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Dear DPTI Planning Reform Engagement Team

FEEDBACK ON DRAFT PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) (DEVELOPMENT ASSESSMENT) VARIATION REGULATIONS – RIVERLAND COUNCILS

This is a joint feedback submission from the:

- District Council of Loxton Waikerie;
- Berri Barmera Council; and the
- Renmark Paringa Council.

Additionally, in moving towards the implementation of the *Planning, Development and Infrastructure Act 2016* ("the Act"), we have noted other significant issues which require consideration.

This submission is in three (3) parts –

1. details of significant issues which require consideration under the Act and final *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*; and
2. our feedback on the draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations ("the draft regulations");
3. our feedback on the draft Practice Directions, being: Practice Direction – Notification of performance assessed development applications, Practice Direction – Deemed planning consent standard conditions and Practice Direction – Conditions.

The Act and Accreditation Scheme

We take the opportunity to raise a number of significant issues under the Act and the Accreditation Scheme which have only become apparent in the consideration of the draft Regulations.

1. **Role of the Assessment Manager**

1.1 As you may be aware, the Riverland Regional Assessment Panel is (as far as it can be) modelled on a sharing arrangement. Each Council shares administration of the RRAP on a rotating basis. This means that the Assessment Manager is an appointment which effectively 'rotates' between staff of the three Councils.

1.2 Presently, where a development application is lodged in one of the three Councils, staff of that particular Council are responsible for processing the application. Should the application require determination by the RRAP, the Assessment Manager at the time is responsible for checking the relevant RRAP report and ensuring that the application is scheduled for determination.

1.3 We appreciate that the effect of section 87(a) of the Act is that there can only be one (1) Assessment Manager appointed in respect of each Assessment Panel. The combined effect of that provision, section 93(1)(c) of the Act and regulation 22 of the draft regulations is that the Assessment Manager will be the relevant authority for all development applications lodged in all three Council areas. This creates a challenging situation where an employee of one Council is ultimately responsible for development applications determined in other Council areas, yet is not an employee of that Council and is not accountable to the CEO of the other Council.

1.4 We ask that consideration be given to amendments to section 87(a) to allow more than one Assessment Manager to be appointed in respect of a Regional Assessment Panel so that each Council may appoint its own Assessment Manager for the purposes of administering and determining development applications in that Council's area with consequential changes to regulation 22 to clarify that it is the Assessment Manager appointed by a Council who can determine development applications lodged in that Council's area.

1.5 Whilst we acknowledge that formation of a Joint Planning Board which may appoint its own Assessment Panel provides a potential solution to the concerns raised above, we confirm that a JPB in our Council areas is a long-term prospect and will not be in place ahead of the commencement of the Planning and Design Code (and hence the commencement of the remainder of the Act in our areas) in November this year.

2. **Regional Plan mechanisms**

2.1 On the topic of Joint Planning Boards, we note that section 64 of the Act provides that a regional plan may be prepared by the State Planning Commission, or, if a JPB has been constituted for that area of the State – the JPB.

2.2 The Riverland Councils are presently considering the formation of a JPB for the purposes of preparing a regional plan for the Riverland.

2.3 We note that the process of forming a JPB is complex and that, once established, a JPB is a separate legal entity from its constituent councils. This model has benefits for councils who are considering forming a JPB to carry out a range of functions under the Act, but is considered overly complex where the purpose of the JPB will be to prepare and oversee the regional plan alone.

2.4 We ask that consideration be given to alternative methods to ensure the participation of regional councils in the formation of a regional plan. For instance, the following could be considered:

2.4.1 contractual arrangements between the Minister and regional councils concerning preparation of a regional plan;

2.4.2 amendments to the Act to allow the Minister to recognise bodies for the purposes of the preparation of a regional plan. The recognised body can then prepare a regional plan instead of the Commission and/or a JPB. An example of a body would be the Murray Mallee LGA.

