A LEADING PRACTICE MODEL

FOR DEVELOPMENT ASSESSMENT IN AUSTRALIA

March 2005

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FOREWORD

Development is a vital component of the Australian economy. It shapes the urban and rural fabric in which Australians live.

For liveable and vibrant communities, it is essential that the built environment meets and reflects state and local policy objectives. Development assessment has an important role in delivering this.

In recent years, the pressure on assessment systems has increased, due both to increasing levels of development activity and to increasing interest and expectations from communities about what is appropriate.

Assessment systems can only respond to these pressures if they are efficient and have clear policy objectives. There is general agreement that existing development assessment processes in Australia could be substantially improved - many jurisdictions are already actively working towards this goal.

This report sets out a leading practice development assessment model that will guide the various jurisdictions in developing efficient, effective and nationally harmonised development assessment systems.

In 1995, the Industry Commission estimated potential savings of $1billion a year could flow from improvements to planning and building regulations and processes (Industry Commission, *The Growth and Revenue Implications of Hilmer and Related Reforms*, AGPS Canberra 1995). The initiatives outlined in the Development Assessment Forum (DAF) Leading Practice Model will streamline development assessment and enable much of this lost resource to be redirected to more productive outcomes.

The leading practice model is simple and logical. It proposes:

- Ten leading practices that a development assessment system should exhibit. These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose.
- Six 'tracks' that apply the ten leading practices to a range of assessment processes. The tracks are designed to ensure that, at the time it is made, an application is streamed into the most appropriate assessment pathway.

By adopting the DAF leading practice model, jurisdictions will be able to ensure appropriate scrutiny of development applications, while delivering faster, cheaper assessments.

Peter Verwer
Chair
Development Assessment Forum

EXECUTIVE SUMMARY

The Development Assessment Forum (DAF) believes there is potential to improve development assessment processes across Australia. Reforms will deliver very significant cost and time savings to a wide range of stakeholders in the creation, assessment, and determination of development applications.

DAF therefore proposes a leading practice model as a means of promoting efficient, effective and nationally harmonised development assessment systems across Australia.

The DAF leading practice model is a toolkit that can be adapted and adopted by jurisdictions to suit their specific needs. Application of the model in each jurisdiction will result, over time, in the increased harmonisation of systems across Australia.

Development assessment should not operate in isolation but within a framework of good planning policy. To be efficient, assessment must operate in conjunction with effective policy development. DAF emphasises that any review or implementation of a new development assessment process must include the formulation of strategic and statutory planning policies that meet community expectations.

The DAF leading practice model proposes:

- Ten leading practices that a development assessment system should exhibit. These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose.
- Six 'tracks' that apply the ten leading practices to a range of assessment processes. The tracks are designed to ensure that, at the time it is made, an application is streamed into the most appropriate assessment pathway.

The development of the leading practice model has been informed by the work of the Centre for Developing Cities at the University of Canberra, which produced *Leveraging the Long Term: A Model for Leading Practice Development Assessment 2003a*, and by a national program of stakeholder consultation about the recommendations made in that report.

The ten leading practices proposed by DAF are:

1 Effective policy development	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.
2 Objective rules and tests	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.
3 Built-in improvement mechanisms	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.

4 Track-based assessment	Development applications should be streamed 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.
5 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.
6 Notification	Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.
7 Private sector involvement	Private sector experts should have a role in development assessment, particularly in: • 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.
8 Professional determination for most applications	Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either: Option A – Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council. 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.
9 Applicant appeals	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.
10 Third-party appeals	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.

The six development assessment tracks proposed by DAF are:

- Exempt
- Prohibited
- Self assess
- Code assess
- Merit assess
- Impact assess.

Each track will be consistent with the ten leading practices and provide a process of assessment that is relevant to the project's complexity and impact on the built and natural environments. The track in which an application is to be assessed must be clear before an application is submitted.

The DAF commends the leading practice model to Australian Governments as an important first step in the process of development assessment reform and harmonisation. This model will be made even more effective by completing the projects identified in the Next Steps section.

