An Efficient and Effective Development Assessment Process for South Australia

Issues Paper

This paper has been prepared for consultation purposes only and has not been endorsed by the LGA Board

Prepared for Local Government Association of South Australia

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1.0 Introduction

The Local Government Association of South Australia (the LGA) has commissioned this Issues Paper to identify issues and opportunities for reform relating to South Australia's development assessment process.

The Issues Paper is intended to be a resource for Local Governments as they respond to South Australia's Expert Panel on Planning Reform, including its forthcoming Options Paper due for release in mid 2014.

1.1. Scope of the issues paper

This Issues Paper contains:

- A summary of Local Governments' key issues and concerns with current development assessment processes based on consultation feedback gathered by the LGA (Section 2.0);
- A critical review of the six assessment tracks identified by the Development Assessment Forum (DAF) as part of its leading practice model for development assessment in Australia (Section 3.0);
- A suite of proposed feasible development assessment pathways for South Australia based on a consideration of Local Governments' reflections the critical review of the DAF tracks (Section 4.0);
- Proposed principles for reform of notification criteria for development assessment processes along with broad criteria for when notification is appropriate (Section 5.0);
- Proposed reforms to agency referral processes (Section 6.0); and
- Proposed reforms to the Major Project assessment process based on previous work undertaken by the LGA (Section 7.0).

1.2. LGA Planning Reform Objectives

In consideration of key issues and reform opportunities, the Issues Paper has had regard to Planning Reform Objectives developed by the LGA in consultation with the Local Government sector. These Objectives provide a frame of reference for challenges in the current system as well as system reform options.

Table 1.1: LGA Planning Reform Objectives

LGA Planning Reform Objectives
Accessible
1. Policies and processes are clear and consistent, resulting in equity, fairness and certainty. 2. Opportunities for public participation in the planning system are clear, with an emphasis on influencing outcomes at the strategic planning and policy development stages. 3. The pathways to development are clear and uncomplicated, with the level of assessment required matched to the level of risk of impact associated with a development. 4. The appeal and review process is timely and cost effective, and compliance and procedural matters are principally resolved through a non-judicial process.
Integrated
5. Planning policies and processes are underpinned by triple bottom line thinking, which balances the State's economic, environmental and social interests. 6. Local Government works with the State Government to develop and implement an overarching planning strategy and to ensure that all major state and local policy documents are consistent with the strategy and with each other. 7. The system promotes excellence in urban and built form which improves the health and wellbeing of communities. This is underpinned by decision makers having a high level of planning and design competency.
Accountable
8. Decision making at all stages of planning is transparent and decision makers are held accountable for their performance by introducing fair and reasonable performance measures. 9. The development assessment process is robust, but is more efficient through the removal of red tape. 10. Planning policy can be updated quickly and efficiently, with amendments that are not seriously at variance with the Planning Strategy taking no more than 6 months to be finalised from the date of lodgement. 11. There is accountability in the planning policy amendment process through the introduction of performance measures and transparency through the introduction of an online 'tracking' system.
Local Involvement
12. Local Government has primary responsibility for developing and updating the local elements of planning policy and the assessment of local impacts of all development proposals. 13. Elected Members have a high level of engagement and influence in the development of local planning policy, which is used to make objective decisions about development outcomes.

1.3. How the Issues Paper has been developed

The key issues associated with the current development assessment process from the Local Government perspective summarised in Section 2.0 have been identified through review of the following documents:

- Responses on behalf of 13 metropolitan and regional Local Governments to the *Planning Reform Questionnaire for Councils* implemented by the LGA in November 2013;
- Summary Report of the Metropolitan Local Government Group's Planning Improvement Workshop, February 2014; and
- Adelaide City Council's draft response to *What We Have Heard*, the first report of South Australia's Expert Panel on Planning Reform.

2.0 Local Government's experience

Prior to and during convening of the Expert Panel on Planning Reform, the LGA has been working with Councils to identify the key issues being experienced with the planning system. This has included identification of issues relating to development assessment processes.

A summary of Local Governments' key issues and concerns with current processes has been developed based on consultation feedback gathered by the LGA, specifically:

- Responses on behalf of 13 metropolitan and regional Local Governments to the *Planning Reform Questionnaire for Councils* implemented by the LGA in November 2013;
- Summary Report of the Metropolitan Local Government Group's Planning Improvement Workshop, February 2014; and
- Adelaide City Council's draft response to *What We Have Heard*, the first report of South Australia's Expert Panel on Planning Reform.

As described in the following sections, identified issues relate to:

- Accessibility and usability of the development assessment system;
- Information provided with development applications;
- Definition and classification of development proposals;
- Public notification of applications;
- Assessment processes;
- Agency referrals;
- Consideration of design in development assessment;
- Development Assessment Panels;
- Private certification of development applications; and
- Other development assessment issues.

2.1. Accessibility

In feedback to the LGA, Councils variously described aspects of the development assessment process as too complex, inconsistent, subjective and hard to understand.

One Council noted that for the community, it is unclear "what can and can't be done", and another similarly identified the need for certainty amongst the

community regarding where development can occur, and when a development application should not be lodged.

It was suggested that plain English be used to describe planning classifications – e.g. "permitted" and "prohibited" to enable easier understanding of the system.

One Council noted that the general "user friendliness" of the Development Act and Regulations has decreased over the years. Another commented more specifically that "the revisions and reserved text mean that they do not appear to flow in a logical manner and the cross-references between the two documents are unclear". The use of an accompanying explanatory memorandum as used in the United Kingdom was suggested.

The current separation of the planning and building assessment processes was also raised, with one Council noting the differences are not well understood in the community.

2.2. Information provided with applications

Several Councils identified incomplete development applications as a source of delay in the development assessment system. Some Councils have the view that the minimum application requirements in the Development Act are too broad, referring to the fact that many Councils provide their own more prescriptive minimum guidance for applicants.

Despite the presence of this guidance, applications are lodged with insufficient supporting information, causing Councils to suggest introduction of:

- Deemed refusal for incomplete applications, or where requested information is not provided by the applicant in a timely manner;
- Incentives for complete applications (assessment time or fee reductions);
- Pre-lodgement certification of applications' completeness; and
- More detailed minimum requirements in legislation.

2.3. Definition and classification

A number of Councils made comments relating to the process of defining a proposed development and determining whether it is complying, non-complying or neither.

One of the most frequently mentioned issues amongst Councils was definitions. It was noted that definitions of development in Schedule 1 of the Development Regulations are "confusing" and "inefficient", often requiring significant time and resources to apply. Examples given included that:

- There are six types of "dwelling" in the definitions and this doesn't cover all circumstances; and

- Definitions don't capture contemporary "integrated" developments such as service stations and health precincts.

According to one Council there are "too many pitfalls" in the procedural aspects of development assessment such as classifying development, leaving Councils open to legal challenge. Another described classifying development as "confusing".

One Council suggested all relevant information for classifying a development be consolidated in one document, rather than spread across the Development Regulations, Development Plan, and Residential Code.

More than one Council suggested that a "prohibited development" classification with automatic refusal would provide clarity for applicants, noting that some applicants choose to lodge applications contrary to the Council's pre-lodgement advice that approval is unlikely.

