

15 March 2019

Via email DPTI.PlanningEngagement@sa.gov.au

Re: Draft Assessment Regulations and Practice Directions

The Environmental Defenders Office (SA) Inc (“the EDO”) is an independent community legal centre with over twenty five years of experience specialising in environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education.

Thank you for the opportunity to comment on the draft Assessment Regulations (the draft Regulations) and Practice Directions. However, it is challenging to do so given we are not sure how they will interact with the provisions of the new code as full details of this are not yet available.

The EDO sees this process of finalising the draft Regulations as not only the introduction of new regulations but a unique opportunity to review the efficacy of those parts of the current regulations which have been transferred over. We would encourage consideration of our recommendations particularly in relation to significant and regulated trees.

We also note that key issues including what comprises accepted development and matters of environmental significance together with the nature of referrals will be dealt with in subsequent draft regulations. The EDO looks forward to having the opportunity to comment on these at a later date.

Planning and Design Code

The draft regulations propose that the new code may identify various zones, subzones or overlays with respect to a number of matters including environmental, flood and historic or conservation zones. The EDO recommends that “may” be amended to “should”.

Relevant Authorities

The EDO does not support land surveyors as the relevant authority for land division decisions as surveyors can personally profit from these decisions with resulting poor outcomes for communities and their environment.

The EDO is very concerned that the State Planning Commission members are not required to be accredited as this is at odds with the objective of the professional accreditation scheme.

The EDO does not support the use of arbitrary project values and building heights to determine the relevant authority and for this reason does not support the State Planning Commission as the relevant authority, for example, inner metropolitan buildings exceeding four (4) storeys in specified

areas. The EDO assumes specified areas will be defined in the code. The responsibility for this also raises issues of which authority deals with compliance matters as discussed at the end of this submission.

Furthermore, the EDO does not support the proposed regulation which exempts the Commission from referring such applications to the relevant Council for comment. This is at odds with the principle that decision makers should have all relevant material before them when making decisions.

Assessment Timeframes

The EDO does not support the shortened timeframe for applications which do not require public notification, statutory referrals, or a Council Assessment Panel decision. These applications can still need detailed assessment including non-statutory referrals within Council or external consultants. It is not supported when considered together with the deemed consent provisions which the EDO is concerned could lead to poor planning decisions and increased litigation.

Exempt development (development not requiring any approval)

There are a number of new activities which do not require development approval and these include demolition of single storey buildings (other than heritage buildings and those in specified areas). Where there is no council processing of an application this introduces an increased risk of unlawful demolition as the onus rests with the property owner to accurately and honestly determine whether approval is required prior to demolition.

The EDO strongly recommends that Contributory Items as currently referred to in Council development plans be included as an exception along with State and Local Heritage places. Contributory Items are critical as they form the “building blocks” of historic conservation zones and should be preserved in the new planning system.

Public Notification

The EDO supports increasing the public notification period from ten (10) business days to fifteen (15) business days for performance assessed development applications as this goes some way to giving affected parties a genuine opportunity to comment on a development proposal. However the EDO does not support a relevant authority having a discretion to allow representors to appear before it. In our view this should be mandatory as is provided for in the current Regulations. Finally, the proposed process for determining the commencement and finish dates for the public notification period is complex and confusing and should be more clearly defined in both the draft Regulations and the practice directions.

The use of a sign is generally supported but the EDO has concerns. A neighbour to the rear of the property will probably not see the sign if they do not use that road regularly. The Practice Direction includes templates for the letter and sign but the language is too technical and dense, for example the term deemed-to-satisfy means little if anything to the average citizen. This critical information in the letter, sign, at the relevant authority’s office and on the Planning Portal needs to be spelt out clearly and simply. Perhaps there could be a list what can be commented on instead of what can’t be commented on.

Public notification can be exempted in the new code or where the relevant authority is of the opinion that the proposed 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 scope of what constitutes “minor nature” or “unreasonably affect” will be a matter determined by the relevant authority in each instance (assessment panel). The EDO does not support the inclusion of this provision in the Practice Direction – Notification of Performance Assessed Development Applications 2019. This provision is more appropriately located in the draft Regulations (as per the current Schedule 9 in the Development Regulations 2008). The EDO recommends that this Practice Direction include specific guidelines as to what is meant by “minor nature” and “unreasonably impact” to help ensure consistent and transparent decision making by relevant authorities.

In relation to the draft Practice Direction - Restricted and Impact Assessed Development 2019 the EDO recommends that it be amended to provide that the:

- a. public consultation period 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.
- b. application documentation (including the environmental impact statement), proponent's Response, Commission's Assessment Report and full details of the decision are to be uploaded to the Planning Portal within 2 business days.
- c. commencement of the public consultation period together with availability of the application documentation, proponent's Response, Commission's Assessment Report and decision details be notified to interested citizens via an email alert from the Planning Portal.
- d. technical terms used, such as preliminary assessment, be clearly defined to ensure clarity and consistency of decision making
- e. inspection and copying of documentation should be free of charge

This level of transparency and accessibility should also apply to Crown developments. More generally, in relation to public notification the EDO repeats it's previous recommendation that the Planning Portal include an automated function where the public can receive an alert when there is a notifiable development proposal in their Council area.

The draft Regulations require the relevant authority to make copies of the application's plans available to the public for inspection without charge at their principal office during the public notification period. This should apply to the vast majority of applications and exceptions should be limited. Access to both notified and other applications is important for transparency and particularly for citizens if they need to investigate and seek assistance with possible breaches of planning approvals.

Significant and Regulated Trees

We strongly urge that a review occur of trees exempted from the development approval process given the significant decline in tree canopy across metropolitan Adelaide. In addition, the EDO recommends that the 30% threshold for pruning regulated and significant trees 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.

Compliance and Enforcement

As the number of assessments by the State Commission Assessment Panel has grown so have the issues for citizens with more high rise and infill development around Adelaide. There is now a serious and uncertain issue as to which authority should deal with breaches of development approvals made by SCAP. Many clients have contacted our office confused about the advice they have been given as to who they should contact with respect to these issues.

The EDO is strongly of the view that, in general, the approval authority should have this responsibility in our planning system. Urgent action is needed to formalise arrangements on this issue to enable authorities and members of the public to know with certainty as to who deals with what issue. This is a matter that could be dealt with in part by the regulations and/or by agreement between the various authorities involved.

Please advise if you require clarification on any of the issues raised in this submission.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'M Ballantyne', is written in black ink on a light-colored background.

Melissa Ballantyne
Coordinator/Solicitor
Environmental Defenders Office (SA) Inc.