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06 May 2021

South Australian Productivity Commission  
GPO Box 2343, ADELAIDE, SA 5001

**By email:** [sapc@sa.gov.au](mailto:sapc@sa.gov.au)

Dear South Australian Productivity Commission

**Re: South Australian Productivity Commissions's Issues Paper 26 - Development Referrals – 26 March 2021**

The Murraylands and Riverland Landscape Board (the landscape board) has reviewed the South Australian Productivity Commission's Development Referrals Review Issues Paper 26 March 2021.

The landscape board welcomes the opportunity to support the review on development referrals. The landscape board is a referral body under the Planning, Development and Infrastructure Act 2016, as well as a number of other acts, as shown in Table 1 below. Of relevance to the issues paper are the referrals from the Native Vegetation Council (NVC) and the EPA in the first three rows. Other referrals come directly to the board for direction, by virtue of the *Landscape South Australia Act 2019*.

<b>Matter</b>	<b>Action</b>	<b>Act</b>
Consideration of native vegetation clearance/deciding whether to consent to clearance	NVC <b>must seek and consider</b> advice from relevant regional landscape board	Native Vegetation Act 1991 R5(9) Part 5 (1)(29)(5)
Consideration of a controlled action involving a licence, permit or other instrument under the Landscape SA Act	NVC <b>must consult</b> with relevant regional landscape board	LSA Act 2004 S220(4)(a)
Before deciding to issue an environment protection order or variation that would, but for S106 of Landscape SA Act, require the undertaking of an activity for which a permit would be required under that Act, the EPA	<b>Must invite</b> written submission from the Board (if relevant to the permit)	Environment Protection Act S99(2a)
Development for which a WAA permit would be required but is exempt under S106(1)(e) of the Landscape SA Act, other than in a R Murray protection area, is	<b>Referred for direction</b> to the relevant Board	*Development Act 1993 S12(1) of Sch 8, Dev Regs/Planning, Development and Infrastructure (General) (Miscellaneous) Variation Regulations 2020 Sch 9, 12
Development that involves a change in landuse for establishing or expanding a commercial forest within a prescribed area where a permit would be required but is	<b>Referred for direction</b> to the relevant Board	*Development Act 1993 S12(1) of Sch 8, Dev Regs/Planning, Development and Infrastructure (General) (Miscellaneous) Variation


<b>Matter</b>	<b>Action</b>	<b>Act</b>
exempt under S106(1)(e) of the Landscape SA Act is		Regulations 2020 12 (a)(iii) of Sch 9
Development, other than development within a R Murray protection area, for a specified activity that requires water above any allocation that has already been granted or may affect the operation of a notice under S109 of the Landscape SA Act is	<b>Referred for direction</b> to the CE of DEW, who can then refer it to the relevant Board directly	*Development Act 1993 S12A of Sch 8, Dev Regs/Planning, Development and Infrastructure (General) (Miscellaneous) Variation Regulations 2020 Sch 9, 13
Development involving dams in an area where a section 109 notice under the Landscape SA Act applies is	<b>Referred for direction</b> to the CE of DEW, who can then refer it to the relevant Board directly	*Development Act 1993 Item 16 of Sch 8/Planning, Development and Infrastructure (General) (Miscellaneous) Variation Regulations 2020 Item 13 of Sch 9
Also consider: The functions of a Landscape SA Board are to provide advice with respect to the assessment of various activities or proposals referred to the board under this or any other Act	To <b>provide advice</b> to a range of referring authorities under different acts e.g. Mining Act 1971	LSA Act 2019 25 (1)(d)

The landscape board works closely with staff from the Native Vegetation Management Unit in the Department for Environment and Water (DEW), in providing advice to the NVC for consideration regarding native vegetation clearance requests.

Please find enclosed Attachment 1, which provides responses to several of the information requests from the issues paper.

For further discussions and/or any queries you might have please contact Eilidh Wilson, Senior Project Officer, Planning and Policy on 0400 889 023.