2.4. Public notification

Like classification of development, identification of the correct notification category was identified by Councils to be complex and contain "too many pitfalls" leading to risks of procedural error.

Several Councils expressed views in relation to methods of public notification of development applications – these issues will be explored in a separate issues paper by the LGA relating to community engagement. More than one Council reported receiving feedback from the community that current public notification periods are too short.

Other concerns in relation to public notification included that:

- Category 2A notification is not supported by regulations, and wastes Council resources notifying neighbours who are not affected;
- Variation applications are exempt from notification, so previously notified parties are unaware of subsequent changes to a proposal;
- General public notification allows comment from people nowhere near the subject site;
- Representors don't know how their comments on an application will be used to inform the decisions;
- Notification can create tension between neighbours - applicants can feel scrutinised; and
- Amongst Councils there is inconsistent interpretation of "adjacent land" for the purposes of notification.

Councils' suggestions in relation to notification included:

- Remove the requirement for Councils to respond to representations in support of a proposed development;

- Notification requirements for Council development and Crown development under Section 49 of the Development Act should be consistent;
- Only notify if proposed development has community significance or is clearly not envisaged;
- Consider changing Category 2 notification to informing neighbours rather than seeking comment; and
- Link the length of notification period to the scale or significance of the proposed development.

2.5. Assessment processes

In addition to the comments noted in Section 2.3 in relation to classification of development applications, Councils also provided feedback relating to the development assessment processes the current system allows for.

Several Councils expressed the view that too much time is taken assessing minor forms of development such as fences. The Residential Code was introduced in 2009 to streamline the process for certain low impact forms of development, however Councils have reported mixed views regarding the Code's effectiveness, with some finding it has worked well and others finding it complicated, confusing, poorly understood and poorly taken up.

The view was expressed that a "minor" assessment process should be accommodated, arising from the principle that "lower risk [development] should mean greater simplicity and speed of [assessment] process".

Another suggestion for simplifying some assessments was use of "umbrella" land use approvals within which a "sub land use" can change with no need for an application – for example a "shop" land use approval would allow change from an office to a restaurant without an application.

One Council suggested broadening of the criteria for, and removal of the requirement for Development Assessment Commission (DAC) concurrence for minor non-complying development to reduce the cost of some non-complying applications.

Some Councils view the non-complying process as "onerous", and as noted above suggested a "prohibited development" classification with automatic refusal as an alternative. Another Council noted that to achieve greater efficiency in processing of non-complying applications the legislation should require a Statement of Effect to be prepared by qualified person, and should more clearly outline the minimum information and assessment that should be included with a Statement of Support and Statement of Effect.

2.6. Agency referrals

Several Councils expressed concern with the time taken by agencies in responding to referred applications, indicating that overdue agency responses impact on the timely and efficient processing of applications.

One Council described Schedule 8 of the Development Regulations as "a minefield" for both Councils and agencies, noting the Schedule could be significantly simplified.

Other comments recorded in relation to agency referrals were that:

- Advice from different referral agencies on the same application can be conflicting;
- Referral bodies are under resourced;
- The advice provided by referral agencies is often not meaningful;
- Referral bodies will not appear in court to support their responses; and
- Conditions of approval inserted by referral agencies should be that agency's responsibility to enforce.

A pre-lodgement agency referral process where the applicant must provide referral comments to the Council with their application was suggested, as was a reduction in the forms of development requiring the concurrence of a referral agency.

Relating to referrals, one Council noted the complexity of dealing with issues through the planning system that are the subject of other legislation - for example the *Native Vegetation Act 1991* and *River Murray Act 2003*. To address this complexity, it was suggested that additional approvals under other legislation are reduced, referrals are reduced, or specific policies which address the objectives of referral agencies are introduced into the Development Plan.

2.7. Design assessment

Several Councils noted a need to better incorporate design quality into the development assessment process. Suggestions to achieve this included:

- Mechanisms for ensuring minimum design standards in development assessment; and
- Requirement for a site and context issues report with every development application.

2.8. Development Assessment Panels

Councils recorded mixed views around Development Assessment Panels (DAPs). While there were reports of positive experiences, particularly with the involvement of independent members, it was also noted that:

- DAP members should be required to have prescribed qualifications relevant to development assessment;
- It can be difficult for regional Councils to fill DAPs with suitably qualified people;
- Operating procedures for DAPs should be consistent across the state; and
- There is an avenue required for Council to make representations to the DAP or appeal the decision of the DAP.

2.9. Planning certification

In relation to the recent introduction of private certification, one Council noted that:

- The timeframe for Council to provide a private certifier with requested information is too short;
- There is no mechanism to manage where Council or another party disagrees with a certifier's assessment; and
- Council is not financially compensated for follow up inspections for privately certified applications.

The Metropolitan Local Government Group has also noted that the process of auditing private certifiers is not robust enough, and Councils are often doing additional work where certifiers' work has not been to standard.

2.10. Other issues

Other issues raised by Councils for the development assessment process included the following:

- Provisions around lapsing of consent are confusing;
- Tree legislation is confusing, particularly where the *Native Vegetation Act 1991* also applies;
- Development assessment fees do not reflect Councils costs and Schedule 6 of the Development Regulations should be reviewed;
- Development costs provided by the applicant as a basis on which to calculate fees are not verified and in some cases are misrepresented;
- There is need for Local Government involvement in all development assessments – deregulation of some assessments has resulted in poor built form outcomes;
- It is not accepted practice for Development Plans to refer to industry standards such as intensive animal keeping, but the Courts have recognised that these standards can be used to assist in interpretation of the Development Plan;

- Development assessment does not capture the cumulative impacts on the environment of individual decisions relating to energy efficiency, resource recovery and waste management; and
- Reserve matters are not well used and are overly relied upon, particularly as a means to manage staged development proposals.

Other suggestions by Councils to improve the development assessment process included:

- An electronic lodgement system for all development applications, similar to the Electronic Land Division Lodgement Site (EDALA);
- Review of Land Management Agreement (LMA) requirements and provision of guidance as to their use;
- Mandatory outcomes for development assessed on merit, specifically minimum quantitative requirements for aspects such as stormwater management and energy efficiency, and on merit consideration of design and character with reference to mandatory outcomes;
- Introduction of fees for written pre-lodgement advice;
- Introduction of "in principle" approval and other tools to address that the system currently struggles to manage large multi-stage developments; and
- Prescription in the *Development Act 1993* of how non-statutory guidelines are to be used and weighted in an assessment – consider the concept of "material weight" used in the United Kingdom.

In framing the concept of development assessment process improvement, one Council noted that in 2011 the Productivity Commission found South Australia's planning system to be the nation's most efficient in processing development applications. This Council suggested any need for change to the current system should be clearly articulated and evidence based.

Other Councils noted that the objective of efficiency in the development assessment process must be balanced with the objective of quality development outcomes.

