

Introduction

“Assessment Pathways” refers to the processes and steps a development proposal can follow, ranging from preliminary enquiries to completion of construction. Although the nature of the pathways are established in the *Planning, Development and Infrastructure Act 2016 (the Act)*, the pathways will be further defined and enacted through future regulations, practice directions and the Planning and Design Code (the Code).

The new pathways will ensure that applications are assessed in a process commensurate to their complexity – simple, expected forms of development with minor impacts will follow a streamlined approval process, while more complex applications with notable impacts will be subject to agency referral, public notification, wide-ranging assessment, and will be assessed by a panel of independent experts.

A technical discussion paper titled “*Assessment Pathways: How Will They Work?*” was released for public consultation for 8 weeks, from 23 August to 17 October 2018. The paper communicated the detail around assessment pathways set out in the Act, but also invited feedback on the matters that are yet to be determined.

As part of the consultation process, two workshops were held, as well as two open-house sessions, with feedback invited through written submissions and a survey.

This paper summarises the key messages that were communicated to the Department of Planning, Transport and Infrastructure (the Department) throughout the consultation process.



Workshops

During the consultation period, two workshops were held; the first workshop on 25 September 2018 engaged with planning/industry professionals, while the second workshop held on 26 September 2018 continued the discussion with members of the community.

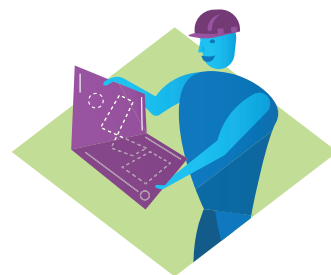
A total of 51 planning professionals attended the first workshop (including 33 via livestream), and 28 community members attended the second (including 12 via livestream).

The following themes were discussed at the practitioner workshop:

- Exempt development could be broadened to include minor works such as: cubby houses, cat runs, and certain earthworks and minor structures in the Hills Face Zone
- Assessment Managers or Assessment Panels should be the relevant authority for performance assessed applications where notification is required
- Relevant authorities employed by government bodies should be the relevant authority for performance assessed and impact assessed development
- The regulations should provide clear scope when delineating relevant authorities
- Guidelines should be provided on the role and function of relevant authorities in the new system (e.g. standard templates for assessment reports).

The following matters were discussed at the community workshop:

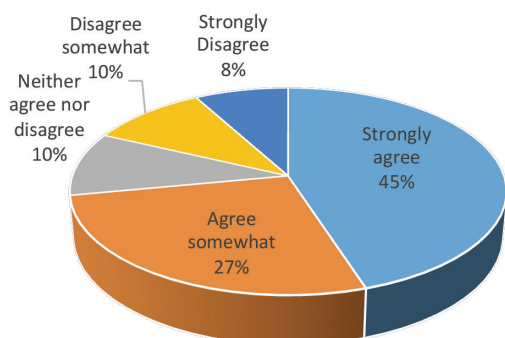
- Development that is exempt from needing approval should not have any impact on neighbours. Impact should consider: noise, overshadowing, overlooking, design, views, distance from boundaries
- Suggested exempt works could include small sheds and pergolas (lower than fence height), carports, retaining walls, cubby houses, solar panels, water tanks, and any like-for-like replacement
- Assessment Panels should assess anything that involves community opposition, as well as anything exceeding height guidelines, affecting the public realm, or impacting on the environment
- Significant developments should be notified via newspaper, a sign on the site, a website, letters, and by notifying key stakeholders such as resident groups.



