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LIGHT REGIONAL COUNCIL

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Ms. Sally Smith
General Manager – Planning and Development Division
Department of Planning, Transport and Infrastructure
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Per e-mail: DPTI.PlanningEngagement@sa.gov.au

Dear Sally,

Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations and Practice Directions - LRC Submission

Thank you for the opportunity to provide feedback with respect to the draft PDI (General) (Development Assessment) Variation Regulations (hereafter 'the Regulations') and the four (4) Practice Directions dealing with:

- Conditions;
- Deemed Planning Consent Standard Conditions;
- Notification of Performance Assessed Development Applications;
- Restricted and Impact Assessed Development.

Regulations

Whilst it was noted that the draft regulations are in many ways a carry forward of the existing *Development Regulations 2008* with minor modifications, additions and omissions; Council officers have considered the content contained therein and provided comments in the attached Table. In addition, the following general comments are provided:

- Council wishes to highlight that the Regulations, as with the Act, continue to emphasise the largely administrative and compliance roles that Councils will play in the new system. Whilst this is a disservice to the relevant and meaningful role that the vast majority of Councils and Council planners have had in the system for the past 25+ years, should this premise continue there is a need to move towards a full cost recovery model for these administrative functions. This is particularly relevant when considering the new notification requirements for performance assessed development applications as noted below.
- It was pleasing to note that the Regulations make provision for the charge of expiation fees which prove to be useful tools in enforcement and compliance which is otherwise not available. Council considers that there is scope for the Regulations to prescribe an expiation fee for the following provisions within the PDI Act:

Section 91	Section 135	Section 136
Section 139	Section 140	Section 146(2)
Section 151(5)	Section 152(1)	Section 155
Section 156	Section 157	Section 211
Section 213	Section 215	Section 216

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Section 217		

Practice Directions

Conditions

Council officers have considered the content contained in the Draft Discussion Paper – Conditions and make the following comments:

- Clause 5(5)(f) – The ability for a condition to be imposed on an application which was considered by an Accredited Professional as Deemed-to-Satisfy, subject to minor variations, which in turn alters the application is considered inappropriate and unnecessary. An Accredited Professional should be considering the application before them and not taking steps to alter such application by way of condition in order to justify the granting of minor variation. If there is a need to amendment via condition the application would be better categorised as Performance Assessed.

Deemed Planning Consent Standard Conditions

Council acknowledges the intent of this Practice Direction and its contents plays to form a 'last line of defence' and considers the use of this mechanism to be on a rare occasion.

It is however noted that a number of proposed conditions are considered out-of-step with expectations and case law updates, unworkable and unreasonable. Furthermore, a number of conditions are not reflective of the Practice Direction guidelines relating for conditions generally. Of note:

- Privacy – the first condition notes that '*the portion of the upper floor windows less than 1.5m above the internal floor…must be treated'*. This should be updated to a reference height of 1.7m which recognises case law outcomes.
- Animal Keeping – reference is made in this condition to 'septic tank system'. This designation has not been used for quite some time and the reference should be updated to 'Wastewater Control System'.
- Viticulture/Olive Growing – The conditions proposed for these land uses are considered unreasonable and unworkable and it must be remembered that primary production is a form of industry which in turn has the potential for impact. For example, a condition which seeks to limit the hours of operation of a vineyard between 7am and 7pm (excluding harvest) is completely unreasonable and demonstrates a lack of understanding of the manner in which these land uses occur. Further, those conditions which attempt to control tasks such as chemical spraying and the obligations on farmers regulated at both a State level and Federal level are not helpful and may fall foul of the overarching legislative framework and codes of practice.

Notification of Performance Assessed Development Applications

Council wishes to note a number of matters for consideration in relation to this Practice Direction:

- General:
    - Signage Requirements – Council questions the benefit of placing signs on public road frontages in rural areas. In many cases these allotments are large in size (e.g. 33 hectares or larger), located in remote areas and located in high speed zones. Signage may be better limited to those properties located within 'Metropolitan Adelaide' as defined in the Regulations.
    - The requirement for a sign to be placed on the property is an administrative burden which in turn will likely result in an increase in the costs attributed to land owners and in turn should be carefully considered.

- Clause 2(2) – reference is made in this clause to the ability of a relevant authority to make a discretionary call as to whether an application should be subject to notification. This discretion should be removed as the Code deals with these matters via exclusion from notification and such discretion is unnecessary.
- Clause 7:
    - Council questions the need for the relevant authority to generate the notification when this should be capable via the SA Planning Portal as a simple output when all information is correctly input. This in turn would allow the portal to generate the QR Code which directly links to the application in question.
    - Council considers the ability of individuals to request the relevant authority to place a notice on the land on their behalf to be unreasonable and a significant resourcing impact which will be an unreasonable cost to Councils. Given the associated

requirements to maintain the signage there is a real chance that this would result in a need for the relevant authority viewing the site on a number of occasions during the notification period which in the case of rural Councils could result in a considerable resourcing and financial impost, unlikely to be captured via the associated fees.

