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1 March 2019

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To the Engagement Team,

Thank you for providing the City of Playford Council an opportunity to provide a formal response to the Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 (the draft Regulations).

Council is generally supportive of the proposed direction of the draft Regulations however we have identified areas of concern relating to procedural, community, private sector and Council resourcing issues that require consideration. It is understood that a detailed Planning and Design Code has not been released meaning some aspects of the Regulations may be clarified upon the release of the Code.

It is noted that the Department has provided a template response option, however Council has considered the key themes of the draft Regulations and how these relate the City of Playford Council.

A primary concern is the potential creation of adversarial relationships between Council and developers. We anticipate that reduced timeframes and reduced flexibility will result in increased refusals by Council to avoid deemed consents for highly complex greenfield land divisions often subject to complex negotiations such as deeds.

This will be in conflict with the approach of the City of Playford Council which has actively sought to build positive working relationships with developers and the community to achieve positive development outcomes.

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Playford average 2 refusals per year on planning grounds over the last 5 years, with approximately 10,000 applications received in that time.

Further to the above, our response has been broken into the following key themes to identify the specific impacts in the Playford Context;

1. The interaction with draft Regulations on growth area development applications
2. The proposed application timeframes and the implementation of Deemed Consent Notices
3. Potential impacts to developers and the community
4. The impacts of the draft Regulations on Council resourcing
5. Assessment pathways and delegations
6. Building Rules Consent processes
7. The public notification practice direction
8. Standard information required for an application
9. Development approval exemptions

These points have been expanded upon within the body of the response.

Kind regards



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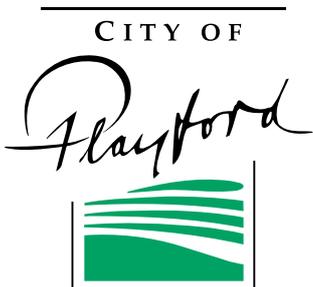
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PLAYFORD COUNCIL

Draft Regulations Response 2019



3/1/2019

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1. The Interaction with Draft Regulations on Growth Area Development Applications

- 1.1** The City of Playford Council is one of the state's largest growth area Council's. Accordingly, a high level of importance is placed on the interaction of the draft Regulations with future growth area applications in order to manage future risk to the community. Growth area applications are highly complex, commonly featuring deeds, infrastructure agreements and require detailed negotiations with developers to ensure high quality outcomes.

Council considers the prescribed time frames to be inadequate to allow appropriate assessment of complex applications. These applications require extensive consultation between numerous internal and external parties which would be difficult to accommodate under the proposed timeframes.

- 1.2** Greenfield and growth area land divisions have a higher complexity than general land divisions due to the requirements for agreements within Council that go beyond typical assessment pathways. It is unrealistic to expect the two types of land divisions to adhere to the same time constraints and for this reason it is important that this is recognized within the Regulations.

Solution:

Investigate the introduction of extended assessment periods or stop clock mechanisms when Infrastructure agreements, land management agreements, open space contributions or deeds are required. This would alleviate Council's primary concern relating to major and complex applications.

Another mechanism, employed in the United Kingdom planning system allows a relevant authority to request an extension of time from the applicant (similar to the ability to seek additional information detailed in Regulation 36 (6)). This would allow for a clear delineation of timelines for standard applications and remove the risk of a deemed consent being served. This would avoid refusals being issued by an authority in situations where additional time would facilitate a mutually beneficial outcome.

- 1.3** The Prescribed time period to request for additional information is too short (10 days) as specified in Regulation 36(5), especially given the time to lodge an application can take 5 days. This will not allow for sufficient time to adequately review what additional information is required. For complex applications this presents the risk of required information being missed.

In situations where Council is required to engage independent technicians from the private sector such as for, acoustic reports, soil reports and other specialised detail, this time frame is an unrealistic expectation and does not reflect the nature of industry workloads.

Solution:

Existing prescribed time period of 15 days be maintained for standard applications, prescribed time period of 20 days be applied for complex applications (greater than 20 allotments, Assessment Panel as authority, value greater than \$5,000,000)

- 1.4 In practical terms the benefits of a deemed consent to a developer is questionable. In situations where an Assessment Panel is the relevant authority, the 10 days to impose conditions on a deemed consent may not allow sufficient time frames for Panel consideration. Similarly, in some situations a Council may choose not to issue a decision notice for a deemed consent. This would leave a developer with a deemed consent, without a physical decision notice or imposed conditions, only assumed conditions per the Practice Direction. This would conflict with the expectations of the banking sector as there would be no confidence in issuing a loan on a deemed consent. Consideration is required for a template deemed consent notice to address this.