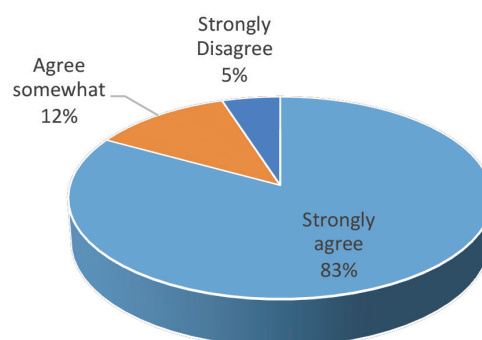
Survey responses

10 questions were posed through a survey on the Have Your Say webpage, with a simple response option ranging from 'strongly agree' to 'strongly disagree'. 74 people undertook the survey and responded as follows:

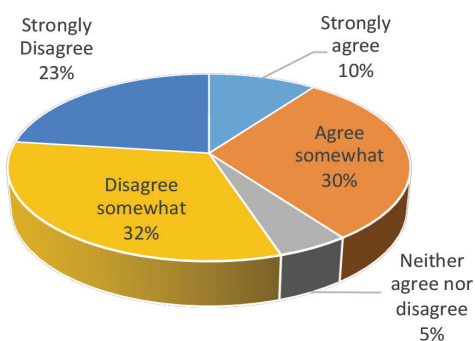
1. I think qualified planning assessors (accredited professionals) should be limited to assessing simple applications at the lower end of the scale. For anything more complex, a panel of three or more experts should be used to evaluate and approve develop.



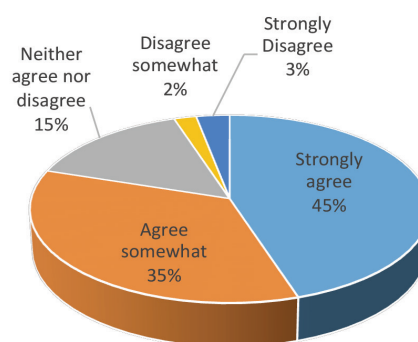
2. I would want to be notified about a neighbour's development application which is not within normal criteria (e.g. they exceed height restrictions, are closer to a boundary or cover a larger footprint of land).



3. I think that simpler types of development (such as backyard sheds or solar panels) which can be constructed without needing approval, should be broadened for homeowners to include things like swimming pools and garages.



4. I would use an online system to access planning information and to lodge development applications.



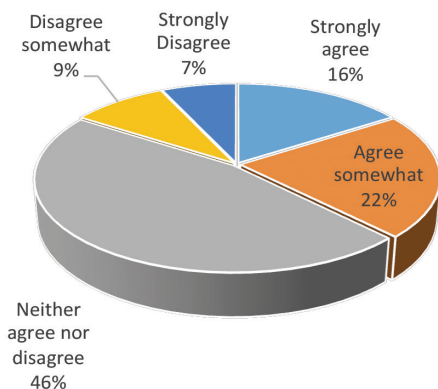
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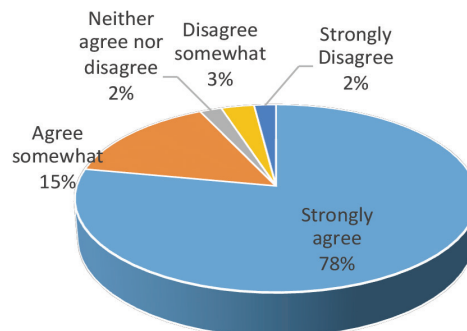
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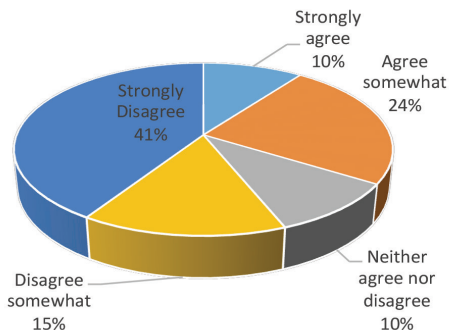
5. I think the new ways proposed to assess development applications will result in faster approvals.



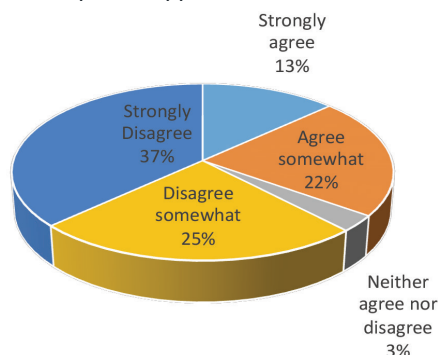
6. If I were notified of a development application which I thought could affect me, I would want to be able to respond – either in writing or by making a submission in person.



