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DPTI



Attention: Sarah Elding, Project Lead State Planning Policies
Department of Planning, Transport and Infrastructure
Level 5, 50 Flinders Street
ADELAIDE SA 5001

Sent via email to: DPTI.PlanningEngagement@sa.gov.au

Dear Ms Elding,

RE: CITY OF MITCHAM RESPONSE TO ASSESSMENT PATHWAYS: HOW WILL THEY WORK?

I refer to the above Technical Paper and thank the Department of Planning, Transport and Infrastructure (DPTI) for providing the City of Mitcham the opportunity to provide feedback in relation to it.

It is acknowledged that DPTI has undertaken significant amount of work to reach this point, and as such, the Council's response is limited the questions posed in the Paper rather than providing feedback and/or criticism about the planning reforms more generally. The comments attached to this letter provided for your consideration.

Should you have any enquiries or require any clarification in relation to any point in this correspondence, please do not hesitate to contact Council's Manager Development Services, Marc Duncan on [REDACTED].

Yours faithfully

A handwritten signature in black ink, appearing to read "M Duncan".

Marc Duncan

Manager – Development Services

MITCHAM

City of Mitcham

City of Mitcham submission to the Assessment Pathways: How Will They Work? Technical Discussion Paper

General Comments on Structure and Content

In reviewing the Paper it is recognised that the structure of the Planning, Development and Infrastructure Act is already in place and therefore, our comment is limited to the 'Summary of Key Questions' set out in the Paper.

Relevant Authorities

1. In the absence of the detail of the Planning and Design Code and its application to various parts of the Council it is difficult to precisely quantify to which authority, Code Assessment development should be designated for assessment. That being said, as a general principle, Code assessed applications should, wherever possible, be assigned to the Assessment Manager with only the most complex applications being assessed by an Assessment Panel. In terms of complexity, those applications that generate the most external impacts are more suited to assessment by a Panel and those that require public notification where representors wish to be heard.

Assessment Categories

2. The current scope of 'exempt development' should be expanded to capture a wider range of forms of development. In terms of specific recommendation, whilst not exhaustive, the following matters should be addressed under the new PDI Act:
 - "Earthworks" in association with and ancillary to other forms of development should specifically be excluded from the requirement to obtain development. This is a constant problem in the City of Mitcham. However if the Code includes provisions about appropriate levels of cut/fill etc there needs to be a mechanism to ensure that these works aren't undertaken outside of an application process. Within the Mitcham Hills, changes to natural levels can seriously impact on local biodiversity and character as well as impact neighbours by way of privacy and visual impacts.
 - Consideration should also be had to expanding the types of development that can be undertaken by a Council in relation to Council infrastructure akin to the exemption granted to Crown development pursuant to Section 49 of the Development Act. The current exemptions are too limited.
 - Expanding the exemption for developments for ancillary domestic outbuildings. The current quantitative requirements are relatively restricted, and this aspect of the current Development Act causes significant, and unwarranted anxiety in the community. If a domestic outbuilding is proposed in a rear yard, is used for residential purposes, then the limitations on size could largely be dictated by minimum prescribed areas for impervious surfaces or the provision of sufficient private open space. Some consideration will also need to be had in respect of Building Rules issues to ensure public safety. Further limitation may be placed on structures that are on boundaries or of a height that has deleterious impacts on neighbouring amenity. of

- Fencing and associated retaining walls. This form of development takes an inordinate amount of Council administration time and could be adequately dealt with under the Fences Act. A review of the maximum height restrictions on fencing should be investigated to determine when applications for development should be sought.
- Telecommunications facilities. It is rare to find a telecommunications facility that “fits” in any zone within a Development Plan. Telecommunications facilities though, are essential infrastructure in the modern, connected world and as such, should not be subject to the vagaries of the development assessment system.
- Schedule 3A – Exempt Development in Colonel Light Gardens - Further clarification is required about how Schedule 3A will be represented in the new Act and Regulations. Will all State Heritage Listed properties be excluded from exempt development criteria? This has the potential to be onerous on a number of property owners within Colonel Light Gardens seeking to undertake minor works that do not impact on heritage value.

Public Notification

3. Yes.
4. Minor variation to deemed to satisfy should explicitly exclude any item that would make the application otherwise categorised as Impact Assessed Development. There is a current paucity of direction under the current system where one element of an otherwise Complying development is in fact, non-complying. This problem should be resolved under the new Act.
5. No. Either the application is notified or not and special treatment should not be afforded certain planning impacts over others. The PDI Act is an excellent opportunity to avoid the current system of exemptions upon exemptions.
6. As per answer to question 1.
7. Only developments that are clearly not envisaged in the zone should be restricted. At present, there are many examples of developments that are non-complying that, whilst not typical for a zone, are not so out of character to effectively make them prohibited. Mitcham Council currently has many non-complying applications that are approved which indicates that the balance is not right.
8. Restricted development should be assessed in the same manner as the present non-complying path. Whilst restricted, it should not necessarily mean that the form of development must not be approved. It must merely be assessed via a more rigorous development assessment path.
9. State significant development is suited to impact assessment.