- Clause 8 – The potential, particularly in areas outside of Metropolitan Adelaide, for signage to be erected prior to notices being received is very likely. The introduction of provisions to specify the commencement of notification based on the later of the two (2) introduced unnecessary ambiguity, will lead to confusion and over complicates the system.
- Clause 10:
    - Clause 10(1) notes that notification is to be provided to owners or occupiers of adjacent land. This should be limited to the primacy level which would lie with the person with principle controlling interest in the land; the owner. Whilst noting that there are circumstances in which the occupier should be notified (e.g. when there is no owner listed or the address is different), primacy should remain with the owner.
    - Clause 10(2) makes reference to the State Atlas as the source of property owner information. It is noted that as it currently stands this system is not operational and in the event that its equivalent is, Council is not able to access the information required by way of the Practice Direction. Given that there are many occasions where the State Atlas is different to the Council rating database systems, it is recommended that Council have the ability to retain use of their systems for this purpose.
- Clause 11:
    - Clause 1(d) – Council wishes to raise concern with the requirement for a notice to be a minimum A2 in size. There are very few relevant authorities with the capability to produce this form of sign and the value of a sign this large is not recognised. A reduction in size could be easily accommodated by the removal of the requirement to place an image of the proposed development on the notice. There is little to no direction on what should be used in this instance (e.g. site plan, floor plan, elevation, artists impressions) and the value that this adds is questionable.
    - Clause (4) – The term 'reasonable endeavours' is used to describe the actions that the relevant entity must take to ensure the notice is placed and maintained on the property. Should this remain there is a need for greater clarity and definition around the term 'reasonable endeavours' given the likely administrative and resource burden this will have on relevant authorities.
- Attachment 1 – It is observed that the proposed template letter to adjacent landowners is wordy and not prepared in layperson terms, particularly paragraph 3 which commences with *'Please note that the subject…'* Further it is recommended that this be reworded to reference the elements which are open to representation, rather than those which are not as specifically listing the elements which are open to representation is clearer and provider greater certainty to the representor. This change should also be carried over to the template notice on land in Attachment 3.
- Attachment 3:
    - In addition to providing the date of closure, the sign should also provide clarity on the time in which representations must be received (as per the letter).
    - The need for an image should be removed as this wastes space on the notice and there is no clarity on what image should be used and one could argue that there is no single image which would fully represent the application.
    - A note should be placed at the bottom of the notice which references that it is an offence to damage or remove the sign during the notification period.
    - Provision should be made to require the landowner to remove the sign within 5 days of the closure of the notification period.

Restricted and Impact Assessed Development

It was with interest that Council officers noted Clause 7 relating to information that must be provided by the proponent and the information to be provided by an applicant. Is it reasonable for those land uses which stand to have the most significant impact, draw considerable interest and debate and be of a complex nature can be accompanied by *'a planning report, prepared by a planning consultant qualified to a minimum standard equivalent to a Level 3 Accredited Professional (but does not necessarily require accreditation under the Accredited Professionals Regulations 2018'?* Whereas, the equivalent professional is only capable of acting in circumstances where an application is Deemed-to-Satisfy'. This separation is considered unreasonable.

Thank you again for the opportunity to provide comments with respect to these matters. If you have any questions or would like to discuss the content of this letter, please contact the undersigned at [redacted] or on [redacted].

Yours sincerely,

Andrew Chown
Manager, Strategy

Enc: Table – Comments on Draft Regulations

Attachment 1 – LRC Comments

Regulation	Comments
Regulation 4	• includes a definition of 'Metropolitan Adelaide' and makes reference to GRO Plan 639/93. It is noted that this GRO Plan is not readily available, albeit being referenced throughout the draft Regulations. It is recommended that the GRO Plan be made readily available on the SA Planning Portal and/or SAILIS. • Council cautions against any requirement for the P&D Code or Regulations to include specific finished floor level requirements within flood prone areas. It is noted that current flood mapping processes follow best practice and provide a high level of accuracy of the likelihood of flooding and translates this into corresponding planning policy. Any requirement to specifically capture and mandate a FFL within a flood prone area is both difficult and costly and best left to a site-by-site assessment.
Regulation 3F	• The title of this Regulation neglects to include 'Regulated Trees' and should be amended accordingly. • Whilst recent case law (Hargreaves & Anor v City of Holdfast Bay) has provided some clarity to the matter of measurements from the tree to a swimming pool, the draft Regulation as written neglects to include the findings of this matter and continues to result in considerable ambiguity with respect to measurements taken from a tree to an existing dwelling. The exclusions contained in this Regulation should be updated to reflect current information and provide greater certainty and clarity.
Regulation 3G	Council acknowledges the importance of pool safety and takes this matter seriously. However it has been observed that there is an increasing desire within the community to purchase and temporarily utilise an inflatable pool with a depth greater than 300mm, and a corresponding disconnect between the requirements of the landowner in these circumstances and the Regulations. This in turn leads to considerable compliance and awareness activities. Council officers would support an alternate approach being considered such as notification at the point-of-sale on the obligations of landowners in these circumstances, or alternatively a rethink of the minimum depth requirements to more closely align with inflatable pool products readily available.
Regulation 22	• (1)(a)(ii)(A) – It is noted that the relevant authority in performance assessed cases which require public notification will default to an Assessment Panel, with no specific separation within the Regulations for those applicants that draw representations and those that do not. Whilst acknowledged that there is scope for delegation to be provided to the Assessment Manager it is anticipated that the Panel will be responsible for a considerable increase in applications. This could be negated by providing certainty by way of Regulation, that the Assessment Manager is responsible where no representations are forthcoming. • (1)(a)(ii)(B) – this sub-regulation places a monetary value of $5M as the relevant authority threshold for the Assessment Panel. It is not uncommon for applications (e.g. winery) currently processed through the system to exceed this amount. In the interests of simplicity it is recommended that this amount be increased to $20M and greater clarity/definition be provided around what constitutes 'total amount' and 'any work' to better understand how this would be calculated. • (1)(d) – should there be a desire to include an Accredited Professional – Surveyor as a relevant authority under the Regulations greater clarity is needed around the types of deemed-to-satisfy land division applications surveyors will be