2. The Proposed Application Timeframes and the Implementation of Deemed Consent Notices

- 2.1 Council considers that the proposed timeframes may be suitable for standard residential and commercial applications; however, it considers the lack of distinction made in the draft Regulations for complex or major forms of development application and greenfield land divisions as inappropriate.
- 2.2 Deemed consent notices place a large burden on Council and are likely to have significant impacts on complex development applications. It is expected that this would result in a higher percentage of refusals for complex applications as it is not realistic to expect an application to be satisfactorily determined within such a constrained period.
- 2.3 There is potential for the deemed consents process to be manipulated by delaying agreements etc. This then places the onus on a relevant authority to either refuse an application based on a lack of available information, or to challenge the deemed consent at appeal. Both are poor outcomes.
- 2.4 In situations where a Panel is the relevant authority, the proposed time frames are not consistent with the nature of panel meetings, which are typically held monthly by most Councils. In the current iteration of the draft Regulations, a Deemed Consent notice may be served on an application which is awaiting a decision by an Assessment Panel, as no mechanism is provided to avoid this situation.
- 2.5 There is no legislative ability for an Assessment Panel to defer an application. Given that further information often comes to light in such meetings, especially when public representations are made, it is essential that such a mechanism is available.

Solution:

The draft Regulations are amended so that a deemed consent notice cannot be issued on an application where an Assessment Panel is the relevant authority and the item is pending a Panel meeting.

A deferral mechanism should be included within the draft Regulations to allow a single deferral of an item by an Assessment Panel. This would require compensatory time being added to the assessment timeframe

- 2.6** Clarification is required regarding when the ‘clock starts’ for an application. The draft Regulations repeatedly interchange the use of the words ‘lodgement’ and ‘receipt’ of an application which creates confusion as to when the timeframe begins. It should be clarified that the clock starts only when an application has all basic information specified under Schedule 8 and the requisite fee has been paid. The relevant authority should have provision to cancel or return an application if basic information required under Schedule 8 is not provided within 10 days of the receipt of the application
- 2.7** It is also noted that if a “deemed consent notice” is served on an application where the Assessment Panel is the authority, there may not be sufficient time for the Panel to determine the conditions or to lodge an appeal against the deemed consent within the 10 days prescribed in the deemed consent Practice Direction.

Solution:

As stated above, deemed consents should not be able to be issued on applications where the relevant authority is the Panel and it is waiting to be tabled for the first time.

- 2.8** Fifteen (15) business days are specified for comments from the CEO of Council where the Commission is the relevant authority. Given the likely complexity in nature of such applications this is not considered an adequate period of time. Referrals to different departments are likely to be required in order to comment on traffic, waste management, infrastructure, heritage etc. and should be taken into consideration

Solution:

A period of at least twenty (20) business days, if not longer, would be more appropriate, particularly given the current referral timeframe in the *Development Regulations 2008* is six (6) weeks.

3. Potential Impacts to Developers and the Community

- 3.1** The draft Regulations are likely to result in increased numbers of refusals for applications, due to the proposed timeframes and the risk posed to Council of the resultant deemed consent notices.

- 3.2** Furthermore, given the limited time to submit a request for information, it is considered likely that Authorities will be forced to adopt a risk adverse stance when initially reviewing an application. This could involve sending out large and comprehensive information requests in an attempt to cover different eventualities; particularly given only one request is allowed.
- 3.3** Both outcomes, refusals and large request for information, are unsatisfactory outcomes for developers who often operate on tight time constraints due to future planning and budgetary constraints. It may also result in expert reports being requested that may not be required to determine the application.
- 3.4** These outcomes (3.3 above) undermine the ability of an Authority to work with a developer to obtain a satisfactory outcome and are unlikely to result in positive development outcomes.
- 3.5** For a community that is used to the City of Playford Council attempting to facilitate development through positive communication and negotiation, the constrained time frames will pose an issue. This is reflected in the lack of the ability to extend an application in situations where an authority requests a variation to an application.
- 3.6** The variation regulations do not factor in sufficient time or provide a legislative mechanism for a relevant authority to request for an application to be varied, without risk of statutory time frames being exceeded. The potential risk is that this will ultimately result in an increase in refusals due to the short allocated timeframes for each assessment pathway (besides deemed to satisfy) and the inclusion of the deemed consent notice.

