Streamlined Planning Assessment

Policy Position Statement
Planning Institute of Australia, South Australian Division

Definition

Development assessment is the assessment of development proposals against the relevant provisions of the Development Plan and Building Code in accordance with the legislative process requirements of the Development Act 1993 (the Act) and Development Regulations 1993.

To obtain Development Approval, two consents are generally required – development plan consent and building rules consent. This policy focuses on the development plan consent part of development assessment (hereafter referred to as DA).

Rationale

DA that is streamlined and integrated is crucial to achieve:
• development proposals that deliver the economic, social and environmental outcomes communities seek from the planning system
• quality decisions at minimal cost (in terms of both the nature of the approved development and the speed of the decision)
• public confidence in the planning system.

Nationally, PIA has endorsed the Development Assessment Forum (DAF) Ten Leading Practices for assessment. PIA SA’s snapshot picture and perspective of how SA is travelling in relation to DAF is in Attachment A.

Approximately 35,000 development applications seeking planning consent valued at approximately $3300M were lodged in SA in 2005/06 (page 30 of Report to the Minister for Urban Development and Planning from the Planning and Development Review Steering Committee March 2008). The March 2008 Planning Review analysis identified that this number of applications equated to 42 per 1000 people in SA (compared to 17 NSW, 24 WA, 29 Vic, 39 Tas).

These numbers highlight that DA is often the public face of planning, deciding the details of how land is to be used and developed.

DA’s gatekeeper role of ensuring suitably located and designed development is critical to the successful functioning of our State. In 2008, DA is a sophisticated practice, with increasing weight being given to matters such as the following:
• climate change
• affordable housing
• energy efficiency
• mixed use
• noise
• soil contamination
• significant trees
• native vegetation
• stormwater management
• watershed protection
• bushfire mitigation
• crime prevention
• water sensitive urban design

Reflecting this sophisticated DA process, adaptation of the Development Act and Regulations, and interlinked legislation, over time has created complex legislative processes. Successfully achieving the above matters in an efficient manner presents challenges.

DA relies on up to date policy that reflects State and local strategy in the context of spatial planning pressures and legitimate changes in community expectations. Examples of factors impacting upon DA include:
• A vibrant economy driving investment in infrastructure and commercial development, and to be further driven by mining and defence growth
• Changing household structure, housing preferences and affordability, coupled with compact city strategies and oil concerns, are driving medium to high density development
• Increased densities bringing people physically closer together, creating great opportunities for synergistic mix as well as potential for increased conflict
• On the fringes of urban areas, rural living pressures brings conflict with adjoining primary producers as rural lifestyle seekers looking for scenic environments in which to live do not accept that adjoining primary production activities create noise, smells and other impacts resulting in conflict
Changing rural trends associated with drought and globalisation

Coupled with these high levels of activity placing pressure on the quality and timeliness of DA decisions, the national planning skills shortages and leakage from the planning profession as a result of workplace stresses compounds a resource gap. These resource issues exist in SA, as highlighted in “Development Assessment – The Inside View – Dec 2007” completed for PIA in Dec 2007.

These factors highlight the need for:

- up to date policy
- quality applications
- streamlined DA processes
- skill-full practitioners
- positive work cultures
- maximised delegations
- reformed regulatory environments
- E-Services, empowering customers to ‘self – service’.

Development Assessment Panels (DAP's) have assisted to depoliticize the DA process, focusing assessment on technical aspects. This has started to shift the focus of local elected representatives to shape their areas future through strategic planning and updating policy (with an increasing interest for an increased speed in updating policy settings in Development Plans).

This has also provided the opportunity for local representatives not on the DAP to act for concerned ratepayers (who are often uninformed and understandably feel threatened by the DA process).

In summary, in SA in 2008, working within the existing strategic planning, policy setting and regulatory framework, DA produces reasonable outcomes on the ground and is operated on a highly professional basis with sufficient checks and balances.

Nonetheless, it suffers from:

- unnecessary policy variation from Council to Council
- having overly cumbersome and lengthy processes for minor matters
- having to make too many judgement calls and undertake too much public notification for minor applications that should be straightforward

This leads to undue workplace stress, compounding resource shortages and the inability to concentrate on important planning decisions.