Yours sincerely



**Andrew Meddle**  
**General Manager**  
**Murraylands and Riverland Landscape Board**

**Enc: Attachment 1 – Specific comments on the information requests**

**Attachment 1 - SAPC Development referrals review issues paper  
Murraylands and Riverland Landscape Board comments on information requests – May 2021**

Information request	Response
<p><b>2.1: Relevant authorities in the referrals process</b> Stakeholders are invited to provide information and evidence on the following issues based on their experiences with referral bodies responsible for native vegetation, matters of environmental significance, and road network access and corridors:</p>	
<p>1. Are the roles of the relevant authority and these three referral bodies involved in a development assessment made clear to applicants at the start of the process?</p>	<p>The Native Vegetation Clearance advice and application process has improved significantly in recent years, thanks to the online self-determination portal. As the landscape board is a referral agency that has until recently been a first point of call for members of the public enquiring about native vegetation clearance requirements, the improvements to the self-service system have been greatly welcomed. Councils are well versed in the approval process and usually clearly explain to applicants how the development approval pathway interacts with any approval for native vegetation clearance, and the role that the native vegetation council play in that.</p>
<p>2. Is the process for the applicant engaging with relevant authorities and these three referral bodies in relation to the development application (DA) clearly understood?</p>	<p>The process could still be made simpler, with the use of flowcharts to clearly show applicants the approval process, with the who and why aspect explained for different additional referrals. For the Murraylands and Riverland Landscape Region there is an added complication for applications with the interaction with the River Murray Act</p>
<p>3. In what circumstances have applicants engaged directly with these three referral bodies in relation to a DA?</p>	<p>As the landscape board no longer has a role in providing advice on native vegetation clearance, legislation or process within the Murraylands and Riverland region, any enquiries, pre-engagement or otherwise are directed to the Native Vegetation Council and the Department for Environment and Water Native Vegetation and Management Unit staff that supports the council. The landscape board is frequently contacted to find an approved consultant to undertake a vegetation or arborist report. On these occasions we recommend the applicant go direct to the approved consultant list on the DEW website. As landscape board staff work closely with</p>

Information request	Response
	DEW staff regarding native vegetation clearances, both agencies work together to support early engagement to seek the best outcomes for the environment, in avoiding or mitigating impacts to native vegetation.
4. Has direct engagement of these three referral bodies resulted in improved development assessment outcomes?	It is our experience that direct engagement, particularly early engagement, is very helpful for applicants in avoiding or mitigating impacts to native vegetation. Early engagement can reduce costs and waiting times for applicants later on in the development approval process. It also means that development approval includes native vegetation consideration, rather than leaving it aside to be resolved after development approval. Early engagement of the board's regional ecologist on the State Interconnector project, with support from DEW staff, supported realignment of the proposed route and avoided major impacts to threatened habitats and species. Without this early engagement, the applicant is unaware of how to mitigate their project's impacts, potentially protracting timeframes and escalating costs later on in the project when it becomes much harder to change development plans.
<p><b>2.2: Impacts of the state planning reforms on referrals</b></p> <p>Stakeholders are invited to provide their perspective on the extent to which changes to development referrals under the state planning reforms will impact on regulator practice regarding native vegetation, matters of environmental significance (EPA) and road network access and corridors, including:</p> <ol style="list-style-type: none"> <li>1. The actual or expected effects of the shift to a predominantly direction role for referral bodies, and the implications for development application conditions and compliance with those conditions.</li> </ol>	<p>Although the shift to direction only has clarified the situation for applicants, it is yet to be seen if the new overlays and tiered risk assessment process in the planning system will deliver the outcomes that are desired. Most referral bodies would rather encourage the applicant to still have early conversations, even where a body does not have direction.</p> <p>That said, the new process should significantly streamline the work of the DEW and NVC staff, if the supporting information is sufficiently detailed that direction can be given without protracted requests for additional information. This relies on the relevant authority or the planning system being clear in what constitutes adequate provision and detail of information.</p>
2. The introduction of overlays into the planning regime and the effect on certainty for proponents in dealing with referral bodies for development applications.	While the overlays provide a level of detail that is helpful for the applicant, the overlays are not sufficient to determine if approval will be given or not (which is how some applicants may perceive them)