3.0 Development Assessment Forum assessment tracks

The DAF was established in 1998 to bring key stakeholders together to reach agreement on how to simultaneously achieve streamlined development assessment processes and high quality decision making. Members of the DAF include the Australian Local Government Association, state and territory local government associations, Commonwealth, state and territory governments, the development industry, and relevant professional associations.[1]

In 2005 the DAF published a leading practice model for development assessment in Australia. The model was developed to promote efficient, effective and consistent development assessment nation-wide, and was intended to encourage reforms that deliver cost and time savings in the creation, assessment and determination of development applications.

In proposing the model, the DAF emphasised that the assessment process cannot be separated from the planning policy framework,[2] and that successful reform of assessment processes was equally dependent on development of planning strategies and policies that meet the expectations of the community.

As part of the leading practice model, the DAF proposed six assessment "tracks". Each track constitutes a process to deal with developments of differing levels of complexity and potential impact. These tracks are summarised in Figure 3.1, with the tracks increasing in complexity from left to right. The tracks differ in:

- Who assesses the application – the proponent (self assessment), a private certifier, the consent authority, an expert reviewer;
- Whether an application, assessment and consent is required, and to what degree or standard;
- Whether public notice is part of the process; and
- The conditions under which a proposal can proceed.

Each of these assessment tracks has been reviewed to identify the potential risks and benefits, particularly in the context of key assessment process issues identified by Local Government (refer Section 2.0).

It is noted that the tracks are described at a high level, and their effectiveness would be influenced by more specific arrangements around their application, for example:

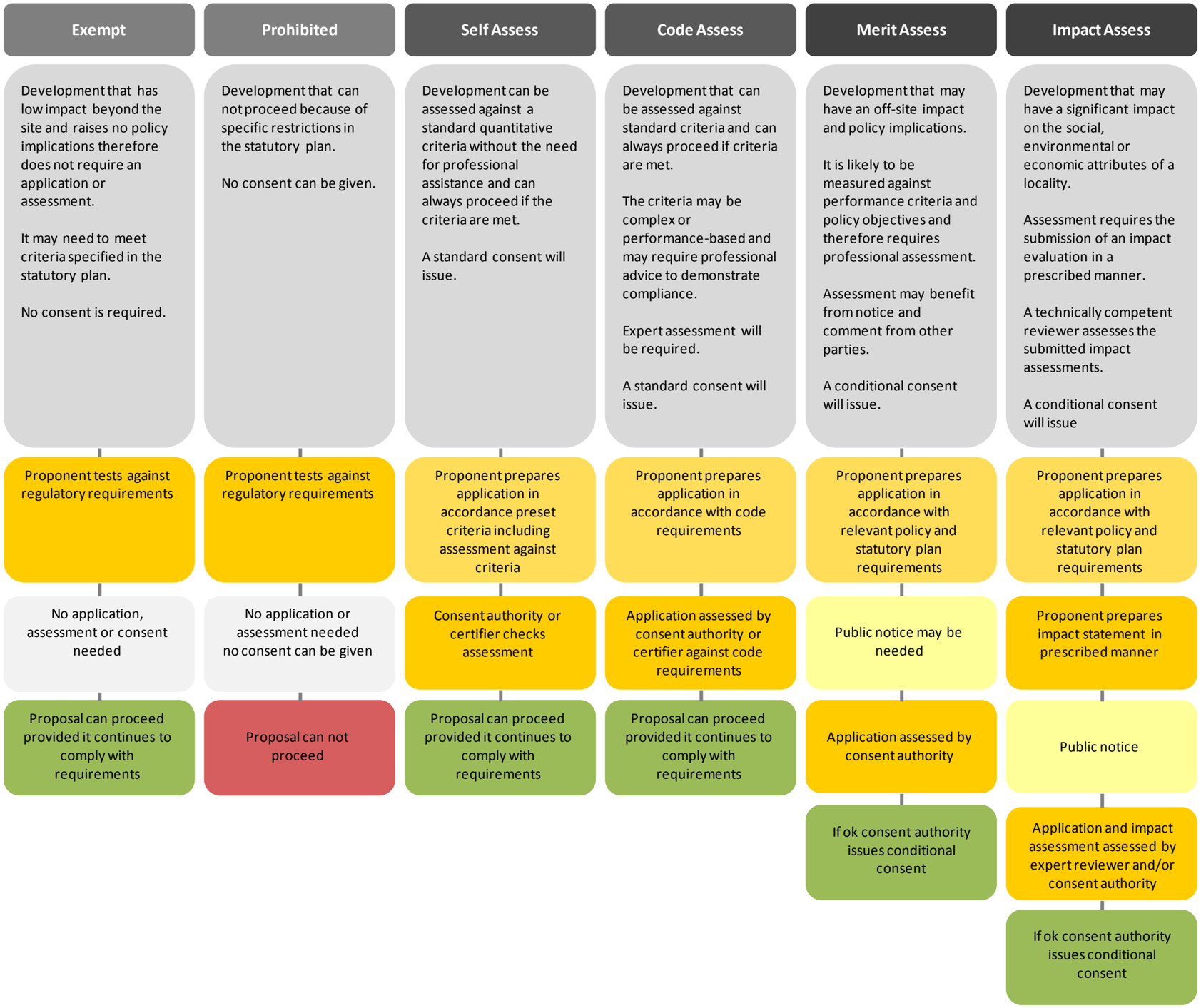
- The forms of development to which each track applies;
- The relevant planning authorities for the tracks/forms of development;
- The form, expression and methods of communication of regulatory requirements;

[1] http://alga.asn.au/

[2] The LGA has prepared a separate Issues Paper on the topic of a Best Practice Planning Policy Framework for South Australia.

- Standards required of information submitted for checking or assessment and how these are enforced;
- Monitoring and compliance arrangements relating to the tracks; and
- Rights of appeal.

Figure 3.1: The Development Assessment Forum six development assessment tracks



3.1. Exempt

The Exempt track removes the requirement for a planning authority to consent to minor development. The proponent is responsible for testing their proposed development against the regulatory requirements for the Exempt track.

The track is intended for developments that have low impacts beyond the development site and implications for achievement of policy objectives. Examples might be minor domestic structures such as fences, verandas and garden sheds. This track exists within the current system as a list of excluded activities and structures within the Development Regulations.

3.1.1. Potential benefits

- Planning authorities save time and resources by avoiding minor assessments;
- Proponents save time and resources as no application is required;
- Requirements to proceed are clear to proponents;
- Reduces 'red-tape'

3.1.2. Potential risks

- Relies on proponents being able to access and correctly interpret relevant criteria;
- Time and resources would be involved in communicating this process to proponents – most will approach a Council in the first instance;
- There is a general community expectation that even minor structures will be captured in the assessment process;
- May lead to increased compliance responsibilities for planning authorities to monitor correct use of the track.

3.1.3. Suitability

The potential savings of time and resources of this track outweigh the risks, which can be mitigated by simple and clearly articulated policy and effective communication of the process.

The Exempt track is considered to be suitable for the South Australian context.

3.2. Prohibited

Under the Prohibited track, certain developments cannot proceed under any circumstances. The proponent is responsible for testing their proposed development against the regulatory requirements for the Prohibited track.

The track is intended for developments that are absolutely unacceptable in particular locations.