PIA SA Policy Position

1. PIA supports reform of the Development Act and Regulations, and associated legislation, to ensure the DA system focuses DA resources where needed and away from minor matters.

2. To that end, PIA supports the “codification” of minor developments. Such codification should ensure that it maintains neighbours amenity and quality of development whilst streamlining assessment.

3. Any proposed codification (which involves policy choices) should be:
   - publicly consulted to ensure transparency, accountability and assessment of administrative benefit and impact.
   - have review processes.
   - not involve any “subjective” assessment.
   - support the trend for sustainable development (noting that an efficiency focused “codification” leads to a low bar in terms of on ground outcomes, such as sustainability and good design).

Codification that is efficient and in a tick box form is likely to only be applicable in limited circumstances where the outcome is straightforward (eg same setback, x height, x size), and unlikely to be applicable in complex circumstances (eg watershed areas, historic conservation areas, mixed use areas – these being important outcomes in SA).

As such, the following should be pursued in collaboration with stakeholders (such as PIA and LGA) and consulted broadly, including local government:

- reviewing the scope of what is “development” and increasing “complying” forms of development in the Development Regulations 1993. Increased complying forms could include outbuildings
- streamlining Agency referrals to include e-services
- the resource benefit of codification needs consultation and investigation. Whilst the need for technical planning staff may be reduced, the administrative requirements for a “public” record of a codified planning approval still entail a public paper trail, presumably within local government. The resource savings need confirmation.

6. Do not currently support private certification of planning applications for “codified” developments due to experience of interpretation issues associated with building certification since 1994.

7. PIA considers a working party is needed for broad community/practitioner checking and balancing of Better Development Plan modules. Such a
working party should involve a similar skill set to that for the Development Policy Advisory Committee and at least three experienced planners in development policy.

9. Support consistent SA wide minimum requirements for information to be lodged with different types of DA's.

10. Support initiatives that improve the DA system regarding timely decision making, consistent advice and good customer service (eg communication). Electronic ‘self service’ tools are encouraged.

11. Support expeditious updates to Development legislation where legal precedents have been set by the Courts to ensure consistency in DA processing across jurisdictions, to reduce variation in local responses, and undue resource use at the local level.

12. Support refinement (at least annually) of delegations to officers from a DAP to reflect an appropriate assessment track. An application’s complexity should reflect the level at which a decision is made. Consistency of delegations across similar LGA's should be encouraged.

13. PIA considers that there is a need for a clear set of criteria in determining which development should be assessed as major projects under S46 of the Development Act 1993 for reasons of consistency, transparency, accountability and community confidence.

14. Support reduced agency referral times provided quality of agency assessment is high (noting that this is likely to require increased resources)

15. Development that is strategically desired in an area should not be notified. As such:
   - the process of establishing the range of Development Plan policy settings to set out how an area should be developed should be set so as to provide that subsequent development proposals that meet those policy settings are not publicly notified.
   - Similarly, the Public Notification Schedule of the Development Regulations 1993 should be set such that no public notification for development applications occurs where development proposals meet a Zone's policy settings.
   - However, both Development Plan Amendments (which establish the range of Development Plan Policy settings) and amendments to the Regulations should be fully publicly consulted in an easy to understand manner to ensure transparency, accountability and assessment of administrative benefit and impact.

16. Where there is minor variance or a proposal may be anticipated (eg related land uses [such as schools or corner shops] in residential areas), such minor variation or related land uses should be Category 2 and not subject to third party appeal.

17. DAP's should continue to comprise a majority of independent experts to ensure quality DA decisions. This focuses elected members on strategic planning and policy development and depoliticises DA.

18. “Vetting” of Council appointments by a body appointed by the Minister may be required.

19. A pool of potential DAP members should be established from which Council's could select.

20. Further investigations of the efficiency, resource benefits and quality of decision making is needed prior “requiring” Regional DAP's. Regional DAP's are considered to have very limited resource benefits in comparison to well managed Council DAP's, and would need to ensure local knowledge is integrated into assessment. Regional DAP’s should not be a surrogate for other governance reform, such as Council amalgamations.