3. Accreditation Scheme costs

3.1 We note that an initial application to be accredited as an Accredited professional – planning level 1 will be $760 unless the applicant is (in essence) a PIA-accredited Registered Planner, in which case the fee will be $270. We note that the application fee for other forms of accreditation will be $560 and $270 if a person is a member of a recognised professional association or body and they apply for a corresponding level of accreditation. We note that ongoing annual renewal fees are $180 per accredited professional.

3.2 We consider the initial application fees to be particularly high and ask that they be reconsidered and a lower fee be provided for accredited professionals in rural and regional areas, especially for planning level 2 accredited professionals.

3.3 We consider that the costs of accreditation may well reduce the number of persons seeking accreditation and will reduce the number of persons available to be appointed to assessment panels in rural and regional areas.

The draft regulations

Draft regulation reference	Comment
4 – Variation of regulation 3 – Interpretation	
essential safety features	The term "essential safety features" appears to be a typographical error. The term used in draft regulation 100 is "essential safety provision"
writing	We question the utility of defining this term is not used in the context of governing when advertisements are and are not "development" and does not appear to be used in the draft regulations nor the Act. We agree that limiting advertisements so that public art and murals cannot be considered to be advertisements is a positive reform, however, we question whether the use of this term within Schedules 3 and 4 needs to occur for the definition to have its apparent desired effect.

5 – Insertion of regulations 3A to 3I	
Regulation 3E	We consider this to be a positive reform which will further assist in ensuring that buildings are properly approved and are suitable for occupancy.
Regulation 3G	We acknowledge that this regulation is similar to regulation 6B of the current *Development Regulations 2008* and that its intent is to reduce pool drownings be ensuring that prescribed swimming pools require swimming pool fencing and other safety features. Many inflatable swimming pools with filtration systems can be purchased relatively cheaply from retailers. Many people who own these pools are unaware of their obligations under the Act. We suggest that regulation of retailers such that pools are sold with warning stickers or other notifications confirming the requirements of the Act to ensure that members of the community are better aware of them.
Insertion of Parts 4 to 18 and Schedules 1 to 19	
Regulation 22(1)(a)(ii)	We note the use of 'code assessed' in regulation 22(1)(1)(a)(ii) and suggest that it be amended to 'performance assessed' to reflect the heading of section 107 of the Act and for purposes of clarity given that the term 'code assessed' as defined in section 105 of the Act includes both deemed-to-satisfy development and performance assessed development.
Regulation 22(1)(a)(ii)(B)	We note that the term 'total amount to be applied to any work' is not defined. This may lead to legal argument as to the calculation of this amount is. We suggest that the term 'building work' or another calculation method is used or, alternatively, that the regulation be deleted.
Regulation 22(1)(a)(ii)(C)	The term 'storey' is not defined and this may lead to legal argument as to the meaning of this term. We recognise that roof-top gardens are not uncommon in townhouse and other developments and that they may incorporate open, verandah and/or pergola structures which may or may not constitute a 'storey'. Also, it is not clear whether a 'storey' includes only portions of a building above ground or whether below ground levels are included. If the intention of this regulation is to ensure that buildings which have the appearance of having more than 3 storeys above ground are assessed by an assessment panel, we suggest that this regulation be rephrased to provide either a definition of storey or to clarify that it applies to a building which will exceed a particular height above ground level expressed in metres.
Regulation 22(1)(d)	We submit that consultation on the nature and extent of deemed-to-satisfy land divisions, which (in addition to other relevant authorities) an Accredited professional – surveyor can assess for planning consent, should occur. If deemed-to-satisfy land divisions are limited to land divisions which occur after built form applications for corresponding are approved (noting that this will require new definitions of 'detached dwelling', 'semi-detached dwelling' and 'row dwelling' in the Planning and Design Code and clear clarification that this can occur to overcome existing Supreme Court case law