7. I think assessment panels should only be needed to assess applications where there are submissions from the public; otherwise it is acceptable for one qualified person to do it.

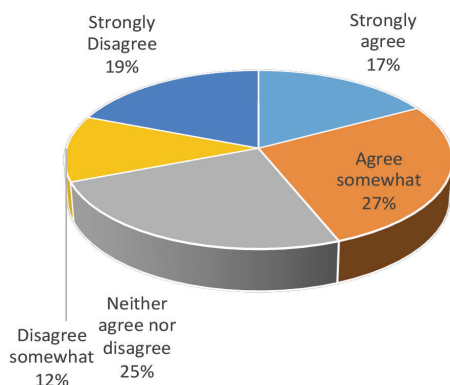


8. I think that 10 business days is enough time for neighbours to submit a response to a publicly notified development application.

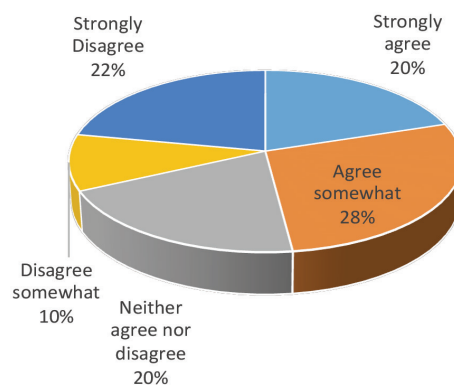




9. I think the suggested timeframe of 8 weeks for a Performance Assessed development is sufficient time for planning authorities to decide if that application gets approval.



10. I think fences should be excluded from the 'Exempt' category (those which do not need any approval) to avoid disputes between neighbours over their construction.



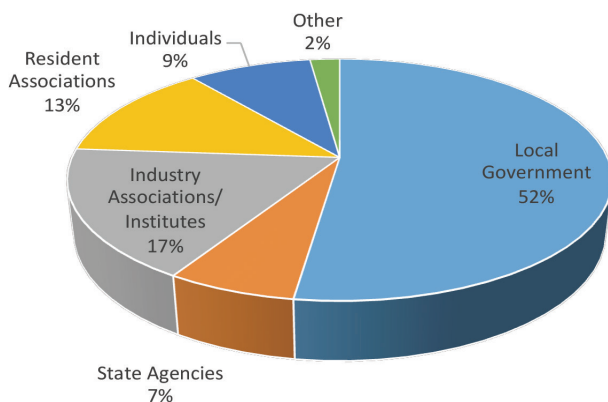
Discussion Paper Feedback

47 written responses were received in response to the Discussion Paper, with respondents ranging from local councils to industry groups, state agencies, resident groups and individuals.

33 questions were asked of respondents in the discussion paper. Some respondents directly responded to key questions raised in the discussion paper, while others responded more broadly.

The summary of consultation responses below provides an overview of the key themes raised:

Type of Submissions





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Relevant authorities

When prescribing relevant authorities, respondents believed that consideration should be given to:

- Significance/scale/intensity/complexity of development
- Level of external impact
- Level of public interest (whether public representations are received)
- Whether the development fits within that envisaged by the Code
- Whether specialist advice is required.

Accredited professionals

Concern was raised about the level of planning discretion required to assess performance assessed applications. Most respondents were of the view that accredited professionals should be the relevant authority for deemed-to-satisfy developments, where clear assessment parameters can be employed in assessment. Such applications should also maintain a low level of public interest, no notable impact to public infrastructure, and not require specialist advice.

Assessment managers

Some respondents identified that assessment managers should be the relevant authority for performance assessed applications, including in circumstances where public notification has been undertaken and no representations raising concern have been received.

Assessment panels

Respondents identified a range of circumstances where assessment panels should be the relevant authority for performance assessed development, such as:

- Where representations raising concern with the proposed development have been received
- Medium/high rise residential development
- Large land divisions
- Developments over a certain value
- Developments of environmental significance
- Development involving demolition of heritage items.

