

South Australian Productivity Commission – Development Referrals Review

Submission

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About the Local Government Association of South Australia

The Local Government Association of South Australia (LGA) is the voice of local government in South Australia representing all 68 councils across the state and the and the Anangu Pitjantjatjara Yankunytjatjara. The LGA is recognised in the *Local Government Act 1999* (SA) and is a constituent member of the Australian Local Government Association. The mission of the LGA is to provide leadership, support, representation and advocacy on behalf of South Australian councils, for the benefit of the community.

Background

The LGA's submission to the South Australian Productivity Commission (the Commission) is in response to the Development Referrals Review Issues Paper dated 26 March 2021.

The LGA strongly supports the continuation of referrals to specialist agencies through the development assessment process. The integration of specialist advice and expertise through the planning system is an effective and efficient method for securing quality development outcomes for South Australia's communities and environments. Referral agencies must be appropriately resourced and work to reasonable timeframes to support their role in a well-functioning system that serves all stakeholders.

Review timing

The timing of this referrals review is not ideal given the State Government has undertaken a wholesale reform process spanning several years and all aspects of the planning system, including referrals.

Since 2013, the planning reform investigations and consultations have offered numerous opportunities for the State Government and other stakeholders to explore and resolve any concerns or questions around development referrals and their relationship with South Australia's competitiveness as an investment destination.

An aim of the reforms has been to make the planning system simpler and more efficient. In pursuit of this, the *Planning, Development and Infrastructure Act 2016* (PDI Act) and Regulations (see Schedule 9) and the Planning and Design Code (the Code) have made significant changes to the referral arrangements previously in place.

The Code commenced operation across metropolitan Adelaide and a number of larger regional centres in March 2021. The LGA's consultation with councils indicates few metropolitan councils have yet finalised, nor even received applications requiring referrals under the new Code.

The timing of the Commission's review means that councils and other stakeholders have little relevant evidence to provide in response to the Commission's information requests. It is simply too early to make informed comment or provide robust evidence of the performance of the new system. Information based on the operation of the previous system is no longer relevant, and any observations drawn from this information could lead to poor recommendations.

Deferring this review for 12 months would enable access to useful data about the operation of referrals under the new system. Efficiencies could be gained by scheduling this review to coincide with the broader review of the PDI Act and Regulations the LGA has recommended to the Legislative Review Committee and Environment Resources and Development Committee of Parliament.

Review scope

The LGA understands the Commission has restricted its review to three referrals – environmental significance, native vegetation and transport – on the basis the referral bodies represent contrasting perspectives, roles and functions.

The LGA is concerned that through this narrow scope, the Commission could draw conclusions and form recommendations impacting upon all referral bodies without due regard to the important context and role of each in addressing the issues within their remit.

Heritage referrals are conspicuously absent from the review, excluding the Commission's consideration of a development referral that not only has been one of the most frequent, but relates directly to the economic significance of cultural heritage and its important role in tourism attraction and expenditure.¹

Other referrals worthy of consideration through a comprehensive and robust review process are those relating to the River Murray, Coast Protection, Landscape Boards, the Country Fire Service, the Mining Act, the Aquaculture Act, the Housing Trust, and Airports.

Information Request

Information request 2.1: Relevant authorities in the referrals process

The new online planning system incorporating the SA Planning Portal and the online Code is presenting challenges for councils and applicants in many aspects of the development application and assessment processes. In one relevant example, the LGA is aware of an application involving a referral body in which neither the council nor the referral body itself knew the fees applicable to the application in question.

It is expected that with time and refinement of the interface, many of these challenges will be overcome.

As it stands, the system generally precludes applicants engaging directly with referral bodies, with the relevant authority (generally the council Assessment Manager) required to be the “middle person” between the applicant and referral body. Some newly established relevant authorities have found the system to be rigid – for example not allowing applicants or referral bodies to provide information in parts and precluding referral bodies from adding file notes to applications, an issue of concern not only for transparency, but also efficiency where system “workarounds” may be required to effectively communicate information and accommodate changes. For example, referral bodies are not able to request information from an applicant through the portal, so have emailed the relevant authority (outside the system) to request council seek the further information on their behalf.