Solution:

The variation regulations to include a legislative mechanism such as provided in Regulation 19(2) of the Development Regulations with a timeframe of 30 days for an Applicant to make the requested changes. The current wording should be slightly adjusted to include “where the relevant authority requests...”

- 3.7** Given that one of the primary arguments behind the Planning, Development and Infrastructure Act was the facilitation of development, it is consideration that while the intent of the draft Regulations are sound, the predicated outcomes are not reflective of these objectives. Revision of the development timelines and how these interact with more complex applications are likely to result in a better result for both developers and the community than the current iteration.

4. The Impacts of the Draft Regulations on Council Resourcing

- 4.1** Ten (10) days to request information following the lodgement of an application is an overly constrained time frame. If a council does not have staff in house to provide this service, they may rely on contractors for engineering, traffic detail or similar. In these situations, this is not a realistic timeframe.
- 4.2** There is an absence of prescribed expiation fees within the draft Regulations. This constrains Council’s ability to ensure compliance with legislation without undertaking

prosecution. This would present poorly to the public who have expectations relating to Councils ability to enforce breaches which would be further reduced by the cost of proceeding with prosecution.

- 4.3 Without the benefit of the Planning and Design Code, based on current application levels and typology, the volume of applications to be determined by Assessment Panels will be substantially increased. Taking into account that most Panels only meet monthly and the administrative requirements of preparing and drafting these reports, followed by a prescribed period of public access to the reports prior to a meeting, there would be a significant resourcing implication for Council's due to Panel obligations. For Playford Council this is estimated to result in a cost of \$40,000 or a 0.5 Full Time Employee (FTE) planning position.
- 4.4 The lack of separation between standard applications and complex application time frames will place a greater strain on Council resources for detailed applications. This includes expert advice such as engineering comments which requires additional resourcing above current levels. This cost is unlikely to be covered in the revised fees structure.
- 4.5 The *Development Regulations 2008* make no provision for additional fees for applications that require assessment from an Assessment Panel. Additional fees where an Assessment Panel is the authority should be built into the future fees and charges regulations due to the increased operating costs for the Panel.
- 4.6 It is noted that the current fee structure does not reflect the cost to Councils in terms of assessment, management and ongoing compliance. For this reason, it is important that any fee structure is more reflective of the actual cost to Council, especially when referrals, legal drafting and increased scrutiny is required for more complex applications.
- 4.7 With the release of the Accredited Professionals Scheme and associated Regulations, it is considered likely that the majority of Councils will pass the cost of registration and ongoing training to its individual Panel Members due to many Panel Members sitting on multiple Panels, or occupying professional positions at other Authorities. A consequence of this may be that some existing members do not become accredited, reducing the pool of available Panel members and potentially making recruitment of members more difficult.
- 4.8 Schedule 49 (b) and Schedule 60 (6) require authorities to send a copies of Decision Notices to relevant parties. This is counterintuitive as the notice will be available online. The planning portal should be designed to automatically send a notification to all relevant parties when a decision is issued, in line with the current EDALA system.

5. Assessment Pathways and Delegations

- 5.1 Council regards the ability for a land surveyor to issue a planning consent for a land division as being generally inappropriate. Local constraints and Council infrastructure,

are often overlooked, resulting in significant impacts on future development. In practical terms, given that an Assessment Manager is the authority responsible for issuing the final land division consent, the ability for land surveyors to issue the planning approval is not seen as offering any tangible benefit to developers or the community.