Categories of development

Exempt development

A majority of respondents were of the view that there is scope to increase the types of development that don't require any form of development approval ("exempt" development), however such development should have negligible impacts and reflect standard, expected development that is commonly undertaken in its setting. Suggestions included children's cubby houses and tree houses, small verandahs, aviaries, cat runs and wood fire pizza ovens.

Accepted development

Respondents had mixed views, but generally agreed there could be scope to increase the extent of development that doesn't require planning consent (but does require building consent). This requires further review in conjunction with the drafting of the Code.

Deemed-to-satisfy development

The need for clear delineation of what comprises a "minor variation" to deemed-to-satisfy development criteria was identified as a priority to ensure consistency and transparency.

Some recommendations were offered in order to assist in defining the scope of a minor variation, including:

- No more than 5/10% discrepancy
- No more than 2 elements of variation
- The likelihood to create adverse amenity potential and/or material detriment
- Negligible impact in relation to the development overall
- The scale and/or nature of the variation results in a development which is not substantially different from one that would have been entirely 'deemed-to-satisfy'
- Outline examples as to what would not be considered a minor variation (e.g. site area, building height, privacy treatments)
- 'Variation percentage budget' (i.e. there is a maximum cumulative 5% of variations to allocate)
- Passing the 'person in the street' test of not noticing the variation.



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Performance assessed development

Generally, respondents agreed that certain elements of performance assessed applications could be a trigger for public notification, as well as where the development doesn't accord with particular Code policies.

Such triggers could include:

- Overshadowing (over height/under setback)
- Boundary development
- Over height
- Lack of privacy treatments
- Shortfall in car parking
- 3 or more storeys development (residential or mixed use)
- More than 1 storey on a hammerhead allotment
- Building on site boundaries
- Building on a site adjacent to a different zone
- Multi-storey development (over 2 storeys) within, or in proximity to character policy areas
- Land use not anticipated in its zone (i.e. residential development in a non-residential zone).

Restricted development

Submissions identified suggested principles to be used when determining what types of development should be classified as restricted in certain zones/sub-zones/overlays, including:

- Whether land use is compatible with the zone's envisaged uses
- Level of impact (noise, pollution, etc.)
- Size, scale, intensity
- Exceed capacity of existing infrastructure
- Adverse impact on surrounding locality
- Nature of the social, economic and environmental impacts
- Potential to be affected by or cause significant environmental harm.

The following considerations outside of the Code were suggested as being relevant to the assessment of a restricted development:

- Comments of the relevant council, including advice regarding infrastructure, engineering, local circumstances, etc.
- Social, economic and environmental considerations (triple bottom line)
- Other relevant legislation (Native Vegetation Act, Liquor Licensing Act, etc.)
- External agency comments (bushfire risk, impact on natural resources, etc.)
- Amenity impacts
- Public interest
- Practice Directions/Guidelines
- Strategic context toward future desired outcomes.

Submissions also highlighted the importance for the assessment process to include a referral to the relevant council to obtain important information on relevant community perspectives and technical information regarding local infrastructure.

Impact assessed development (Environmental Impact Statement (EIS))

Respondents generally agreed that the types of development suited to the Impact Assessed (EIS) should be similar to the current major development pathway under the Development Act 1993.

This could include major developments which have complex impacts, requiring assessment beyond the scope of the Code policies; developments of a significant scale at the State or Regional level; development with significant social, economic or environmental impacts, requiring an EIS assessment approach; or where a strategic assessment approach is required.

Identified examples included:

- Mining related operations
- Energy recovery from waste
- Energy generation and storage facilities
- Wastewater treatment works
- Waste depots
- Port or wharf facility
- Desalination.



Public notification

Relevant authority for publicly notified applications

Respondents were of the general consensus that:

- Accredited professionals should not have the capacity to determine publicly notified applications given the inherent level of public interest and expectation that a public authority will take into account the views of the community.
- It would be appropriate for an Assessment Manager to determine publicly notified applications provided that no representations are received raising valid concerns regarding the proposal.
- In circumstances where representations opposing the development are received, the Assessment Panel should determine the application.