Councils have indicated that some referral bodies will not provide information or informal advice (officer to officer) outside of a formal application process. This indicates some referral bodies are encouraging

¹ Adelaide City Council (2015) *Economic Value of Heritage Tourism*; Commonwealth of Australia (2015) *Australian Heritage Strategy*; Presentation by the National Trust at LGA workshop “Tourism and Heritage – a Winning Combination” October 2014; The Allen Consulting Group 2005, *Valuing the Priceless: The Value of Heritage Protection in Australia, Research Report 2*, Heritage Chairs and Officials of Australia and New Zealand, Sydney.

a siloed approach between relevant authorities and referral bodies. Historically, communication and collaboration amongst planning authorities, referral bodies and applicants prior to and during the assessment process has achieved efficient, high quality, and customer focused outcomes for applicants.

Information request 2.2: Impacts of the state planning reforms on referrals

Having been so recently put into effect, the real impacts of the planning reforms are yet to be experienced. As noted above, the initial experiences of councils are indicating that further refinement is required to ensure the Code can be efficiently and effectively applied, and that applicants are able to access the information they need to navigate the development assessment process.

The impact of the shift to a predominantly 'direction' role for referral bodies is yet to be observed and measured, and it is difficult to predict how referral bodies will exercise their powers of direction. One factor that may influence referral outcomes is whether the referral body is sufficiently resourced to defend their decisions in the Environment, Resources and Development Court if required.

Councils have found in the past that the ability for planning authorities, referral bodies and applicants to collaborate in the assessment process often increases efficiency and creates better community outcomes. The new system has limited opportunities for this, through removal of the "middle ground" of referral body advice for regard by the assessment authority.

Overlays in the new Code as they stand are likely to be confusing for applicants and require a professional planner (council or consultant) to navigate. Council staff are themselves currently grappling with the interpretation of overlays and relevant policies on occasion. Currently, a search in the Code returns vast amounts of possibly relevant policy, and in some cases links to information outside of the Planning Portal but relevant to an overlay and referral – for example heritage.

Referral triggers are located in tables as well as Overlays in the Code. Where development applications are outside of a determined pathway in the Code, the relevant authority must manually "browse" the Code at verification stage to make sure all referrals are captured.

To improve efficiency and accessibility of the referral process, the planning system should be refined to ensure all referral information is in one easily accessed location, for example a central referral table that consolidates the tables from each overlay. Tables should also be set up so only tables relevant to the overlay are called up in a property query.

The planning reforms have seen reduced timeframes for councils to assess applications (20 days), while some referral bodies (for example transport) have 30 days to respond even when the application is not complex. It seems reasonable that appropriately resourced referral authorities with relevant expertise and clear statutory responsibilities in the planning system should be able to provide responses more quickly for simple matters – for example 15 days. This amendment could improve assessment timelines and reduce applicant waiting times thereby improving the State's competitive advantage.

Under the new planning system, land division and building work are now lodged as separate applications and may be determined by different relevant authorities and subject to different referrals. Some councils' experiences to date (during Phase 2 of the Code operation) have found agency responses have been delayed during this process, and the assessments have not been integrated, creating uncertainty for applicants. The move away from the EDALA land division system, which automatically generated referrals, has made assessment of land division applications a more complex and manual task, with the relevant authority responsible for identifying the referrals required.

Information request 3.1: Assessment pathways – contrasting approaches

The more extensive requirements for Major Projects and Impact Assessed development applications are likely to lead to a more straightforward assessment process. Such applications are likely to be developed with the input of professional services and pre-lodgement consultation with the relevant authority and referral bodies, thereby establishing working relationships and identifying issues and solutions early on. Such development proposals are generally of significant scale, and the applicant invests significant time and resources to all aspects of the project including planning approval.

Performance assessed development is likely to be far more diverse in its nature as will be the information required for development assessment. This may provide less clarity for the applicant, but also a lesser standard of information than would be required for a major project or impact assessed development.