	authorised to consider. It is Councils view that these should be limited to those where the built form is in place (e.g. separation of a semi-detached dwelling) as this would ensure that matters directly relevant to the application and not considered by the surveyor (e.g. CWMS connection) are already managed.
Regulation 25	Subregulation (4) notes that an *Accredited Professional – building level 3* will have the ability to act as a relevant authority for Class 1 or 10 buildings only. This change is considered inappropriate and a significant degradation of current delegations held under the AIBS program which allow the equivalent professional to also act as relevant authority for buildings within Classes 2 to 9. The changes proposed are considered burdensome and will lead to considerable resourcing challenges for Councils located outside of the Adelaide Metropolitan area.
Regulation 27	It remains unclear on what constitutes an Element and there is a need for greater clarity around how a DA may be assessed which comprises various 'Elements' and how this may be treated in the event that one element is Deemed-to-Satisfy and one element is Performance Assessed.
Regulation 32	In being asked to provide this task there is a need to consider an opportunity to levy an administrative fee as this will require a number of tasks to be undertaken.
Regulation 35 and 36	There seems to be confusion in the terms used when referencing 'receipt of an application' (35(1)) and 'lodged' (36(5)). As these terms relate to legislative timeframes available for confirmation and further information consistency there is a need for clarity around these terms. Further, it is noted that the period prescribed for a relevant authority to request further information (10 days) differs from the current period of fifteen (15) days. It is recommended that the period be extended to 15 days to provide adequate time for a full and proper assessment of applications to be undertaken by the relevant authority.
Regulation 38	Council acknowledges and supports the 'reset' of time limits should an amended application be sought, however what is not clear is what constitutes 'substantial' and more clarity is needed on this matter.
Regulation 68	Subregulation (3) notes a payment of an amount for each replacement tree. It is noted that the Regulations do not specify an amount.
Regulation 71	Subregulation (3)(C)(i) notes that there is an opportunity for minor variation, however it is not clear what will constitute such variation and greater clarity will assist in clarifying this important point.
Regulation 85	It is noted that a vital element of public infrastructure outside of the metropolitan area is Community Wastewater Management Systems (CWMS). It is considered relevant for CWMS to be included in this Regulation in addition to SA Water and prescribe a corresponding fee for such assessment.
Regulation 89	Subregulation (5) prescribes a number of infrastructure elements to be constructed to Council's satisfaction. Council recommends that this is expanded to include additional elements that are generally expected in the public realm to include, for instance, street lighting, street furniture and landscaping and establishment of reserve areas.
Regulation 100	Council considers it important to provide a definition of 'Essential Safety Provisions' within this Regulation in line with the definition provided within the Building Code for clarity.
Regulation 122	Council notes that there is a need for a fee to be prescribed for a review to be undertaken by the Panel. It is noted that convening of a Panel brings with it costs and this should be recognised by way of Regulation.
Schedule 3	A number of specific provisions have been provided around excavation and fill. These provisions should also recognise the values of the Barossa Character Preservation District and in doing so, limit excavation greater than $9m^3$ within 'District'.

Schedule 4	• The leading sentence of Subregulation 2 – Council Works makes reference to *'construction, reconstruction, alteration, repair or maintenance by a council of'*. This should be expanded to include work undertaken on behalf of Council. • Subregulation 5 references 'Home Activity' however neglects to now provide a definition of this land use.
Schedule 8	It is noted that in addition to the provision of Plans, all applications should be accompanied by the relevant Certificate of Title. This important document provides critical information which may be of relevance to an assessment such as LMA's, easements, encumbrances etc. and the risk of not identifying an item is high.
Schedule 18	It is noted that little change has been made to this Schedule, however there is a need to update the definition of feedlot to more accurately reference feedlots for animals other than cattle which themselves have the risk of environmental impact, such as sheep feedlots and others where the nature of activities constitute confined rearing of animals.
Schedules 7 and 14	All reference to the former District Council of Kapunda and Light need to be updated to reference Light Regional Council.