	authorities which prevent this from occurring), we are generally supportive of this regulation.
Regulation 22(1)(e)	We are supportive of this regulation. An assessment manager is best placed to assess infrastructure and other requirements imposed under sections 102(1)(c) or (d) of the Act.
Regulation 23(2)(b)	We suggest that the timeframe for providing a report to the Commission should be increased to 20 days (i.e. 4 working weeks). The Riverland councils do not always have sufficient in-house resources to be able to provide engineering and other advice and often rely on consultants in this regard. The extra timeframe is requested to ensure that sufficient time is allowed for this to occur so that reports to the Commission are sufficiently detailed and of assistance to them. Further, in some circumstances, reports may need to be endorsed by the elected body of a council and a 15 business day period will make this very difficult to achieve.
Regulation 23(3)	We note, with disappointment the limited content of a report provided to the Commission by a council. Councils, particularly rural and regional councils are very close to their communities and are usually aware of local conditions and possible resultant impacts of developments which authorities based in Adelaide do not. We suggest that this regulation be deleted so as to allow councils to make submissions on community impacts, local conditions and other matters which may be relevant as per the Planning and Design Code to ensure that Commission decisions are as robust and informed as possible.
Regulation 25(2)(a)	We consider that, in light of the new Accreditation Scheme and its requirements for the accreditation of planners, this regulation should be deleted. Building professionals are not best-placed to assess and determine applications for planning consent – planners are. It appears to be contradictory to the intent of the Accreditation Scheme which is to ensure that persons exercising or involved in the exercise of the powers of a relevant authority to be appropriately qualified and experienced.
Regulation 25(4)	We note that this regulation restricts Accredited professional – level 3 to the assessment of class 1 and 10 buildings only. This restriction is stricter than AIBS Accreditation Requirements for the AIBS-equivalent accreditation level and, is therefore, stricter than present requirements. We suggest that the reference to class 1 and 10 buildings be removed.
Regulation 27	We suggest that clarification on the term 'element' used in this regulation should be considered. For instance, if a mixed use development contains shopping, office and residential components, does this mean that each component is an 'element' which must be identified? If a development has both deemed-to-satisfy and performance assessed components, are they 'elements'?
Regulation 30(1)(b)	Within the area of our councils, the Riverland Regional Assessment Panel ("RRAP") will be a relevant authority as will the Assessment Panel appointed in respect of it. Responsibility for administration of the RRAP and the Assessment Manager is shared between councils on a rotating basis. Presently, development applications are lodged at the relevant council in whose area the development will be occurring. We suggest that this provision be amended to better accommodate RAP arrangements by stating that, where a RAP has been appointed,

	a development application must be lodged at the principal office of the council in whose area the development is proposed to occur. We suggest that a similar amendment be considered for joint planning boards to avoid applicants having to travel great distances to lodge a development application.
Regulations 30(1), 31, 32, 35(1), 36 and 38 – use of the terms 'lodge' and 'receipt', etc	Clarity is sought on the use of the terms 'lodge' and 'receipt' given that timeframes in regulation 56 run from when verification of a development application occurs under regulation 35. Regulation 30(1) appears to provide that '**lodgement**' of a development application occurs whenever it is lodged on the SA planning Portal by an applicant or when it is submitted to a relevant authority. Regulation 31 provides that applications must be lodged with plans and details etc prescribed under Schedule 8. Regulation 31(4) suggests that lodgement only occurs when the relevant authority confirms that all information and documents are present or, in the alternative, if it permits the applicant to lodge an application without certain items. However, regulation 32 then provides that an application 'received' under regulation 30(1)(b) must be **lodged** on the SA planning portal within 5 business days after receipt, suggesting that an application is not lodged until after it is uploaded to the SA planning portal. Regulation 35(1) then provides that '**on receipt**' of an application, a relevant authority that has received the application (either electronically or otherwise, must within 5 business dates after receiving the application, undertake the verification required by regulations 35(1)(a) and (b). Regulation 36(5) then provides that requests for further information must be issued within 10 business days from the date of the application being **lodged**. Regulation 38(1) provides that, subject to regulation 38(2) assessment time limits 'reset' upon a relevant authority allowing an applicant to vary their application to the 'date of **receipt** of the application'. It is not clear whether the concepts of lodgement and receipt are intended to be separate or the same and, if there is a difference, what that is. The above regulations appear to 'jump' between receipt and lodgement. We suggest that consideration be given to redrafting the abovementioned regulations to remove the separate references to each term or that the terms be clarified. An alternative to the above may be a single, consolidated, regulation which 'steps' through the various steps from receipt, verification and lodgement in a sequential order.