3.2.1. Potential benefits

- Planning authorities save time and resources by avoiding assessment of applications for inappropriate forms of development;
- Proponents have absolute clarity that certain development cannot proceed and this can inform their decision making and avoid spending time and resources on an application;
- Results in greater certainty for communities.

3.2.2. Potential risks

- The track is inflexible and may limit potentially appropriate development;
- The regulatory requirements may not keep pace with innovation and changing conditions that could generate acceptable forms of generally inappropriate development;
- Time and resources would be involved in communicating this process to proponents – most will approach a Council in the first instance;
- It would be resource intensive and cumbersome to develop and maintain a list of land uses that should be prohibited in every zone.

3.2.3. Suitability

The risks associated with this track compromise one of the strengths of the current South Australian system – its flexibility and ability to realise good developments of a type that may be generally inappropriate.

A consideration of when the Prohibited track may apply raises questions as to its utility. In cases of extreme land use conflict (e.g. a piggery in a residential area), the use is likely to never be applied for due to external factors (e.g. ability to be licensed, costs to mitigate impacts, access o supply chain), and the Prohibited listing becomes obsolete.

At the other end of the spectrum, if the Prohibited track is considered as an alternative to the current non-complying classification, it could apply to development that is considered unsuitable for the character of an area (e.g. a three storey dwelling in an area characterised by single storey dwellings). This removes the

opportunity for an applicant to demonstrate the merits of a proposal, as well as the opportunity for a good development that may contribute to the locality.

Some Local Governments have suggested this track should exist in South Australia (refer Section 2.0), primarily on the basis that the current non-complying process is unclear to applicants, or resource intensive for Councils. While there may be scope to reform the current non-complying process, on balance the Prohibited track is not considered to be a feasible alternative.

The Prohibited track is not considered to be suitable for the South Australian context.

3.3. Self Assess

The Self Assess track unconditionally allows a development to proceed if prescribed quantitative criteria are met. The proponent determines compliance with the criteria, and the accuracy of the self-assessment can be checked by either the planning authority or a private certifier.

3.3.1. Potential benefits

- Planning authorities save time and resources by avoiding straightforward assessments where quantitative criteria are the only considerations (noting that potential time savings could be eroded by auditing and compliance functions);
- Requirements for consent are clear to proponents;
- Reduces 'red-tape' by limiting full merit assessments

3.3.2. Potential risks

- Relies upon clearly articulated quantitative criteria that excludes any development that would in fact warrant additional assessment;
- In some locations, relatively few planning assessments can be undertaken solely on the basis of quantitative criteria, especially where design and character are considerations. In this case the benefits of the track would be limited;
- Planning authorities expend time and resources in communicating the process and checking self assessments;
- Private certifier checking relies on an appropriate level of competency amongst certifiers;
- May lead to increased compliance responsibilities for planning authorities to monitor correct use of the track by proponents and certifiers;
- Councils often rely on conditions of approval to enforce important matters such as appropriate glazing to upper level windows to prevent overlooking.

3.3.3. Suitability

The potential savings of time and resources of this track could be of benefit to Councils, but potential time savings could be eroded by auditing and compliance functions.

Some risk can be mitigated by simple and clearly articulated quantitative assessment criteria and effective communication of the process. A critical analysis of problems with the current Residential Code in South Australia would provide insight as to what form a simple and easy to use code might take.

The Self Assess track is considered in part to be suitable for the South Australian context, but would require considerable modification.

3.4. Code Assess

The Code Assess track unconditionally allows a development to proceed if prescribed criteria are met. The criteria may be complex of performance-based, and as such requires an application to be prepared by the proponent and assessed by the consent authority or a private certifier. South Australia currently has a Residential Code housed within the Development Regulations.

3.4.1. Potential benefits

- Certainty for applicants as to the requirements for approval;
- Increased efficiency for planning authorities through use of the met/not met standard rather than an "on balance" assessment;
- Reduction of red-tape by limiting full merit assessment.

3.4.2. Potential risks

- Relies upon clearly articulated quantitative, qualitative and performance-based criteria to provide the intended certainty for applicants;
- Qualitative and performance-based criteria may be incompatible with a met/not met assessment or may be applied inconsistently amongst planning authorities and certifiers – compromising the intent of increased certainty for applicants. Additional interpretation guidance may be required, but this may complicate or compromise the intent of the Code Assess track.
- Private certifier assessment relies on an appropriate level of competency amongst certifiers;
- Consent authorities may disagree with certifiers assessments – a process would be required to resolve this in a time and cost effective way.

3.4.3. Suitability

On the face of it the Code Assess track provides similar benefits to the Self Assess track in terms of simplifying assessments of relatively straightforward development, in this case with the planning authority or a certifier responsible for the assessment rather than the proponent.

A key risk area for this track, as described by the DAF, however is how qualitative or performance based criteria could be included in a code format, and consistently interpreted in a met/not met form. Qualitative criteria introduce a level of interpretation, and potentially uncertainty that the concept of use of a code is intended to overcome. It is unclear how in practice this track would differ from a merit assessment, other than potentially relating to more limited set of policies (the code).

While the notion of code assessment has benefits, the use of qualitative policies in a code is counter-intuitive.

The Code Assess track is in part suitable for the South Australian context, but would require considerable modification.

3.5. Merit Assess

The Merit Assess track involves the planning authority assessing a development application prepared by the proponent against a range of performance criteria and policy objectives. Public notice may be part of the process.

This track is intended for developments that may have off site impacts and policy implications.

3.5.1. Potential benefits

- Allows a thorough on balance assessment of development proposals against relevant policies;
- Allows for public scrutiny of development proposals.

3.5.2. Potential risks

- Assessments take time and resources to complete;
- The concept of an 'on balance' merit assessment can be confusing to communities;
- There is potential for inconsistency in the way qualitative policies are interpreted and applied, creating uncertainty.

3.5.3. Suitability

The Merit Assessment track proposed by the DAF generally reflects the merit assessment process in the current South Australian system. Local Governments' feedback in relation to the current development assessment process (refer Section 2.0) contained few concerns with the current merit pathway, other than where it was required to assess relatively minor developement. This reflects a need to reform the classification of development, rather than the pathway itself.

The Merit Assess track is suitable for the South Australian context.

3.6. Impact Assess

The Impact Assess track is the most complex and rigorous of the six tracks. It requires the proponent to prepare a development application and prescribed impact statement which are assessed by the planning authority and/or an expert reviewer. Public notice is a part of the process.

This track is intended for development that may have a significant impact on the social, environmental or economic attributes of a locality and is similar to the current non-complying process in South Australia.

3.6.1. Potential benefits

- Provides a high level of scrutiny by experts and the public for proposed developments with potential for significant impacts;
- Prescribed requirements of an impact statement guide applicants as to investigations required.

3.6.2. Potential risks

- The criteria by which the potential for "significant impact" would be required would need to be clear and justified;
- Required expertise to assess impact statements would need to be available and resourced appropriately.

3.6.3. Suitability

The Impact Assess track mirrors elements of both the non-complying and major project assessment pathways within the current South Australian system. Overall the track represents a fair approach to dealing with development proposals with high potential for impact, and the identified risks can be mitigated.