Under the new planning system, a verification period is applied upon submission of an application. During this period the relevant authority has 5 business days to ensure adequate information is included in the application for assessment. It is not until this occurs that assessment of the application can commence. Where the relevant authority requests further information, the verification period of 5 days is put on hold, and clear advice is provided to the applicant on what is required to complete the application and for assessment to commence. In this way, the verification period may be seen to serve as a pre-lodgement process. Once assessment commences there is less opportunity for the relevant authority to 'stop the clock' by asking for further information, given the verification period is largely to ensure all relevant information is provided.

Information request 3.2: Planning approvals and environmental licensing

Environmental referrals should remain integrated with the planning system. Importantly, not all environmentally significant activities that require a referral through the planning system are subject to environmental licensing.

Councils have reported to the LGA that the Environment Protection Authority is generally unwilling to engage in pre-lodgement discussions or provide informal advice at officer level. It is recommended that given the significance of the EPA in the referral and licencing process they should consider regularising pre-lodgement discussions with the relevant authority and the applicant.

Information request 3.3: Native vegetation clearance and co-regulation

Native vegetation referrals should remain integrated with the planning system, as integration to date has resulted in positive outcomes.

Consistency and collaboration of advice between Native Vegetation and Country Fire Service referral bodies has generally improved in recent years, and resolution of conflicts during an assessment process are generally straightforward.

Native vegetation issues that can impact on the development assessment process include firstly, a common and reasonable practice, where an application for Planning Consent is submitted at Preliminary Design stage and does not allow for native vegetation impacts to be fully understood. Secondly, where native vegetation on a site is less visually obvious– for example understory plants rather than trees - and requires expert input to a development application.

The former issue has previously been managed adequately by applicants seeking pre-lodgement advice from the Native Vegetation Council, and the latter could be addressed by guidance materials for applicants to assist in identifying different types of native vegetation.

Information request 3.4: Road network referrals and information requirements

The Commissioner of Highways' information requirements have historically been generally reasonable, and response times and access to staff with relevant expertise appropriate. Longer timeframes are generally related to issues of significant traffic engineering complexity, which can have flow on effects to require reworking of other aspects of a development proposal. In past instances, pre-lodgement consideration of whole of site issues, in consultation with all relevant referral bodies, has been beneficial in achieving an efficient assessment process and appropriate development outcome.

Information request 3.5: Applicant experiences and case studies

Referral bodies play an important role in the development assessment process, and generally add value to the assessment process and ultimate development outcome. On the whole, under the previous planning system the proportionality of information required by referral bodies relative to the risk and complexity of the applicant and the referral body's mandates was generally fair and reasonable.

Councils have found in the past that the ability for planning authorities, referral bodies and applicants to collaborate in the assessment process often increases efficiency and creates better community outcomes. Pre-lodgement discussions and a case management approach by planning authorities have been an effective way to achieve this to create certainty and efficiency in the formal assessment process. Outside of the 5-day verification period for performance assessed development, it is unclear how this practice sits in the context of the state planning reforms, which seek for all aspects of the process to be conducted through the online portal and under strict timeframes.

Appropriate resourcing of referral bodies ensures efficient and timely operation of the system. The approach to understanding resource requirements needs to not only consider total referral numbers, but also the assessment complexity of caseloads. Referral bodies should review the average effort (time taken) for assessment of a variety of applications to gather information to feed into workforce planning. They need also to allow for other factors such as professional development, leave and flexibility arrangements in the workforce. A well-resourced referral body will have the time required to provide a highly skilled and productive assessment service, which in turn supports economic development, growth and sustainable environmental outcomes.

Correction to Issues Paper

In discussion on the planning reforms the Commission's Issues Paper states that "Applicants will be able to defer a referral to a later time in the assessment process to avoid potential delays ..." (p. 13) with reference to the PDI Act section 122(10). It is important to clarify that in accordance with the PDI (General) Regulations Schedule 9 clause 2, this provision relates exclusively to applications for electricity infrastructure referred to the Technical Regulator.

It is recommended that future reports clearly indicate where the opportunity to delay a referral applies.



Local Government Association
of South Australia

The voice of local government.

148 Frome St
Adelaide SA 5000

GPO Box 2693
Adelaide SA 5001

T (08) 8224 2000

E lgasa@lga.sa.gov.au

www.lga.sa.gov.au