- 5.2** Playford and other growth councils have a relatively large volume of applications over 20 allotments and as such, are appropriately resourced with the people (planners, engineers, landscape architects etc.) to determine the specific technical aspects of these applications. As such, the delegation of the Panel as the relevant authority will not achieve a streamlined assessment pathway. There is a concern that this will result in a higher percentage of applications being lodged for 19 allotments to avoid delays awaiting Panel meetings. This would create a fragmented pattern of land division and makes it difficult for Council to master plan land divisions, recoup open space contributions and impose stormwater and road forming requirements.
- 5.3** Infrastructure provision is a major component of land division applications and is commonly assessed by a Council's internal departments and external agencies. This is a specialised skill set which exceeds that of an expected panel and it may be problematic for a Panel to make a determination on such issues which have already been determined by internal Council departments. Due to these technical aspects it is not considered that Council Assessment Panels are best placed to as the relevant authority for large land divisions. This should remain under the authority of Assessment Managers.
- 5.4** While Council Assessment Panels are able to delegate a decision back to Council, this relies on the Panel having a willingness do to so. If a Panel is unwilling to delegate decisions back to Council, this would have impacts on assessment processes, particularly in land division situations.
- 5.5** Ten (10) days for an applicant response following public notification is considered constrained when compared to the 60 days afforded an applicant when a request for information is made from an authority. This should be reviewed and increased to a minimum of 15 days.
- 5.6** There is scope to Combine Regulation 22 and 24 for development where assessment managers are the relevant authority
- 5.7** Significant/regulated trees information is spread throughout the draft Regulations. This should be consolidated into one section for clarity and practicality. Regulation 18 of Schedule 4 could be moved to the exempt criteria for regulated/significant trees in Regulation 3F(4)
- 5.8** The prescribed fee for tree removal should be reviewed and increased, with consideration towards the physical costs of planting and establishing a replacement tree.

6. Building Rules Consent Processes

- 6.1** It is noted that Council's building staff have been involved with the Building Reform Working Group and ongoing feedback has been provided within this forum, with a formal response to be provided.

- 6.2 As noted, there is an absence of expiations within the draft Regulations, which impacts Councils ability to effectively manage enforcement.
- 6.3 Further information is required regarding the integration of the current Council database into the planning portal. ESP's, Pool Inspections, Statements of Compliance, Certificates of Occupancy and other post development approval information would need to be carried through from each Council.
- 6.4 It is expected that the E-Portal will provide individual Council reporting- inspections etc. to avoid the need for Council to maintain its own independent data base.
- 6.5 Consideration should be given to the impacts of the introduction on Certificates of Occupancy for Class 1 buildings. Particularly if the dwelling has been privately certified and Council is to issue a Certificate of Occupancy. It is suggested that the Regulations prescribe that the approving authority must issue the certificate of occupancy, similar to the situation for a variation to an approval specified in Regulation 71 (1) of the draft Regulations
- 6.6 Council suggests that there should be a requirement that wall framing, footing and plumbing inspection certificates be provided before a certificate of occupancy can be issued. This would provide an authority greater certainty in issuing a certificate of occupancy if appropriate documentation has been provided.
- 6.7 Strong auditing and compliance obligations for private certification are essential to ensure the private sector maintains appropriate practices.
- 6.8 There is the opportunity to bring a building rules referral trigger into land division application which have buildings located near boundaries. Without the correct expertise, approvals may be issued for land divisions which are in violation of the Building Code

7. Public Notification Procedures

- 7.1 An authority should have the ability to notify properties beyond a 60m radius in situations where they are likely to be impacted by a development, consistent with the current Category 3 notice. Traffic, stormwater, noise and dust emissions (amongst others) may often have impact beyond 60m, as do rural setting where properties have a greater separation.

Solution:

The scope for public notification to include any properties determined by the relevant authority to be directly affected by the development. The test for the determination of properties to be notified should be included in the public notification Practice Direction.

- 7.2 The Regulations do not take into account the time required for preparation of a public notice sign for performance assessed development applications and this should be amended.

- 7.3** The draft Regulations and Practice Direction make reference to penalties for parties that deliberately remove or damage a sign; however no detail is made regarding prescribed decision time frames in these instances. If a sign is removed prior to notification finishing, does the replacement sign have to be erected for a further two weeks? Does this add two weeks to the timeframe in which a decision is to be made. What would the outcome be if the sign was repeatedly removed, such as by a vagrant or a disgruntled neighbour.
- 7.4** The onus to observe and maintain a notification rests with the person who erects the sign. Councils, as with the Commission, should have the ability to not erect signage. An applicant should only be able to request Council to erect signage when Council has consented to such a request.
- 7.5** The Practice Direction for public notification results in a lack of clarity in relation to the placement of the signage. There are times where signage will achieve limited purpose such as in rural areas, on high speed roads, hammerhead development where the proposed development will occur at the rear or where vegetation prevents the placement in an appropriate location.

Solution:

Public notification should not be required in areas with a prescribed speed limit greater than 60kmp/h or when a property is outside of a residential or township zone as defined in the Planning and Design Code. This could easily be achieved by excluding rural zones from public notification obligations.