Responsibility for placing a notice/sign on the land

Respondents offered opposing views as to who should be responsible for placing a notice on the subject land (approximately 57% said applicant, 43% said relevant authority).

In favour of the authority, it was observed that this would avoid procedural uncertainty and ensure consistency in approach and sign requirements.

In favour of the applicant, it was observed that a relevant authority will not be adequately resourced to attend every site to erect the notice and ensure that it remains in place.

All agreed that the cost of the sign should be borne by the applicant.



Evidence of the notice/sign

Most respondents agreed that evidence of the sign should be recorded via a photograph. If the applicant were responsible for erecting the sign, a statutory declaration would also be an appropriate method of verification.

To minimise risk of interference/tampering with the sign, it was suggested that an offence penalty could be prescribed in the legislation.

Period of public notification

Local government representatives were generally of the view that the current 10 business day timeframe was sufficient time for the public to respond to a publicly notified application.

However, most respondents also agreed that, for more complex applications, a longer timeframe should apply. Suggested timeframes ranged from 3 weeks to 6 months.

Respondents observed that the period for notification should take into account any delays in postage and should not include public holidays.

Other comments on public notification

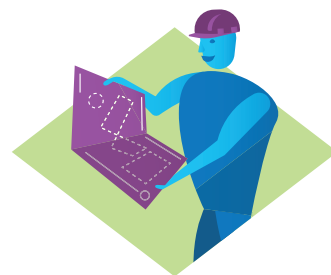
- Assessment Panels should have the discretion to hear representors who wish to make verbal submissions.
- Concern regarding the effectiveness of a notice on the site on high-speed roads and rural properties.
- Concern raised around the concept of comments on performance assessed development being limited to the performance assessed elements of the development and how the different elements eligible for comment will be clearly communicated to the public.
- There may be cases where an application is of a minor nature that doesn't require notification. In those cases, an Assessment Manager should be able to determine that public notification isn't required.



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Provision of information

Some respondents believed the current information requirements for development applications (prescribed by Schedule 5 of the *Development Regulations 2008*) was sufficient, while others thought it should be expanded.

It was observed that the requirements for deemed-to-satisfy development should include the following:

- Certificate of title
- Schedule of colours/materials
- Survey plan identifying site levels and street infrastructure (particularly for development in flood risk areas)
- Extent of proposed earthworks
- Sewer connection points/waste water systems
- Location of rainwater tanks
- The amount of private open space, site coverage etc.
- Electricity declaration
- Location of any regulated trees
- Extent of hard surfacing versus landscaping.

It was also observed that information requirements should be broadened to apply to a variety of development types, including standardised information for commercial/industrial businesses, multi-level dwellings and changes of land use.

A number of submissions identified that the information standards should apply to all applications as a baseline for lodgement.

Outline consents

Local governments were of the view that outline consents should be operational for between 3 to 12 months (with the opportunity to apply for an extension of time). Industry associations believed the period should be longer, between 3 to 10 years.

Respondents thought that outline consents may be appropriate/beneficial for the following types of development:

- Land divisions applications (to confirm density)
- Large-scale major developments undertaken in stages, where a number of subsequent applications and amendments may be needed
- Master planned development
- Structure plans

- Mixed use development
- Multi-storey buildings
- Intensive animal keeping
- Land use proposals.

Respondents generally agreed that Assessment Mangers, Assessment Panels and the Commission should be responsible for granting outline consents.

A number of respondents raised additional questions regarding outline consents, including:

- The scope of information available to undertake an assessment
- The role of design review in the granting of outline consents
- Whether the application for outline consent and/or subsequent planning consent applications will be subject to public notification;
- How outline consents relate to mandatory agency referrals.

These matters will be considered and detailed in a future practice direction to be issued by the Commission (noting that outline consents will not come into effect until such time as the practice direction is issued).

Referrals

Concern was raised regarding the ability to defer referrals to a later stage of the assessment process, given that referrals will be for direction and may alter fundamental components of any development authorisation. As such, it was observed that referrals which relate to matters of detail that are not material to the development may be potentially suitable for deferral. This will require further consideration as the types of referrals in the new planning system are being determined.