Regulation 37(2)	We consider that this regulation should be reconsidered as it is likely to result in increased refusals of development applications where requests for further information are outstanding. Where a development application is complex, such as where site contamination exists or other environmental issues are relevant, requests for further information can take many months to resolve. At present, the approach of all councils is to allow an applicant sufficient time to obtain further information, even if this timeframe does exceed 12 months, in circumstances where the council is satisfied that the applicant is acting reasonably, in preference to refusing their application. Due to the operation of deemed consents under the Act and the implications of these for relevant authorities, we consider that refusals will increase as a result of this regulation. This outcome is not considered ideal and should be reconsidered.
Regulation 50(4)	We submit that this regulation should be reconsidered in its entirety. The area of each of our councils is very large and the requirement for our RRAP to ensure that notices are placed on land will be onerous and expensive to administer. We are of the view that the responsibility to place a notice on land should rest with the applicant alone.
Regulation 52	Similar comments to those made in respect of Regulation 30(1)(b), we suggest that this regulation be amended to clarify that public inspection occurs at the relevant council to avoid the need for excessive travel and administrative costs.
Regulation 53(1)(a)(i) and 53(2)	We submit that the public notification timeframe should end 15 business days after the relevant authority receives proof that the notice has been placed on the land by the applicant only to avoid difficulties arising when there is a delay in the placement of the notice occurring. Further, the definition of 'ordinary course of postage' is problematic for us. Priority Post (which has timeframes which meet the definition) is not often delivered within 3 business days within our council areas. Linking anticipated postal delivery timeframes to public notification timeframes is, therefore, problematic and should be reconsidered.
Regulation 56(1)	Timeframes prescribed in this draft regulation are considered to be too short. We suggest that 5 business days be added to each timeframe at a minimum.
Regulation 56(2)	Given the reduced assessment timeframes provided for in regulation 56(1), the fact that advice from referral bodies is often of material significance to the assessment of a development application and additional timeframes under (1)(g), (h) and (j) will run concurrently is considered to be problematic. We also note that there are no 'stop-clocks' for referral agency reports to be received. Given our expectation that all referrals will have a power of direction, we consider that assessment timeframes should pause when awaiting receipt of a referral report.
Regulation 60(2)	We query whether 5 business days to issue a decision notification form after determining a planning, building or land division consent is too long. We suggest that consideration be given to reducing this timeframe and allowing more time for the assessment of a development application.