- 7.6** There are serious concerns with placing signs on land within a High Bushfire Risk Area in summer months. This potentially exposes authorities to a high risk of danger and will likely breach a Council's WHS requirements for working outside on days of high heat. Extreme heat periods can also extend for a week or more which would not be suitable for officers to enter high risk areas due to WHS requirements and will therefore cause delay in placing a notice on the land.
- 7.7** The following questions are raised with regard to details contained within the Practice Direction;
- Breach of WHS on high speed roads (80km/h +) – requires specific training for traffic officers to place signage
 - Star droppers – very hard to remove and some soils difficult to penetrate (e.g. limestone) therefore not a suitable option
 - Heritage building without setbacks – how to affix sign without damage to building
 - It is not always practical or possible to attach signage to a fence as some rural fences are electric.
 - Significant vegetation along boundaries may restrict signage placement due to limited visibility. Placing the signage above the vegetation is not a realistic option in rural areas where vegetation may extend to several metres in height.
 - What if sign was stolen – is re-notification required? How to prove if sign was stolen especially in a rural location. Good faith should be recognised
 - What is specifically required to be shown in the image on notice – (e.g. site plan, elevation, floor plan). This should be included in the Practice Direction
 - Placing a notice on Council verges may not be a suitable option given some verges are entirely paved, landscaped and have hidden infrastructure that could

be at risk of being damaged if inserting star droppers or alike. Placing signage around light posts or stoby poles may not be a suitable option as the circumference of an A2 sign would often exceed that of a light pole.

- 7.8** If poles or star droppers will need to be inserted into the ground for the notice sign, a “Dial before you Dig investigation prior to implementation will be required to avoid damage to any hidden infrastructure. Proposed assessment timeframes do not allow for this investigation to occur and would be unreasonable to impose on development applications.
- 7.9** In situations where Council erect signage and are responsible for the maintenance of the sign, the Practice Direction needs to specify the expected level of maintenance- weekly inspections, daily or at the beginning or end of notification period.
- 7.10** Signage should be similar to the Liquor Licencing requirements that puts the onus on the applicant to erect and maintain the signage in accordance with Consumer and Business Affairs requirements. To Councils knowledge, this approach has served the purposed suitably with no complaints received by Council.

8. Standard Information Required for an Application

- 8.1** It is suggested that a site contamination declaration and the electricity declaration be built into the e-portal lodgement process
- 8.2** A question is raised regarding the requirement to provide 1:500 site plans as required documents. This is not replicated in the example information supplied as part of the *Guide to the Draft Assessment Regulations & Practice Directions* which shows a 1:200 site plan. The majority of applications that are currently lodged would make use of 1:200 site plans. 1:500 is unrealistic, particularly for typical residential applications.

Solution:

Scales should be amended to the following to reflect majority of applications received for dwellings, dwelling alterations and additions, verandahs, outbuildings etc.:

- Site Plan: Scale no less that 1:200
- Floor Plan: Scale no less that 1:100
- Elevations: Scale no less that 1:50

- 8.3** Not amending the above will create a cumbersome task for relevant authorities to justify every departure from Schedule 8 as per Regulation 31(4) given that majority of applications are less than the prescribed scales.
- 8.4** Replace the wording of “the elevation” in Schedule 8, 2(c)(i) on pg. 139, with “elevations”. The current wording implies that only 1 elevation needs to be submitted where all sides of a building are crucial to the assessment of an application.
- 8.5** Requirements for site plans (for all dwellings, dwelling additions and non-residential development under the relevant section of clause 2 & 3 in Schedule 8) do not prescribe the position and location of any existing building on the site, only proposed.

Solution:

Use the wording from Schedule 5 of the Development Regulations 2008 which reads: “*the position of the minimum front and side setbacks of any existing or proposed building on the site*”;

8.6 There is a repetition of the roof requirements under Schedule 8, Part 2- Plans for residential alterations, addition and new dwellings 139, under schedule (C).

(v) in relation to the roof—

(A) the height (relative to the adjacent ground level) of the eaves and the ridge; and

*(B) **the pitch; and***

(C) a description of the materials comprising the roof; and

(vi) the dimensions of proposed eave overhangs; and

(vii) the dimensions of proposed internal doors and windows, including door and window head heights; and

*(viii) **roof materials and roof pitch; and***

(ix) a description of the proposed materials and finishes of all external surfaces, including walls, doors and windows; and

8.7 Elevations should be included as required information for swimming pool applications. If the pool is to be an above ground pool, there may be some issues of overlooking from people entering and exiting the pool.