Preliminary advice

Respondents generally agreed that preliminary advice from a relevant authority should remain an informal process due to the risk of applicants viewing the advice as a form of certain pre-approval, when inherently, a complete assessment would not have been undertaken for preliminary advice.

It was also noted that the new ePlanning portal will assist in minimising the need for preliminary advice due to the future enquiry tools that are linked to the online Code.



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Decision timeframes

Respondents generally agreed that decision timeframes under the *Development Act 1993* are appropriate, and should be used as a guide for the new timeframes. However, it was noted that increases to the timeframes should be considered to ensure a reasonable assessment time before a deemed planning consent notice could be served.

Respondents also noted that additional time should be added to the overall timeframe to account for periods of public notification, agency referrals and determination by an assessment panel.

Some respondents identified the need for a period of verification by the relevant authority before the 'clock' starts on an application, to ensure that the application has been categorised correctly, all base information has been provided, and the correct fees are charged.

Respondents noted that timeframes should be prescribed in business days to avoid ambiguity and exclude public holidays.

Deemed planning consent

Respondents generally agreed that it would not be appropriate for deemed planning consents to apply if mandatory procedural steps in the assessment process had not been undertaken. While local government respondents were unanimous, representatives from the development industry were generally supportive of deemed planning consent in these circumstances.

A number of respondents raised concern with the concept of deemed consents due to:

- Planners being compelled to refuse applications where the timeframe is due to expire instead of continuing negotiations with the applicant to facilitate mutually agreeable outcomes
- Increase in Court processes and expenses appealing deemed consents issued for developments with outstanding issues
- Potential reliance on the use of conditions to try to achieve better development outcomes
- Lack of incentive for private accredited professionals to appeal a deemed planning consent.

It was noted, however, that where deemed consents operate elsewhere (including in Queensland), over time applicants learn to provide sufficient information with their application to avoid a refusal, and assessment planners in relevant authorities speed up their processes to avoid deemed planning consent being required.

The concept of deemed planning consent has been established in the Act, which was endorsed by Parliament in 2016. The concerns raised with the concept of deemed planning consent would require legislative reform, and is therefore outside the scope of the assessment pathways project. That being said, the concerns are noted and will be taken into consideration when determining the assessment timeframes in future regulations, and when designing the ePlanning platform to ensure the approaching end of assessment timeframe is made clear to the relevant authority.

Concerns regarding potential misuse of the deemed consent process by private accredited professionals are acknowledged, but noting that any such unethical conduct would be an issue dealt with by the Accredited Professionals Code of Conduct.

Conditions

Respondents were of the view that a suite of standard conditions should be established for the use of relevant authorities, ensuring that all conditions are legally valid and enforceable. This would enhance consistency in the type of conditions used across the State.

The suggested scope of conditions included:

- Site management
- Maintenance of landscaping
- Privacy treatments
- Hours of operation
- Car parking area standards
- Stormwater disposal/detention
- Waste storage and collection
- Wastewater connection/system
- Driveway levels/specifications
- In accordance with Australian Standards
- Noise limitations
- Light spill / glare
- Emissions/ spray drift/ odour.



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Reserved matters

Respondents agreed that matters to be reserved by the applicant's request should not be fundamental to the assessment. The following suggestions for non-fundamental reserved matters were identified:

- detailed design elements (where a sufficient concept plan has been provided)
- stormwater management (where a standard engineering solution could be achieved)
- site contamination audit/report (if preliminary tests demonstrate that any potential contamination can be remediated).

Variations

Respondents generally agreed that minor variations should be kept in the new planning system because it provides a practical method by which to approve minor variations to a development post-decision.

However, respondents also observed that a fee should be required to cover the administrative costs and time required to process such minor variations. In doing so, the need for consistent documentation of the minor variation was also identified. Suggestions to achieve this included the generation of an amended decision notification form.

Some respondents were of the view that the development application number should be modified to keep track of any minor variations approved.

Submissions also raised the need for clear advice regarding what constitutes a "minor variation".