The Impact Assess track is suitable for the South Australian context

4.0 Assessment pathway reform

4.1. Overview

On the basis of Local Governments' reflections on the current development assessment system (Section 2.0) and a critical review of the six DAF assessment tracks (Section 3.0), a suite of reformed assessment pathway options for South Australia have been developed.

The spectrum of feasible options is set out in Figure 4.1, with the pathways increasing in complexity from left to right.

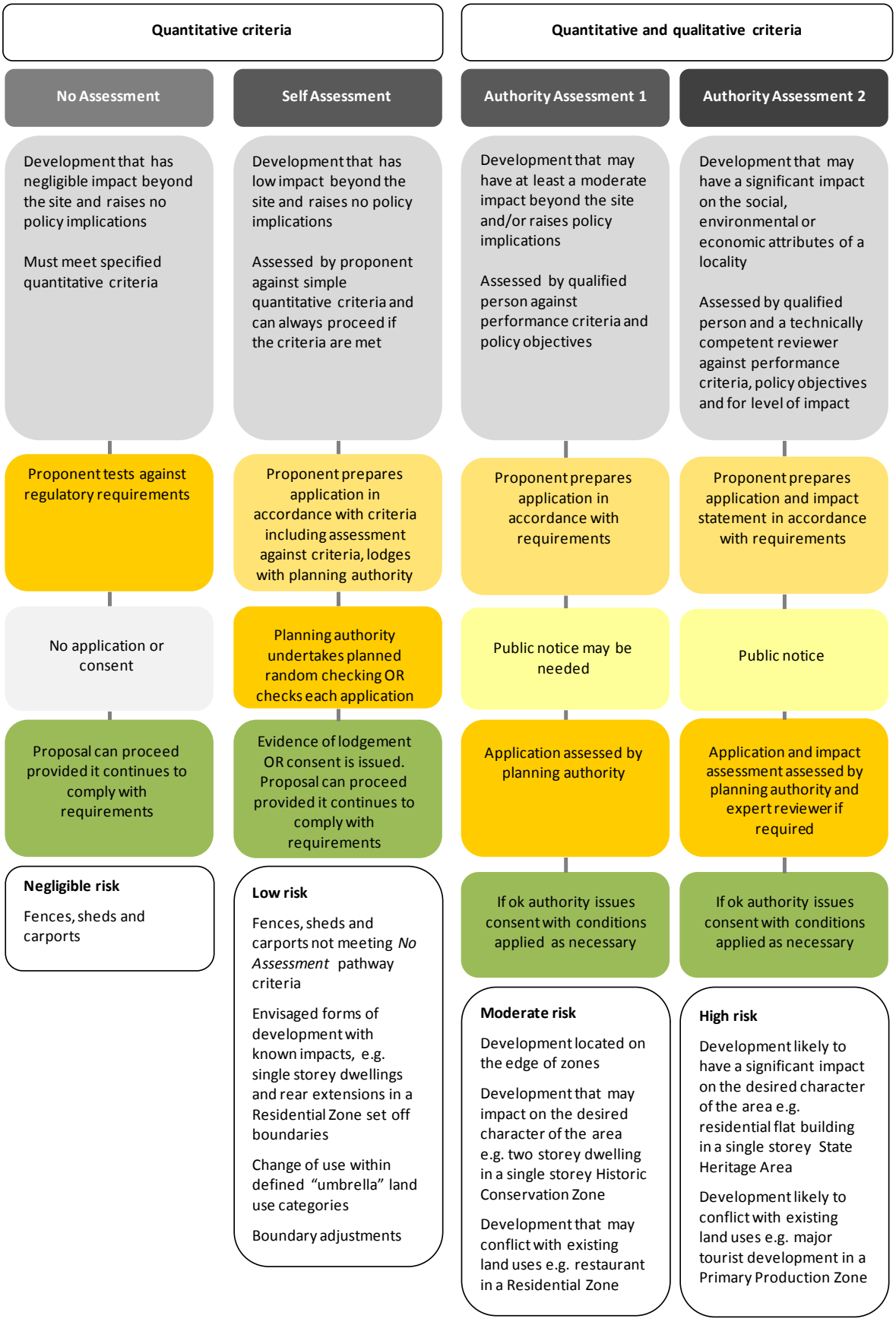
The following principles underpin the pathways:

- While seeking to ensure high quality development outcomes, the development assessment process should maintain flexibility to enable innovation and best practice approaches;
- The degree of development control (and associated time and resources) exerted by a planning authority in an assessment pathway should be commensurate to the level of impact associated with forms of development assessed within that pathway;
- The risk profile of a form of development in a given location/zone with policy objectives can be determined primarily by considering:
    - Potential for conflict between land uses; and
    - Potential for impact on the desired character of a location;
- Lower risk development can be assessed against quantitative criteria, while more complex and higher risk development should be assessed against both quantitative and qualitative criteria;
- In seeking development assessment efficiency at the same time as good development outcomes, there is a balance to be struck between an acceptable level of risk to each.

  In this context "acceptable risk" means that from time to time a development application may be subject to a more rigorous and time consuming assessment than necessary. From time to time an undesirable development outcome may be also be assessed by a more streamlined assessment pathway. If these instances occur occasionally, but are the exception, the system is functioning effectively.

Each feasible pathway is further described in the following sections, with reference to the criteria by which forms of development might be allocated to the pathway, the planning competency required for decision making within the pathway, and the appropriate planning authority or authorities for that pathway.

Figure 4.1: Feasible development assessment pathway options



4.2. No Assessment

Pathway profile: For negligible risk development

The *No Assessment* pathway is suitable for development that has negligible impact beyond the development site and raises no policy implications (i.e. has no impact on the policy objectives of the zone being met).

Examples of the types of development that would be suitable for the *No Assessment* pathway are fences, sheds and carports that meet specified measurable standards in relation to form, scale and siting.

Under the *No Assessment* pathway, no planning consent is required, and no application is required. The proponent is responsible for testing their proposal against the requirements of the pathway. The competency required to undertake this test is that of an ordinary person with the ability to interpret a simple checklist and quantitative standards.

Planning authorities and in particular Councils would have a role in this pathway of providing information and support to proponents, for example a fact sheet and checklist and front counter advice.

No public notification is required.

A proposal that meets the requirements of the *No Assessment* pathway can always proceed provided it continues to comply with requirements.

4.3. Self Assessment

Pathway profile: For low risk development

The *Self Assessment* pathway is suitable for development that has low impact beyond the development site and raises no policy implications (i.e. has no impact on the policy objectives of the zone being met).

Examples of the types of development that would be suitable for the *Self Assessment* pathway are:

- Fences, sheds and carports that do not meet the quantitative criteria for the *No Assessment* pathway;
- Envisaged forms of development with known impact, for example an off-boundary single storey dwelling or rear extension in a Residential Zone;
- Change of use within defined "umbrella" land use categories, for example a change from a shop to a consulting room; and
- Boundary adjustments.

Eligibility of development for the *Self Assessment* pathway would be adherence to specified measurable (i.e. quantitative) standards in relation to form, scale and siting.

An application is prepared including assessment by the proponent against the quantitative requirements. The competency required to undertake this test is that of an ordinary person with the ability to interpret a checklist and quantitative standards. Some proponents may wish to engage qualified people to assist with self assessment – for example planning consultants or certifiers. Volume builders may also provide a resource for this assessment pathway.