21. Applicants appeals should not be extended to land uses/development clearly not anticipated in an area (typically such activities fall into the non-complying category). Third party appeal options should be limited to land uses or development clearly not anticipated in an area (typically such activities fall into the non-complying category).

22. Reports prepared by qualified planners should be required for all non-complying proposals (except where determined unnecessary by the relevant authority), for major projects under S46 of the Development Act 1993 and also for development applications involving significant development cost.
<table>
<thead>
<tr>
<th>DAF Policy</th>
<th>PIA SA Policy Position</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Policy Development</td>
<td><strong>Support and would add that such policy development should be informed by professional investigations undertaken in the context of local and regional strategic plans.</strong></td>
<td>To provide an investigations based and professional rationale to inform consultation.</td>
</tr>
<tr>
<td>Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.</td>
<td>PIA SA considers a working party is needed for broad community/practitioner checking and balancing of BDP modules.</td>
<td>Greater community and practitioner input is needed to ensure BDP meets its goals.</td>
</tr>
<tr>
<td><strong>Objective Rules and Tests</strong></td>
<td>Support and would strengthen intent link such that objective rules should be outcomes and the “how” to be achieved is put forward as optional methods.</td>
<td>Greater focus on outcome and less prescription as to how to be achieved.</td>
</tr>
<tr>
<td>Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.</td>
<td>Support SA’s Development Plan Review requirement provided genuine input from PIA and key stakeholders occurs into policy and DA system updating.</td>
<td>Up to date policy is essential to provide DA certainty, clarity about outcomes, consistency across jurisdictions, streamlined processes, and community confidence in the planning system.</td>
</tr>
<tr>
<td><strong>Built-in improvement mechanisms</strong></td>
<td>Support initiatives that foster a continuous improvement culture and knowledge sharing.</td>
<td>PIA acknowledges there has been significant and ongoing review of the DA system.</td>
</tr>
<tr>
<td>Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.</td>
<td>Support consistent SA wide requirements for information to be lodged with DA’s. PIA offers to update Fact Sheets consistent with legislative standards and to further promote.</td>
<td>Reinforcing that an applicant is responsible for ensuring a well documented application is submitted, thereby assisting a timely process, is important.</td>
</tr>
<tr>
<td></td>
<td>Support initiatives that improve the DA system regarding timely decision making, consistent advice and good customer service (eg communication). Electronic ‘self service’ tools are encouraged, such as preliminary lodgement enquiry, online lodgement, tracking, electronic public notification submission, information guides and</td>
<td></td>
</tr>
<tr>
<td>Track-based assessment</td>
<td>Support refinement (at least annually) of delegations to officers from a DAP to reflect an appropriate assessment track. An application's complexity should reflect the level at which a decision is made.</td>
<td></td>
</tr>
<tr>
<td>------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Development applications should be streamlined into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard. Adoption of any track is optional in any jurisdiction, but it should remain consistent with the model if used.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In “principle” support limited increased &quot;codification&quot; provided</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- quantifiable standards apply which do not increase subjective judgement and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- such quantifiable standards are transparently established (including targeted community consultation) to ensure public accountability.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>However, an efficiency focused &quot;codification&quot; leads to a low bar in terms of on ground outcomes, such as sustainability and good design. Codification that is efficient and in a tick box form is likely to only be applicable in limited circumstances where the outcome is straightforward (eg same setback, x height, x size), and unlikely to be applicable in complex circumstances (eg watershed areas, historic conservation areas, mixed use areas).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As such, the following should be pursued in collaboration with stakeholders (such as PIA and LGA) and consulted broadly, including local government:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- reviewing the scope of what is “development” and increasing “complying” forms of development in the Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refinement of the DA system in SA is essential to reform the legislative approach to minor structures clogging the system, thereby contributing to skills shortages.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Regulations 1993: Increased complying forms could include outbuildings
  - streamlining Agency referrals to include e-services

Tracks for assessment "should" be used in jurisdictions that are relevant, and should not be optional.