1 INTRODUCTION

HISTORY OF THE LEADING PRACTICE MODEL

In 1996, the Small Business Deregulation Task Force, chaired by Charlie Bell, released a report entitled *Time for Business*. This report recommended (Recommendation 29):

> *That the three spheres of government develop a reform strategy for referral and concurrence procedures in the building and development industry by 1 July 1997. The strategy should include a system for resolving problems between government agencies and ensuring the delegation of decision making to the lowest level practicable taking into account the scale of development.*

Prime Minister John Howard endorsed these findings in his response to the report, *More Time for Business*.

The Development Assessment Forum (DAF) was established in 1998 to respond to Recommendation 29. It brought the three spheres of government together with industry and professional associations to examine ways to speed up assessment and cut red tape, without sacrificing the quality of the decision-making or development outcomes. (DAF membership details may be accessed at www.daf.gov.au/membership.aspx)

In September 1999, DAF released its *Principles of Leading Practice in Development Assessment.* This work identified the features DAF considered to be essential for a world class development assessment system.

DEVELOPMENT OF THE MODEL

DAF then commissioned the report *Draft Leading Practice Model for Development Assessment* from the Centre for Developing Cities (CDC) at the University of Canberra.

This report examined existing systems in Australia, New Zealand and Singapore and proposed a leading practice model that aimed to deliver greater consistency, simplicity and economic benefit to stakeholders. Each element of the development assessment process was considered, ranging from pre-lodgement processes to appeals and system improvements.

At a Local Government and Planning Ministers' Council meeting in February 2004, Ministers and the Australian Local Government Association agreed to facilitate a nation-wide consultation program with key stakeholders to test the CDC model.

CONSULTATION

Socom Pty Ltd commenced consultation in April 2004.

Stakeholders from state, territory and local government, industry, and the community were brought together to discuss relevant issues in a series of information sessions and facilitated workshops held in all the capital cities. Interested parties were also encouraged to make written submissions and complete an online survey.

Over 12 weeks of consultation more than 580 individuals from over 400 organisations contributed to the debate on the draft model, including 58 written submissions. All participants agreed that improvement to our development assessment systems was both possible and necessary.

DAF has considered the submissions, findings, and recommendations from the consultation process in developing its proposed leading practice model for development assessment. The model can be applied to all jurisdictions in Australia.

HOW WILL THE DAF LEADING PRACTICE MODEL BE USED?

Development assessment is crucial to ensuring that development delivers the economic, social and environmental objectives and good planning outcomes communities seek.

Australia needs quicker, more efficient processes that can be relied on to deliver these outcomes.

Although a 'one-size-fits-all' development assessment system is unlikely, leading practices are already operating in many locations and are easily able to be used in other jurisdictions.

The DAF leading practice model is a toolkit that can be adapted and adopted by jurisdictions to suit their specific needs. Application of the leading practice model in each jurisdiction will result, over time, in the increased harmonisation of systems across Australia.

Development assessment processes should not operate in isolation but within a framework of good planning policy. To be effective, a development assessment process must operate in conjunction with a rigorous policy development process.

DAF emphasises that any review or implementation of a new development assessment process must include the formulation of strategic and statutory planning policies that meet community expectations.

Quicker, more efficient development assessment processes, based on rigorous planning policy, will deliver reliable economic, social, and environmental outcomes for the entire community.

2 THE DAF LEADING PRACTICE MODEL

WHAT SHOULD A LEADING PRACTICE DEVELOPMENT ASSESSMENT MODEL ACHIEVE?

Many of Australia's development systems were designed for a different era. These days, Australians expect more of their built environment and seek better outcomes from development assessment. Our economic needs are more diverse and environmental issues are more prominent. The built environment plays a significant role in delivering community benefits such as health, education, security, leisure, and entertainment.

Research shows that our current approach to assessing new developments can be confusing, slow and inefficient. This leads to reduced productivity, wasted resources and lengthy, costly delays.