There are two potential options for consent under a *Self Assessment* model as detailed below:

Option 1: Random and responsive checking

Under this option for the *Self Assessment* pathway, applications are lodged with the planning authority, and evidence of lodgement is issued, but no consent is issued from the planning authority.

Planning authorities undertake planned random checking of proponent assessments, and have the ability to take enforcement action and/or require an application to be lodged under a different pathway if the *Self Assessment* pathway has been erroneously applied. Planning authorities would also have the ability to check proponent assessments in response to specific enquiries.

In this arrangement, proponents have responsibility for determining the application in relation to clearly defined criteria, but planning authorities are the "system authority" with oversight of the pathway and ability to intervene.

Option 1 presents opportunity for increased efficiency in the pathway, but potentially introduces additional risk by removing planning authority oversight from each application.

Option 2: Consistent checking

Under this option, planning authorities check each self assessment and issue consent. This option potentially reduces the efficiency benefits of the *Self Assessment* pathway, but retains the planning authority's oversight of each application and responsibility for consent.

Under option 2 the planning authority, having issued consent, would carry liability for the decision even though the assessment is undertaken by the applicant.

Planning authorities and in particular Councils would also have a role in this pathway (under both Option 1 and 2) of providing information and support to proponents, for example a fact sheet and checklist and front counter advice.

No public notification is required.

A proposal that meets the requirements of the *Self Assessment* pathway can always proceed provided it continues to comply with requirements.

Acceptance of standard conditions of consent could form part of the lodged documentation.

4.4. Authority Assessment 1

Pathway profile: For moderate risk development

The *Authority Assessment 1* pathway is suitable for development that may have at least a moderate impact beyond the development site and/or raises policy implication (i.e. has the potential to impact on the policy objectives of the zone being met).

Examples of the types of development that would be suitable for the *Authority Assessment 1* pathway are:

- Development located on the edges of more sensitive zones;
- Development that may impact on the desired character of the area, for example a two storey dwelling in a Historic Conservation Zone characterised by single storey dwellings; and
- Development that may conflict with existing or envisaged land uses, for example a cafe in a Residential Zone.

The more complex nature and higher risk profile of these types of development requires assessment against qualitative or performance based criteria.

The application is assessed by a qualified planner against relevant performance criteria and policy objectives on behalf of the planning authority. The planning authority for the *Authority 1 Assessment* is a Council, a regional body or State Government.

Assessment of applications within the *Authority Assessment 1* pathway may benefit from public notice and opportunity to comment.

Under this pathway a planning consent is issued by the planning authority with the ability for conditions to be applied as necessary.

4.5. Authority Assessment 2

Pathway profile: For high risk development

The *Authority Assessment 2* pathway is suitable for development that may have a significant impact on the social, environmental or economic attributes of a locality.

Examples of the types of development that would be suitable for the *Authority Assessment 2* pathway are:

- Development likely to have a significant impact on the desired character of the area, for example a residential flat building a State Heritage Area characterised by single storey dwellings; and
- Development likely to conflict with existing or envisaged land uses, for example major tourist development in a Primary Production Zone.

The high complexity and high risk profile of these types of development requires assessment against qualitative or performance based criteria and well as assessment of the social, environmental or economic impact of the proposal.

Under this pathway, the proponent is required to submit an application and impact statement in accordance with prescribed requirements.

The application is assessed by a qualified planner against relevant performance criteria and policy objectives on behalf of the planning authority. The planning authority for the *Authority Assessment 2* is a Council, a regional body or State Government.

The impact statement may be assessed by a qualified planner on behalf of the planning authority, and/or an expert reviewer depending on the nature of the proposed development and likely impacts. Expert reviewers may have specialist expertise in relation to particular social, environmental or economic impacts.

Assessment of applications within the *Authority Assessment 2* pathway requires public notice and opportunity to comment.

Under this pathway a planning consent is issued by the planning authority with the ability for conditions to be applied as necessary.

4.6. Additional considerations for the feasible pathways

4.6.1. Risk considerations

For increased efficiency and functionality, the system should direct developments t as far to the left hand side of the pathway spectrum (refer Figure 4.1) as possible, within an acceptable level of risk. The *Authority Assessment 2* pathway for example should apply to only the highest risk forms of development that can be contemplated.

Enabling the optimum level of functionality of the feasible pathways, and a more efficient system, relies on the full commitment of planning authorities to the agreed acceptable level of risk. Adding complexity to the quantitative pathways for example (*No Assessment* and *Self Assessment*) through additional risk management criteria, could compromise the functionality and efficiency they are intended to provide.

Acceptable level of risk will vary between locations. The *Self Assessment* track for example may be more suitable for dwellings in greenfields areas, than for dwellings in inner metropolitan areas with more complex heritage, character, or other planning considerations – or anywhere were less change to the environment is anticipated and any change requires more consideration.

If the pathways were to be implemented, transitional arrangements could assist in determining acceptable levels of risk for different forms of development. For example there could be opportunity for certain types of development to be subject

to the *Authority Assessment 1* pathway for a period, after which it's suitability for the *Self Assessment* pathway would be considered.

4.6.2. Private certifiers

The feasible pathways do not provide for use of planning certifiers in an assessment role in place of a planning authority.

Instead, the proposed feasible pathways seek to achieve efficiency by transferring responsibility for lower impact assessments to proponents within acceptable levels of risk. Under the *Self Assessment* track, proponents may choose to engage suitably qualified people to assist with self assessment.

5.0 Notification reform

Land use planning systems generally include provision to notify neighbours and the public of some types of development proposals, and seek comment on proposals in some circumstances.

Local Governments have identified a number of concerns with current public notification processes within the South Australian development assessment process, primarily relating to the statutory requirement to notify neighbours for some low impact developments, a lack of clarity amongst representors around how their responses influence an assessment, and the length of time neighbours and the public have to comment on an application (refer Section 2.4).

To consider reform of notification arrangements in development assessment invites the following questions:

- Under what circumstances should notice of a development proposal be given?
- Who should be notified?
- Should those notified have the opportunity to provide comment on a proposal and if so under what circumstances?
- What influence or weight should neighbour or public comment on a proposal have in the planning authority's assessment of that proposal; should the degree of influence vary between different types of proposals; and on what basis should the degree of influence vary?

Potential benefits of public or neighbour notification include:

- An additional **public interest** check through enabling interested and potentially affected parties to contribute to decisions affecting the local environment;
- The opportunity for potentially affected parties to respond in defence of their **individual rights**; and
- The opportunity for **new information** to be provided by respondents that can contribute to robust decision making in determination of the application.

Potential risks associated with notification include the possibility that development that is consistent with planning policy meets significant opposition through a notification process. This could point to weaknesses in the policy or policy development process, or simply reflect a conflict of individual interests. While representations that reflect individual interests need to be considered, this is balanced with application of policy that should represent the public interest.

Notification processes also have time and resource implications for planning authorities, particularly when the process allows for a representor to be heard.

Based on consideration of these questions, benefits and risks 4 proposed principles to guide notification reform have been developed, along with broad criteria for when neighbour and public notification is appropriate.