PIA considers that there is a need for a clear set of criteria in determining which development should be assessed as major projects for reasons of consistency, transparency, accountability and community confidence.

| **A single point of assessment**
Only one body should assess an application, using consistent policy and objective rules and tests. Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process. Referral agencies should specify their requirements in advance and comply with clear response times. |
| Support options enabling preliminary feedback from the relevant planning authority as an important precursor to submitting a DA but only involving payment of a fee where of great community benefit (eg includes affordable housing or high energy efficiency) |
| Support integrated planning and building assessment processes allowing concurrent assessment and shorter overall processing time. |
| Support reduced agency referral times provided quality of agency assessment is high (noting that this is likely to require increased resources) |
| SA has a well developed sole authority system. |

| **Notification**
Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided. |
| Where a development proposal is consistent with an areas desired future in the Development Plan (as established through policy amendment processes which involve community consultation), such proposals should not be notified. Where there is minor variance or a proposal may be anticipated (eg related land uses [such as schools or corner shops] in residential areas), such minor variation or related land uses should be Category 2 and not subject to third party appeal. |
| DA invariably involves a weighting and balancing against competing policy objectives, irrespective of third-party involvement. |
| DA should be limited to an assessment and approval process, and should not be used as a mechanism/avenue to resolve neighbourhood disputes or deal with matters better dealt with under other Acts eg fencing and liquor licensing. |

| **Private sector involvement**
Private sector experts should have a role in development assessment, particularly in: |
<p>| Pre-lodgement certification suggests that the application is consistent with the Objective rules. As the objective rules are open to different interpretations, Pre-lodgement certification is not |</p>
<table>
<thead>
<tr>
<th>Professional determination for most applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:</td>
</tr>
<tr>
<td>Option A – Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council.</td>
</tr>
<tr>
<td>Option B – An expert panel determines the application. Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.</td>
</tr>
</tbody>
</table>

- Support Option B.
  - DAP’s should continue to comprise a majority of independent experts to ensure quality DA decisions. This focuses elected members on strategic planning and policy development and depoliticises DA.
  - DAP member training is critical regarding the legal aspects of DA including weighing and balancing applications.
  - Statutory criteria are needed to ensure DAP members are genuine experts.
  - “Vetting” of Council appointments by a body appointed by the Minister is required.
  - Further investigations of the efficiency, resource benefits and quality of decision making is needed prior “requiring” Regional DAP’s. Regional DAP’s are considered to have very limited resource benefits in comparison to well managed Council DAP’s, and would need to ensure local knowledge is integrated into assessment.
  - Regional DAP’s should not be a surrogate for other governance reform, such as Council amalgamations.
  - A pool of potential DAP members should be established from which Council’s could select.

- Undertaking pre-lodgement certification of applications to improve the quality of applications. Providing expert advice to applicants and decision makers. Certifying compliance where the objective rules and tests are clear and essentially technical. Making decisions under delegation.

- Do not support private certification of planning applications for “codified” developments due to experience of interpretation issues associated with building certification since 1994.
<table>
<thead>
<tr>
<th><strong>Applicant appeals</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>An applicant should be able to seek a review of a discretionary decision. A review of a decision should only be against the same policies and objective rules and tests as the first assessment.</td>
</tr>
<tr>
<td>Support: Discretionary review should not be extended to land uses/development clearly not anticipated in an area (typically such activities fall into the non-complying category).</td>
</tr>
<tr>
<td>SA has a sound practice of the same Development Plan policies being used for DA at Council and court levels.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Third-party appeals</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests. Opportunities for third-party appeals may be provided in limited other cases. Where provided a review of a decision should only be against the same policies and objective rules and tests as the first assessment.</td>
</tr>
<tr>
<td>Support: Third party appeal options should be limited to land uses or development clearly not anticipated in an area (typically such activities fall into the non-complying category), eg industry in residential areas. PIA supports limited non-complying lists.</td>
</tr>
<tr>
<td>SA has a sound practice of the same Development Plan policies being used for DA at Council and court levels.</td>
</tr>
</tbody>
</table>