8.8 The details of the pump cover/shelter should be included as required information due to potential impacts on neighbour amenity via noise mitigation.

8.9 No requirement for the provision of a Certificate of Title to be lodged with an application is included under Schedule 8. Certificates of Title allow for verification of accuracy of spatial dimensions, demonstrate that the title has been created and provide details regarding easements, LMA's and encumbrances on properties. Particularly in the case of easements this is important for the protection of essential infrastructure which may be otherwise compromised.

This is critical for greenfield land divisions as applicants can lodge on a parent title prior to clearance being issued. Final levels and infrastructure provisions has not been completed at this stage and can lead to an incomplete assessment. Providing the Certificate of Title will confirm if the site exists for the intended use.

8.10 The test for site contamination may be considered overly onerous. Per the requirements of Schedule 8; *if an applicant has indicated, or an Authority has reason to believe that the allotment is, or may have been subject to site contamination, other than if the previous use was residential, a site Audit report would be required.*

Solution:

Either the Regulations or a future Practice Direction should lay out a process which allows an authority to request a preliminary site investigation, which then may trigger an audit or will justify a residential development. Particularly in rural and peri-urban settings there may be a question as to the previous use of the site where dumping, animal carcasses or soil contaminants are sometimes encountered. Preliminary investigations, in place of more onerous audits are often able to discount such concerns

- 8.11** Stormwater disposal details should be included under the requirements of Schedule 8. In sloping situations, details of stormwater disposal are important to ensure that adjoining or downhill properties are not impacted.

9. Development Approval Exemptions

- 9.1** Concern is raised with regard to the inclusion with a 3.1m high fence and retaining combination being included in the exempt list. This fails to consider visual and overshadowing impacts to the street and adjacent land, or to potential vehicle sight lines and corner cut offs.
- 9.2** Clarification is required on the tree house exception- the use of the word 'tree' implies that the construction of the structure is tied to the presence of a tree where in reality most cubby structures are free standing, especially in urban areas. Additionally, the construction of a tree house on or near a boundary could have overlooking concerns towards adjoining properties.
- 9.3** The increased tank size for bushfire water tanks is supported, however the capacities and allowed heights/ floor areas are not reflective of the actual dimensions of such tanks- i.e a 60,000L water tank has a floor area much greater than 15m

Bushfire fighting systems also are not commonly connected to a roof drainage system. Per the Ministers Specifications for firefighting tanks, there is a prescribed minimum outlet height above ground and the tanks must not be connected into existing systems for residential use- watering of garden, plumbing and household use. Consideration should be given to including such constraints into the exception.

Solution:

Increase total floor area exemption criteria to correctly reflect the size of the prescribed tank capacities such as:

40,000L - total floor area approx. 20m²
60,000L – total floor area approx.: 30m²

Removal of the requirement to be connected to a roof drainage system.
Specify minimum outlet heights and an independent system for bushfire tanks

- 9.4 Incinerators should not be included in the exceptions. These are not allowed by the EPA and it is counterintuitive to include structures as not requiring approval which are not allowed by separate legislation. This presents a confusing situation to members of the public
- 9.5 Special events should be removed from requiring Development Approval in situations where they are located on Council land and Council has issued a permit under the Local Government Act. This creates a confusing situation where 2 separate approvals are required. The Local Government Act is better placed to expediently assess the appropriateness of these events as often there is less notice for an event that the assessment pathway requires.
- 9.6 The wording exceptions for 'Council works' should be amended to include Council contractors or operators under lease from Council. Lease holders are already required to obtain approval from Council for any works and whether the works are completed by Council or on behalf of Council, the end result is the same.

Solution:

The clause be expanded to read' people operating on behalf of Council or operating on land leased from Council.

- 9.7 The wording of ancillary to a dwelling is overly worded and complicated.
The use of land and the use of any lawfully-erected building which is ordinarily regarded as (and is in fact) reasonably incidental to any particular use of the land and the building, or the land or the building, and which is for the substantial benefit of the person or persons who, in any capacity, are making use of the land and the building, or the land or the building.
- 9.8 The use of the word 'attenuate' provides less clarity than the current definition and should be reviewed.

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