Methods of notification (e.g. letter, public notice, and signage) and appeal rights associated with notification have been generally excluded from this discussion, as these issues are the subject of separate papers. Detailed discussion of community engagement within the broader planning system is also the subject of a separate paper.

5.1. Principles of notification

Principle 1: Engage early and notify less

While this Issues Paper is focussed on the development assessment process, the role of public and neighbour notification should be contextualised within the broader planning system and the opportunities available for community participation.

Ideally, broad and genuine engagement in strategic planning and policy development decreases both the need for and risk associated with engagement at the policy application (development assessment) stage. At development application stage the policy is set, and should be the primary consideration in the assessment.

Principle 2: Uphold the community's right to be informed of decisions that affect them

Informing members of the community can be can be considered either in terms of a courtesy, or in terms of a right to procedural fairness accorded to those potentially impacted by a decision (the principle of natural justice).

It is not efficient or desirable for courtesy – between neighbours for example – to be legislated or administered by the planning system. Members of the community do however have a right to be informed about decisions that affect them. Upholding this right requires a judgement to be made about who is affected by a development, and this in itself may be a source of conflict.

Similar to the assignment of assessment pathways (refer Section 4.1), a test of reasonableness must be applied in relation to broader system objectives, and an acceptable level of risk agreed upon. Notification involves time and cost to planning authorities and applicants, and the potential for benefit to a sound development decision and the public interest should be sufficient to balance this.

Principle 3: Define the scope of influence within the framework of the planning policy

Communicating with members of the public about a development decision requires a planning authority to be clear about what the role of those groups or individuals have in the ultimate decision, and willingness and ability to follow through with the commitment made.

As noted in Principle 1, planning policy should reflect the public interest, and be developed with the involvement of the community.

In development assessment, the planning policy is the primary consideration. Comments received from neighbours or the public should be considered only in the context of the relevant policies. This should be made explicit to those notified and invited to comment.

Principle 4: Link scope of influence to anticipated impact

Affording members of the community a significant scope of influence in relation to all development proposals is inconsistent with an orderly and efficient system. Scope of influence should be linked not only to the planning policy (Principle 3), but to the level of potential impact of a proposed development on neighbours or the broader community.

5.2. Broad criteria for notification

The level of potential impact of different forms of development can be considered broadly consistent with the risk profile of different development types considered in the allocation of assessment pathways. That is, negligible/low, moderate and high risk (refer Section 4.1).

Like for the determination of assessment pathways, specific considerations in identifying the potential impact of a proposed development on neighbours or the broader community include the potential for conflict between land uses, the potential for impact on the character of a site or locality, and potential for impact on the amenity of a site or locality.

Table 5.1 sets out a broad framework for notification in relation to potential impact of a proposed development on neighbours. In terms of general public notification, as shown on Table 5.2, it should be required only where there is potential for high impact on the broader community. Generally, anticipated forms of development are unlikely to have an impact on the broader community, particularly if there has been adequate community involvement in policy development.

Table 5.1: Broad criteria for notification of neighbours

Notification action	Potential impact of proposed development on immediate neighbour/s[3]		
	Negligible/low	Moderate	High
Inform	X	√	√
Invite written comment	X	√	√
Invite being heard in person	X	X	√

[3] Where potential impacts of a proposed development are upon a single adjoining neighbour only, such as development undertaken on the boundary, notification should be to that neighbour only.

Notification action	Potential impact of proposed development on immediate neighbour/s[3]		
	Negligible/low	**Moderate**	**High**
Example of development	Carport off side boundary	Two storey residential flat building in an area of single storey dwellings	Light industry near dwellings
Possible relevant assessment pathways (refer Section 4.0)	No Assessment Self Assessment	Authority Assessment 1	Authority Assessment 2

Table 5.2: Broad criteria for notification of the broader community (public notice)

Notification action	Potential impact of proposed development on the broader community	
	Negligible/low/moderate	High
Inform	X	√
Invite written comment	X	√
Invite being heard in person	X	√
Example of development	Most development	Major infrastructure (e.g. mine, port) Development associated with a State heritage place
Possible relevant assessment pathways (refer Section 4.0)	No Assessment Self Assessment Authority Assessment 1	Authority Assessment 1 Authority Assessment 2

6.0 Agency referral reform

Councils have identified a number of issues associated with current agency referral processes within the South Australian development assessment process, including the timeliness and relevance of agency advice (refer Section 2.6).

Broadly, benefits of agency referrals to the development assessment process relate to:

- The inclusion of relevant specialist advice in the assessment of a development against relevant policies;
- The opportunity to integrate pursuit of relevant State-wide standards and policy objectives into development decision making; and
- The opportunity to identify early on in the progress of a proposal the requirements of other systems and approval processes relevant to the development – for example Environment Protection Authority (EPA) licenses.

Risks associated with seeking agency advice generally relate to it hindering the efficiency and effectiveness of the assessment process. This can occur as a result of:

- Advice being provided that is extraneous to the development application;
- Advice not being provided in a prompt manner; and
- Provision of general, non-specific advice that creates less rather than more certainty for the planning authority's assessment.

Risks associated with reducing or removing agency referrals from the development assessment process include that applications are determined without appropriate specialist advice would lead to undesirable outcomes. An example would be an approved industrial development that is unable to obtain an EPA license to operate because trade waste management requirements cannot be met on the site.

In this context, agency referrals should remain an important part of the development assessment process. An efficient agency referral system must however provide clarity for all parties in relation to when agency input is required, and in relation to the nature and form of specialist advice planners require to assess specific types of development applications. The following reform options have been developed in response to this aim.

Reform 1: Clarify referral triggers

The grounds for referral of development applications to specialist agencies should be clear, unambiguous, and quantitative where possible. Ambiguity around the referral trigger has implications for the efficient processing of applications.

For example, Schedule 8 Part 5 of the *Development Regulations 2008* requires referral of development that "directly affected a State heritage place, or in the opinion of the relevant authority materially affects the context within which the State

heritage place is situated". In practical terms, this has potential to create significant delays to processing of development applications. It requires a senior qualified person to make the assessment of material impact, most likely involving a site inspection, before the need for the agency referral is established. Were this provision to refer to development adjacent the State heritage place, or within a defined distance of the State heritage place, the referral process could be commenced by administrative or less senior qualified staff in initial processing of the application, gaining efficiency for both the planning authority and the applicant.

A review of Schedule 8 identifies that some current referral triggers are complex, and require the planning authority to exercise judgement in relation to the proposed development, or in relation to other planning legislation or policy (for example the *Natural Resources Management Act 2004*). In some instances the complex nature of these triggers will be justified, but a review is required with the objective of simplification and improved clarity wherever possible.

The current Schedule 8 categorisation of referral advice as for "regard" or "direction" is sound.[4] The allocation of one or the other should be based on consideration of the risks posed by the proposed development in relation to matters relevant to the specialist expertise of the referral agency.

Reform 2: Clarify the scope of advice

Referrals should result in provision of meaningful advice with direct relevance to assessment of a proposed development against the Development Plan. Extraneous information should be excluded on the basis that it creates potential for confusion, and reduces efficiency of the consideration of referral comments.