Public Notification

10. Yes. However, there will need to be some consideration how those applications that receive representations are assessed and whether those representors have a right to be heard personally.
11. The applicant should be responsible for placing a notice on the land. The requirements for placing notices should mirror the provisions in the Liquor Licensing Act. There may be some difficulties where development is proposed on vacant land and signs are stolen/go missing and what impact this will have on the validity of the notice.
12. A timestamped photograph would be sufficient evidence throughout the notice period. There should be an offence for taking down a notice during the notification period which would also render the entire process void if it occurs. The regulations should build in something similar to mandatory notifications of building works. Applicants should be required to submit an email or upload

paperwork to the Portal that nominates the date and time that the sign was installed as well as a photograph of the notice on the land.

13. The current two-week period is sufficient. Two weeks is appropriate and gives neighbours and affected people sufficient time to provide a response. Some consideration around the impacts of the length of time Australia Post is taking to deliver mail if not paid for as priority. Need to provide reasonable opportunity for those people who may not have access to the Portal to lodge submissions.

Provision of Information

14. The current provision of information is satisfactory. The regulations allow a relevant authority to dispense with the strict adherence to provide all information and this works well at the City of Mitcham. The provision of information should be reasonably consistent across the board to avoid frustration and uncertainty from the community. What mechanisms exist to ensure that critical information has been considered in the assessment of an application, i.e flood study within a flood prone area? Would be concerned if Accredited professionals are able to dispense the need for this to be provided.

Assessment Categories

15. As per the answer for questions 14.
16. Yes, further information should be able to be requested, however, there will need to be careful consideration around the statutory timeframes given the insertion of the deemed consent provisions in the PDI Act. Generally, referral agency/ Assessment Panel requests should be separate to that of the relevant authority. Discussions directly between applicants and referral agencies should be encouraged to assist in progressing applications. Time frames could also be affected if the relevant authority is having to coordinate requests for information from a number of different agencies as well as their own.
17. Any significant amendments to a proposal that will result in further assessment/ information to be provided should re-set the clock back to lodgement and allow additional information to be requested.

Outline Consents

18. 12 months.
19. Outline consents would be appropriate for larger developments where there is likely to be the need for a significant financial outlay to a proponent to provide engineering or other technical details to secure full development approval. An outline consent will be most beneficial in such a situation where the fundamental nature of development can be approved in an outline approval, but the detail can be provided at a later point in time when there is the security of an outline approval in one's hand.
20. The relevant authorities able to issue outline consents are the Minister, State Planning Commission and Assessment Panels. Outline Consents should only be requested for larger development. We query what fees are payable for the consideration of an outline consent? Is it based on each aspect or the development as a whole when completed?

Referrals

21. It is not clear how a deferral of a referral will advance a development application. In the absence of the detail of the Planning and Design Code, it is difficult to provide comment on which aspects of a referral could be deferred. Consideration would need to be given to timeframes allowed for both a relevant authority and a referral agency to assess the deferred matter. There seems little benefit to the applicant in the long run to go down this path

Preliminary Advice

22. The informal avenue of seeking preliminary advice seems to work quite well at present. If a formal avenue was provided, it is unclear how it would differ from the outline consent process as provided in the PDI Act.
23. No, a fee should not apply for the seeking of preliminary advice. Preliminary advice should be encouraged as better planning outcomes are invariably achieved through this process. The planning system should promote this as much as possible.

Decision Timeframes

24. In the absence of detail in the Planning and Design Code, it is difficult to estimate the necessary time frame for each of the new categories of development. That being said, the Code Assessed - Performance Assessed development stream, should have the same assessment timeframes as the current merit stream.
25. The current timeframes are appropriate. What could be improved is the timeframes associated with getting an application to an Assessment Panel for a decision. Due to the cycling of the meeting schedule, an application may have to be on hold for up to 4 weeks for the next meeting. This has implications for the 'deemed consent' provisions within the new Act.

Deemed Planning Consent

26. Whilst the development industry has been successful in changing the system to incorporate deemed consents, it is queried how this will apply in practice. Instead of spending extra time negotiating a good outcome, relevant authorities will refuse an application, increasing the costs to the applicant and the workload of the ERD Court. Further queries arise as to when the relevant authority is a private planning certifier. How will deemed consents work in this scenario? Could a private planning certifier simply sit on their hands and have a deemed consent subsequently issue? Deemed planning consents will be most favourably looked upon by the legal services industry.
27. It is difficult to fathom what standard conditions will apply to a deemed consent and whether the standard conditions will apply to different types of development such as residential, commercial or industrial etc.

Conditions and Reserved Matters

28. The practice direction on conditions should consolidate the existing law on conditions enunciated by the ERD and Supreme Courts. DPTI should also provide standard conditions to be applied by referral agencies. At the City of Mitcham, conditions from the CFS and State Heritage are common but the application of them is not. It would be useful to have a standard set of conditions so that applicants can have some idea as to what they can expect should approval be forthcoming.
29. Query whether reserved matters will be as prevalent once outline consents come into force. If one has an outline consent, the applicant can obtain relevant input from traffic, engineering,

environmental consultants with more confidence. If an applicant requests for certain matters to be reserved there should be consideration for an additional administrative fee to process and consider them. Clarification is required about time-frames associated with assessing Reserved Matters. Are they exempt from deemed consent provisions? Currently applicants tend to submit the reserved information at the same time as the Building Rules consent information and expect decision within the same timeframe for granting Development Approval.

Variations

30. Minor variations should be scrapped from the current system. They are abused and frequently used as a trojan horse to obtain approvals for matters that would never have been approved in the first instance.
31. If minor variations are to be permitted, there should be a fee, equivalent to the fee for a new application as the same amount of work is involved in assessing the application.

Crown Development and Essential Infrastructure

32. No comment.