There is strong argument for greater reform and for taking a more consistent approach across the country.

LEADING PRACTICE PRINCIPLES

To maximise efficiency and deliver certainty, DAF believes that a leading practice development assessment process should:

- Focus on achieving high quality sustainable outcomes
- Encourage innovation and variety in development
- Integrate all legislation, policies and assessments applying to a given site
- Encourage an appropriate performance based approach to regulation
- Promote transparency and accountability in administration
- Be cost effective
- Be streamlined, simple and accessible
- Use standard definitions and terminology
- Incorporate performance measurement and evaluation
- Promote continuous improvement
- Promote sharing of leading practice information
- Provide clear information about system operation.

THE PLANNING LIFECYCLE

To implement these principles in a statutory system, it is useful to look at the four stages of development assessment and how an application is dealt with at each stage – the 'lifecycle' of a development application.

The model proposes ten leading practices essential to the effective operation of any development assessment system.

These leading practices can be applied in sequence to the four stages in the lifecycle of a development proposal:

PLANNING LIFE CYCLE		LEADING PRACTICE	
STAGE 1 POLICY MAKING	An effective policy framework is an essential precondition for assessment.	1 Effective policy development	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.
		2 Objective rules and tests	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.
		3 Built-in improvement mechanisms	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.
STAGE 2 ASSESSMENT	Clear requirements and criteria for submitting and assessing an application should be available at the outset to ensure appropriate outcomes.	4 Track-based assessment	Development applications should be streamed 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.
		5 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.
		6 Notification	Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.

PLANNING LIFE CYCLE		LEADING PRACTICE	
STAGE 2 ASSESSMENT	Clear requirements and criteria for submitting and assessing an application should be available at the outset to ensure appropriate outcomes.	7 Private sector involvement	Private sector experts should have a role in development assessment, particularly in: • 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.
STAGE 3 DETERMINATION	Decisions should be clearly made at the most effective level against specific assessment criteria.	8 Professional determination for most applications	Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either: Option A – Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council. 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.
STAGE 4 APPEAL	A right of review should be by an efficient and independent process.	9 Applicant appeals	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.
		10 Third-party appeals	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.

These ten leading practices encourage the development of better policy and more effective assessment and determination mechanisms to deliver a more efficient system – one that is responsive to both community expectations and the needs of industry.

The six development assessment tracks proposed in the model reflect the application of these ten leading practices to assessment processes. These leading practices can also be used to drive the design of planning regulatory systems and the construction of statutory plans and similar regulatory instruments.

While each jurisdiction will have its own preferred methods for reviewing its assessment systems, the leading practices and the six tracks outlined in this report provide a common national framework for reform. This will ensure that both consistency of approach and the rigour of principle are applied to all development assessment systems.

3 TEN LEADING PRACTICES

STAGE 1 POLICY MAKING	An effective policy framework is an essential precondition for assessment.

Clear, specific, and (where possible) measurable policy is the backbone of an effective model for development assessment.

While most jurisdictions will have statements of planning strategy or policy, often these are not sufficiently well written to assist assessors to make decisions.

There are certain general principles which apply to the formulation of planning policy. Essentially, policies must be for a valid planning purpose and be based on sound planning principles. Policy objectives should be clearly stated and be capable of being implemented effectively.

To meet the expectations of developers and the community, policy needs to be developed through the use of best-practice community consultation and engagement. It may not be possible for all planning policies to be codified into objective rules and provisions, even allowing for a process of extensive public engagement. Therefore, a clear distinction must be made between objective, code-assessable development and more complex applications that require some balancing of public views with the benefits and impacts of the proposed development.

To have statutory status, a policy should have been through a process of public consultation and have a clear link to the statutory provisions.

LEADING PRACTICE ONE: EFFECTIVE POLICY DEVELOPMENT

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.

What this leading practice achieves:

This ensures planning operates in the public interest and delivers desired policy outcomes.

Clear policy statements enable the formulation of objective rules and tests, which are essential for efficient and consistent decision-making.