Crown development and essential infrastructure

Respondents were generally of the view that the current scope of Schedule 14 under the Development Regulations 2008 was appropriate to guide the types of State agency development that does not require approval.

Submissions identified the following forms of infrastructure as being potentially suitable under the definition of "essential infrastructure":

- Telecommunications facilities
- Temporary storage and depots associated with work being undertaken.

General matters

Consents in any order

Some respondents raised concerns with the concept of consents being able to be granted in any order. Given that the ability to grant consents in any order is established under the Act, there is no scope of review this matter without a direction for legislative reform by the Government.

However, concerns regarding the potential for confusion (assumed approval) after obtaining a building consent could be dealt with by clear communication of the development approval process on document templates and correspondence on the ePlanning portal.

Appeal rights

Concern was raised regarding the absence of third party appeal rights to performance assessed development. Given that appeal rights are established under the Act, any change in this regard would be a matter for legislative reform by the instruction of the current Government.

ePlanning

A number of matters were raised in relation to ePlanning including:

- Scope for error from applicants entering incorrect information to guide categorisation and relevant authority
- The need for the system to automatically advise people who have lodged a representation whether the application outcome (i.e. withdrawn, approved, or split into elements).
- The need for a detailed Communications and Implementation Plan to support transition to the ePlanning system
- How sensitive material will be obscured from public view (e.g. floor plans)
- Relevant authority assessment reports, plans and decision notification forms to be made available to the public
- Alternative options for submitting applications should be available for applicants without reliable internet connection or the technology to prepare/copy electronic plans
- The need for a hotline to provide assistance to those using the SA planning portal.

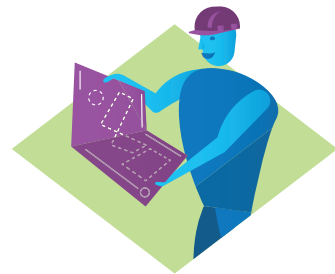
These ideas have been passed onto DPTI's ePlanning team.



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Terminology

The clarity of the assessment pathways terminology was identified as a concern. While most of these terms are defined in the Act and therefore cannot be changed without legislative reform, a suite of definitions is currently being prepared and will form part of the Code.

Design Review

It was identified that design review will be beneficial for larger development proposals, particularly impact assessed development, and could also form an assessment consideration in the granting of outline consent.

It was requested that councils be included on any design panel established by the Minister.

Fees

Concern raised regarding the resource implications of councils issuing development approval, particularly given added complexity through the staging of consents in any order, ability to separate different elements of a development, and to reserve specific matters/referrals.

Local government representatives also highlighted resourcing needs to undertake mandatory inspections and general compliance/enforcement matters under the Act.

Planning and Design Code

Many respondents felt that their ability to comment on the assessment pathways was limited without first knowing the policy content and structure of the Code.

While it would be ideal to consider all policy and legislative instruments as a whole, it is also important to consider and understand the assessment pathways framework before meaningful comment can be provided on the policy content of the Code. For example, when the Code is consulted, it will be important to understand the intricacies of the accepted, deemed-to-satisfy, performance assessed and restricted pathways so that the scope of development types allocated to each pathway in each zone/sub-zone/overlay can be determined.

Separating elements of a development

Respondents observed that there is ambiguity around what comprises an “element” of development for the purposes of section 102(7) of the Act, which allows different elements to be lodged separately with different authorities, and in any order.

It is the Department’s understanding that an element of development for the purposes of section 102(7) of the Act relates to a component part of a development, not an assessment consideration. For example, a dwelling, detached garage and swimming pool would each be separate elements. Front setback, building height or building materials are not “elements”, and therefore could not be separated for assessment purposes.

Next Steps

The Department offers sincere thanks to everyone involved in the consultation process for their valuable feedback.

We are currently working on draft regulations and practice directions which take into account the comments received. It is anticipated that the regulations and practice directions will be released for public consultation on the Your Say website and SA planning portal in early 2019.

For further information visit:

www.saplanningportal.sa.gov.au

www.saplanningcommission.sa.gov.au