Regulation 85(1) and 85(2)	We note that the effect of these regulations is that only SA Water are able to charge fees to undertake an assessment of their requirements for the provision of water supply and sewage. We ask that these regulations be expanded to allow councils to charge the same fees where they are a water industry entity under the *Water Industry Act 2012.* The assessment of CWMS requirements is not always a straightforward task, it is one which requires input from engineers and the dedication of resources. We submit that councils should be treated equally to SA Water in this regard and that they be able to recover some costs of undertaking these assessments.
Regulation 99(3)	Given Australia Post delivery timeframes in our areas are often not met, and the fact that notifications can be given through the SA Planning Portal and to authorised officers of the Council, we suggest that the ability to achieve service of notifications by registered post be removed.
Schedule 4, clause 2 – Council works	We note that the wording of this exemption clause applies to certain activities 'by a council'. Councils often use contractors for such works and, from time-to-time, community groups may wish to undertake some works named in this exemption. We suggest that the wording of (1) be amended to read "The construction, reconstruction, alteration, repair or maintenance by or on the behalf of a council of—" to ensure that there can be no legal argument that works undertaken by contractors or other persons on a council's behalf are exempt. Clause (1)(f) – given the popularity of adult exercise equipment in recreation areas, we suggest that this exemption should be amended to include adult exercise equipment as well as playground equipment.
Schedule 4, clause 4 – Sundry minor operations	Clause (1)(h) – we support this new exemption but suggest that the height restriction, currently expressed as "less than 3.1 metres in height" be amended to read "not exceeding 3.1 metres in height" given that standard fence panels are often 2.1 metres in height. This amendment will allow a 2.1 metre fence to be located on top of a 1 metre-high-retaining wall without development approval being required. Clause (1)(m) – we support this new exemption in principle but suggest that the term "tree house" be replaced with "cubby house". Whilst cubby houses can be considered to be exempt outbuildings pursuant to clause 1(a), many kit-form cubby houses with sandpits, slides and play equipment underneath are taller than 2.5 metres and, therefore, are too tall to be exempt as an outbuilding. We submit that all cubby houses of up to 5 square metres in floor area should be exempt, regardless of whether they are located in a tree or not. Clause (5) – we suggest that the term "domestic floor" be revisited and replaced with simply "floor".
Schedule 4, clause 5 – Use of land and buildings	Clause (2)(a) – we note that the term "home activity" is not defined in the draft regulations. We also note that this term is defined in the draft Outback Code. There is, however, no 'link' in the draft regulations to ensure that this term must be interpreted as defined in the Code. We suggest that this clause be amended to read "the carrying on of a home activity as

	defined in the Planning and Design Code on land used for residential purposes" for clarity.
Schedule 9 – referrals	We request that we be consulted on the drafting of this Schedule. Referrals are particularly important in our areas and we wish to have input into the drafting of the referral tables.

Draft PD reference	Comment
Notification of Performance Assessed Development Applications 2019	
Clause 11(4)	As stated above at our comments for draft regulation 50, we consider that the responsibility to place a notice on land should rest solely with an applicant. The area of each of our councils is very large and the requirement for our RRAP to ensure that notices are placed and **maintained** on land will be onerous and expensive to administer.
Deemed Planning Consent – Standard Conditions 2019	We are supportive of this practice direction and have some suggestions to improve standard conditions to ensure that they are effective.
The building and site must be maintained in good condition at all times	This condition is lacking an 'arbiter' of it. Presently, conditions imposed by the Council will be phrased such that it reads "in good condition at all times to the reasonable satisfaction of the Council". The ERD Court has upheld this standard as being valid and enforceable. The advantage of it is that it is the Council – i.e. the body usually tasked with undertaking development compliance actions – which determines whether a building or site is in good condition, thereby better facilitating enforcement by it. We note that the first landscaping condition requires landscaping plans to be to the "reasonable satisfaction" of the relevant authority. We also note that similar phrasing is used in the Air Conditioning/Plant/Equipment condition and in the Privacy conditions.
Landscaping in accordance with the approved plans must be established prior to the operation of the development and must be maintained and nurtured at all times with any diseased or dying plants being replaced.	As above.
Site Management	As above for all three conditions.
Privacy – both conditions	For the sake of absolute clarity, we suggest that these conditions be amended to expressly state that screening and treatments be thereafter maintained in good condition to the reasonable satisfaction of the relevant authority.

Thank you for the opportunity respond to the draft Regulations and Practice Directions. If you have any queries, or would like clarification on any of the matters raised, you may contact the undersigned.

Yours sincerely,

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