, *not* the speed.

Representations

Unlike the current system, the relevant authority can decide whether or not to hear representations. Unfortunately, the new act has already removed the opportunity for third party appeal rights for the majority of development applications. There is no fairness here.

Public notification & Practice Direction – Restricted and Impact Assessed Development

The use of a sign is a positive development, but it still leaves some at a disadvantage such as a neighbour to the rear of the property who would not necessarily see the sign. The templates for the letter and sign uses too much complex and technical language which the average person would not understand. Terms like ‘deemed to satisfy’ and ‘performance assessed’ need to be defined in plain English.

The public consultation period should be at least 40 business days not 30 as proposed because these are often complex applications and the community needs time to properly consider them, seek advice if needed and provide an appropriate submission

The words “at least” should be inserted in regards to the minimum number of business days, to allow flexibility for the consideration of particularly complex applications. The commencement and finish dates for public notification period is complex and confusing.

The planning portal should also include a pre-set and automatic function where the public can receive an alert when there is a notifiable development in their area. This also should include the start of public consultation period, availability of the Environmental Impact Statement, the proponent's response, the Commission's assessment report, when a decision has been made should all be notified on the Planning Portal to interested citizens via an email alert.

Environmental Impact Statement documentation, the proponent's response, the Commission's Assessment Report and full details of the decision should be put on the Planning Portal as soon as possible.

Who will deal with compliance?

The article entitled “Builder digs in for legal fight” in the 7 March issue of The Advertiser highlights the confusion that is already happening regarding which authority is responsible for compliance. If the Commission is approving developments, why should it not be responsible for compliance? There should be more accountability and responsibility in the regulations. And it should not be forced upon Council rate payers who now have nothing to do with planning assessment and approvals with these types of developments.

Draft Practice Direction (X) Notification of Performance Assessed Development Applications 2019

Please refer to Attachment A for our submissions regarding the above.

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

Please refer to Attachment B for our submissions regarding the above.

Thank you for the opportunity to make a submission on behalf of thousands of ordinary residents of South Australia. If you would like further clarification on any of the above points in our submission, please feel free to contact us.

Yours sincerely,

Christel Mex
President

Tom Matthews
Secretary

ATTACHMENT A

Draft Practice Direction (X) Notification of Performance Assessed Development Applications 2019

The Community Alliance SA suggests that the following clause (highlighted in blue below), in the draft Practice Direction (X) Notification of Performance Assessed Development Applications 2019, be amended to contain guidelines for the relevant authority that specify what (is a performance assessed development) is a minor nature. We contend that if this clause is not specific it will be used to circumvent public notification of developments on performance assessed developments. This clause is wide open to being abused.

Part 2 – Notification of Performance Assessed Development Applications 5 – Determination under section 107(3) of the Act

1. determine such a decision in relation to public notification.
2. (2) *If a relevant authority is of the opinion that a proposed performance assessed development is a kind of development which is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development, the relevant authority may resolve to proceed with assessment without undertaking a process for public notification or submissions in relation to the proposed development.*

The Community Alliance SA suggests that the following (highlighted in blue below) be added – this will enable the public to engage with a nominated person/s who can provide easily understood information on a proposed development. Planning is very difficult for members of the public to understand and all stakeholders must have a demonstrated interest in making information on proposed developments easy to understand. This will enable members of the public to be empowered and know what is being proposed in a language that can be understood by all.

10 – Notice to adjacent land owners/occupiers

- inspection during the notice period and
- *who is the contact person authorised to provide the public with information on the* development?

11 – Notice on land

CASA believes that a maximum distance for a sign to placed on the premises is no more than one metre from the boundary of the land. It must be appreciated that some members of the publics' eyesight might not be very good and as a consequence if the sign is too far away it will be very difficult to read. CASA believes that no member of the public should be disadvantaged. The suggested addition of a metre is highlighted in blue.

CASA asserts that the sign should be placed at a minimum height of 1.5 meters above ground level. A 300mm minimum height is far too low and will make the sign difficult for some members of the public to either read the sign because it is too low

or prevent some elderly people because of an inability to stoop and read the sign. This is also highlighted in blue below.

CASA asks that clause 11 and subclauses (1)(a), (b) and (2) be amended to include the above highlighted in blue below. This reflects CASA comments above.

11- Notice on land

(1) in relation to placing a public notice on the premises in accordance with section 107(3)(a)(ii) of the Act, a public notice must be:

(a) placed on, or within a *metre* ~~reasonable~~ distance of, the public road frontage for the premises, ensuring that it is visible to members of the public

(b) mounted at least ~~*300mm*~~ *one metre* above ground level;

(c) made of weatherproof material (laminated print attached to fence, corflute print on star droppers, or other); and

(d) at least A2 size.

(2) In relation to clause 11(1)(a), the relevant authority shall determine the most appropriate position *(no more than one metre from the boundary)* for the notice on the land in order to provide for maximum visibility from a public road. In cases where the subject land has more than 1 frontage to a public road, the relevant authority may determine that more than 1 notice must be erected on each of the public road frontages to ensure that notice of the development is reasonably apparent to members of the public.

ATTACHMENT B

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

52—Public inspection of applications

CASA expresses concern about the provisions in clause 52 Part 2 (see below) that provide the relevant authority with ability to refuse, ***in its opinion,*** providing plans and drawings on security grounds (highlighted in blue).

CASA appreciates this but CASA recommends that it is imperative that guidelines must be developed to safeguard the relevant authority and members of the public. As the clause stands it is silent on this matter. CASA considers this to be a serious matter that must be addressed. Both the relevant authority and members of the public must be protected. At present the clause is open to being abused. In addition, relevant authority staff might require training to administer this important provision in the Regulations. The question arises – should these suggested amendments be added to the Practise Directions?

Part 2

5 (5) 2 (b) the relevant authority is not required to make available any plans, drawings, specifications and other documents or information if to do so would, in the opinion of the relevant authority, unreasonably jeopardise the present or future security o

53—Representations

The Community Alliance SA believe that subclauses (i) and (ii) below require clarification. At present (i) refers to 15 days whilst (ii) refers to 20 days. See below (highlighted in blue) This is extremely confusing and makes no sense to members of the public whatsoever. CASA recommends that this matter is addressed and that whatever is decided to be included in these regulations they are written in plain English.

(1) For the purposes of sections 107(3)(b) and 110(2)(b) of the Act—

(a) a representation to a relevant authority must be lodged with the relevant authority—

(i) in relation to section 107(3)(b) of the Act—within 15 business days after the day on which the notice under section 107(3)(a)(i) would be expected to be received by the owner or occupier of land in the ordinary course of postage under subregulation (2), or the day on which the notice under section 107(3)(a)(ii) was placed on the relevant land, which ever is the later; and

(ii) in relation to section 110(2)(b) of the Act—within 20 business days after the day on which the notice under section 110(2)(a)(i) would be expected to be received by the owner or occupier of land in the ordinary course of postage under subregulation (2), or the day on which the notice under section 110(2)(a)(ii) was place on the relevant land, which ever is the later; and making the representation; and ….