Referral agencies should be required to recommend either refusal, unconditional approval, or approval with conditions, and to provide explicit justification for their advice with reference to Development Plan policies and relevant policies of the referral agency. General information should not be provided and should not be considered by the planning authority in its assessment.

Where a planning authority must have regard to an agency's advice, and there is disagreement or lack of clarity between the agency and the planning authority or applicant, there should be opportunity for all parties to communicate constructively to clarify or negotiate in relation to the relevant aspect of the advice. Another option is in these situations is to seek advice from DAC to resolve the matter.

Reform 3: Eliminate informal referrals

In development assessment, greater uncertainty generally equates to greater demand for time and resources. Often this can be justified in the pursuit of appropriate development outcomes. Introduction of unnecessary uncertainty into the assessment process should however be proactively avoided.

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[4] The third category of referral advice applies only to development where a consent or approval in relation to a development does not totally adopt the recommendation or any condition proposed by the Minster responsible for the *Heritage Places Act 1993* in relation to a State heritage place.

Examples exist of planning authorities undertaking informal or "courtesy" referrals to agencies outside of what is required by the legislation. This practice introduces uncertainty into the assessment as there is no guidance as to how the agency is to respond to the referral, nor how the planning authority should treat any response received. It also creates time and resources implications for both the planning authority and the referral agency that cannot be justified in the context of statutory responsibilities.

The practice of informal agency referrals should be eliminated either by a process of cultural change within planning authorities and/or by amendment to Section 37 of the *Development Act 1993*.

It may be the case that some non-statutory referrals are occurring due to uncertainty around interpretation of Schedule 8 of the *Development Regulations* (refer Reform 1), in which case education and support for planning authorities may be required along with simplification of the Schedule.

Reform 4: Create supportive conditions for system implementation

Efficient and effective operation of the statutory referral process requires supportive conditions within planning authority and referral agency organisations. Such supportive conditions include:

- Ongoing positive communication between organisations to understand each other's objectives and resolve challenges constructively; and
- Adequate resourcing of organisations to meet statutory requirements including timeframes and provision of meaningful tailored advice.

7.0 Major Projects process reform

The LGA has developed a separate Issues Paper in relation to the "Major Project" development assessment process under Section 46 of the *Development Act 1993*. A number of key issues were identified including:

- A lack of criteria to define the "major" environmental, social or economic importance that enables declaration of a Major Project;
- The absence of rights to appeal in the process or ability to challenge the Minister's decision;
- Misuse of the process as a "fast track" to circumvent the usual development assessment process;
- Inadequate consideration of local as well as State impacts in assessment of Major Projects;
- No requirement for the Minister to have regard for Council comments; and
- A tendency toward Major Project decisions being imbalanced in favour of economic benefits compared to social and environmental considerations.

In response to these issues, the LGA proposed the process reforms shown in Table 7.1.

Table 7.1: LGA reform recommendations for a Major Project process

#	LGA Recommendation
1	The use of a Major Project process should deliver the best planning and development outcomes through a rigorous assessment process, which is scalable to the complexity of the proposal.
2	Major Project status should only be granted following an assessment of the proposal against clear and specific criteria. This criteria should exclude any developments that can reasonably dealt with through the mainstream planning process.
3	In the interests of greater transparency, a publicly available report should be prepared which clearly outlines the Minister's reasons for granting Major Project status. Currently declarations often reference only the vague criteria prescribed in the Act and do not provide a clear rationale.
4	The relevant Council should have the opportunity to comment on its capacity to deal with a proposal prior to Major Project status being granted. This would also give the Council the opportunity to flag any potential issues that might have a negative impact on local communities or local service provision.
5	The role of Local Government in the assessment of a Major Project should not duplicate or add an additional layer of bureaucracy to the assessment process.
6	During the assessment of Major Projects, regard must be given to the local Development

#	LGA Recommendation
	Plan and relevant volume of the planning strategy.
7	Legislative controls need to be in place to ensure that a proposal is not in direct conflict with the adopted planning strategy for the State or Region.

The following discussion elaborates on each of these recommendations and gives further consideration to how the proposed reforms may be enabled.

Recommendation 1

The architecture of the Major Project process is set up to facilitate comprehensive assessment, with the proponent required to respond to impact assessment guidelines that are tailored to the proposed development and the particular environmental, social and economic risks it poses.

There is potential for greater transparency in relation to creation of assessment guidelines and the assessment itself in order to clearly demonstrate the level of rigour applied in the assessment, and how best planning and development outcomes are sought by the process. This could be achieved by provision of publically accessible reports or summaries on both the development of guidelines and the assessment outcomes.

There is also potential to introduce a mechanism in which the comprehensiveness or accuracy of impact assessment could be reviewed under defined circumstances, and in relation to defined parameters. The review body could be the Environment, Resources and Development Committee of the Parliament of South Australia.

Recommendations 2, 3 and 4

The Minister for Planning is responsible for declaration of a major project on the basis of major environmental, social or economic importance. There is no requirement for the basis of the declaration to be explicitly provided, nor for the declaration to be reviewed or subject to oversight.

Greater clarity in relation to the rationale for Major Project declarations would be assisted by the application of more detailed criteria either within legislation, or as policy of the Minister's office. A public report or summary of considerations in relation to these criteria would increase the transparency of the declaration.

Either the legislation or non-statutory criteria could include reference to whether a proposal's major environmental, social or economic importance and impacts are of State, regional or local scale. Where importance and impacts are at the local scale only, there would be justification for use of the usual planning process (not the Major Project process) in most cases.

There is also scope for the process of declaration to be explicitly consultative, with the Minister undertaking a process of engagement with the relevant Council or Councils, and relevant specialist bodies in defined circumstances such as State agencies, DAC, or a special sub-committee of DAC. The process could include

reporting back to the consulted agencies on how their feedback has been considered in responding to the declaration criteria.

Recommendation 5

Local Governments have expressed concerns with a lack of involvement in the Major Project process where the proposal has significant local impact. These impacts can be dealt with as reserve matters or conditions for Councils to deal with following a Major Project approval, however at this stage a proposal is going ahead and it may be desirable to resolve local issues earlier in the process.

Opportunity for formal Local Government involvement in Major Project declaration, development of assessment guidelines, and assessment could address local issues in an integrated and efficient manner as part of the Major Project process, without adding duplication or additional steps associated with Councils' assessment of issues following Major Project approval.

Recommendations 6 and 7

Consideration of the relevant Development Plan and the Planning Strategy in determination of a Major Project is currently required by legislation. Similar to the Major Project declaration and assessment, there is scope for greater clarity and transparency in relation to how a proposed Major Project responds to the relevant planning policy and Planning Strategy. This could occur as part of a publically available assessment report or summary (as discussed in relation to Recommendation 1).

As described in relation to Recommendation 1, there is potential to introduce a mechanism in which the comprehensiveness or accuracy of a Major Project assessment could be reviewed under defined circumstances, and in relation to defined parameters. The defined circumstances could include where the proposal is in conflict with the relevant Planning Strategy. The review body could be the Environment, Resources and Development Committee of Parliament.