Information request	Response
<p>3. The powers for applicants to appeal decisions made by referral bodies and the potential impacts on applicants who avail themselves of this process.</p>	
<p><b>3.1: Assessment pathways – contrasting approaches to the referrals process</b>            What are the advantages and disadvantages to applicants in relation to the way development referral processes are managed for</p>	
<p>1. developments assessed under the Planning and Design Code, particularly performance assessed developments; and impact assessed developments where a separate state-run assessment process is used.</p>	<p>The new planning system seeks to streamline and simplify the development process, while providing transparency to those involved. The code policies have clarified the requirements for developments, for example, in protecting street trees or urban trees from removal, and created opportunities to remove duplication (such as in the provision of a data report).</p>
<p>2. The Commission’s interest is on the contrasting approaches to managing referral process, and specifically the efficiency and effectiveness of referral activity undertaken in relation to major projects of significant commercial and economic value to the state.</p>	
<p><b>3.2: Planning approvals and environmental licensing</b>            Some development activities also require a licence under the <i>Environment Protection Act 1993 (EP Act)</i>.</p>	
<p>1. To what extent does the development assessment referral process under the <i>Planning, Development and Infrastructure Act 2016</i> support and effectively integrate with the requirement for an applicant to obtain a subsequent environmental licence under the EP Act?</p>	
<p>2. Have applicants experienced a disconnected approach in relation to development approvals and environmental licensing requirements for the same development?</p>	
<p>3. Do applicants foresee any potential challenges or risks in relation to the dual development assessment and licensing requirements under the new planning system?</p>	

Information request	Response
<p><b>3.3: Native vegetation clearance and co-regulation</b></p> <p>The Commission has an interest in co-regulation and regulatory interdependencies that may result in duplication, wasted effort and delayed decision-making. Feedback is sought from stakeholders about their experiences regarding:</p>	
<p>1. dual approvals required under the <i>Planning, Development and Infrastructure Act 2016</i> or <i>Development Act 1993</i> and the <i>Native Vegetation Act 1991</i> for native vegetation clearance for development purposes, specifically where regulatory practice has resulted in the need for significant clarification or rework.</p>	<p>Landscape boards have a role to play in reviewing applications referred by the NVC to them for comment. The NVC must have regard for any comments made by landscape boards, according to the legislation. This is not seen as duplicated effort, but provision of specialist regional and technical advice from landscape board that know the landscapes, often are familiar with the locations, and can comment quickly with relevant advice. If there is any doubt in an application, as to the quality of the information provided, landscape board ecologists can and have challenged the information. Significant rework is not something the landscape board would seek to achieve, early engagement can avoid this entirely, and is encouraged.</p>
<p>2. the co-regulation of native vegetation clearance by the Native Vegetation Council and the Country Fire Service (as a referral body for the clearance of native vegetation for both new and existing developments to comply with bushfire safety standards), particularly where a development has been delayed or uncertainty has been created.</p>	
<p><b>3.4: Road network referrals and information requirements</b></p> <p>For some development activity the Commissioner of Highways requires traffic impact assessments or studies to inform its assessment of a development application. Stakeholders are invited to provide to the Commission information and insight on their experience with the proportionality of those information requirements, response times, the requirement for any rework to support the assessment, and any other experiences that materially affected the development assessment process.</p>	

Information request	Response
<p><b>3.5: Applicant experiences and case studies</b> Stakeholders are invited to provide to the Commission specific examples of their experiences in relation to the organisational practices of referral bodies assessing native vegetation, matters of environmental significance and road network access having regard to:</p>	
<p>1. the proportionality of information required by referral bodies relative to the risk and complexity of the development being assessed and whether those requirements are commensurate with the referral body's mandates.</p>	
<p>2. the utility of case management and pre-lodgement arrangements and whether a broader application of these types of arrangements to more types of developments would improve development assessment efficiency and provide for better outcomes.</p>	<p>This would be supported.</p>
<p>3. the use of 'stop the clock' provisions and whether this has enabled referral bodies and applicants to efficiently navigate a development assessment or created unnecessary and avoidable delays.</p>	<p>This is an important tool available to referral bodies, however we are aware that the time given to applicants will need to be sufficient for them to obtain and supply any additional information. This puts the onus back on the applicant to provide the information in a timely manner to progress the application process. Requests for additional information are usually provided to the applicant fairly rapidly, following initial review upon referral.</p>
<p>4. other matters that have given rise to uncertainty, delays or re-work of development applications that applicants believe could have been avoided.</p>	
<p>Whilst the Commission is always interested in interested parties' experiences, specific examples and corroborated case studies may support evidenced-based findings and recommendations. The Commission welcomes stakeholders' views about proposed changes to the practice of referral bodies that would streamline decision-making on a development application without compromising their important mandates.</p>	

Section 2.4 – Matters referred for advice (rather than direction) still involve an amount of work for the body providing that advice. With no compulsion to accept that advice, it can be considered a futile exercise when advice is ignored and is an area that drops from the priority list / is discontinued over time by the body providing that advice if they perceive it is not valued, recognised or followed. Although the new State Planning System has largely eliminated this requirement for most developments, there can still be developments which require a significant amount of input, which are referred informally.

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