What CDC said:

"Legislators (Councillors, Parliament, Ministers and other delegates of the Parliament) approve technically excellent criteria (policies, plans and standards) based on active community engagement: the criteria – a form of contract between the community and users of land – are easily accessed and understood." (CDC Vol 1 p9)

Stakeholder feedback:

Stakeholders agreed that responsibility for policy development should rest primarily with the elected representatives, in consultation with the community and relevant professionals.

Where does this practice already operate in Australia?:

- In **Victoria**, State and local planning policy forms part of every planning scheme (the State Planning Policy Framework and the Municipal Strategic Statement) and the specific provisions and requirements of the scheme must be applied to implement those policies.
- **New South Wales** is considering a similar model to that used in **Victoria**.
- In **Western Australia**, *Statement of Planning Policy No1: State Planning Framework* brings existing state and regional policies, strategies and guidelines together within a single framework that provides a context for decision-making on land use and development.
- In **South Australia**, development assessment policies must implement the State Planning Strategy and all state/local development assessment policies are integrated in a single Development Plan for the council area concerned.

Existing DAF resource or project:

The *Good Strategic Planning Guide*.

Next Steps:

Develop guidelines for writing planning policies that support effective development assessment and facilitate the achievement of good development outcomes.

LEADING PRACTICE TWO: OBJECTIVE RULES AND TESTS

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.

What this leading practice achieves:

Converting policies into clear assessment criteria ensures that decisions consistently achieve policy objectives and that development applications are assessed against relevant criteria. They also ensure that matters are dealt with by applying the appropriate level of assessment necessary to achieve a reasonable outcome. Well written assessment criteria provide certainty to both the community and the applicant.

What CDC said:

"Technically excellent criteria are based on appropriate, relevant, verifiable evidence and lead to objective tests of compliance. Such criteria are also easily accessed and understood... However technical, the criteria embody value judgements and political objectives, which can only be properly adopted through processes which enable citizens to learn about them and contribute, if not to their content, to the precise outcomes they are expertly designed to achieve." (CDC Vol 1 p14)

Stakeholder feedback:

This proposal was generally supported, although stakeholders were less confident than the CDC that 'technically excellent criteria' could be produced for every circumstance. Most felt that there would be circumstances where clear policy was either not available or where objective assessment criteria could not fully cover all relevant issues.

Where does this practice already operate in Australia?:

- Some planning provisions contain objective rules and tests that have been based on verifiable evidence and clearly designed to deliver stated policy objectives. Rescode in **Victoria** and the Residential Design Codes in **Western Australia** are examples.
- However, many planning provisions, particularly older ones, do not always demonstrate rigour in the application of objective rules and tests and could benefit from review.

Next Steps:

Develop guidelines for writing objective rules and tests relevant to development assessment.

LEADING PRACTICE THREE: BUILT-IN IMPROVEMENT MECHANISMS

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.

What this leading practice achieves:

Continuous improvement of the development assessment process requires constant monitoring of performance in achieving policy objectives and the identification of redundant or ineffective requirements.

Best practice in many fields is continually evolving and objective rules and tests for development assessment need to be regularly reviewed to remain current.

What CDC said:

"The principle is straightforward: wherever a person has a formal decision making, reporting, review or judicial role – these points are identified in the model – they also have a formal role to consider the effectiveness, efficiency and transparency of the system and report their findings to those in a position to implement improvements. Notwithstanding that on most occasions it might be a 'nil' report, institutionalising the feedback is essential." (CDC Vol 1 p16)

Stakeholder feedback:

Most stakeholders supported a planning system with built in improvement mechanisms.

Where does this practice already operate in Australia?:

- In **Western Australia**, councils must review their planning scheme at least every five years. The Western Australian Planning Commission (WAPC) undertakes an annual customer survey that identifies areas for improvement. The results of this survey are published in the Commission's annual report.
- **South Australia** is also proposing a five year review period for both the State Planning Strategy and the development assessment policies in each council area Development Plan.
- **New South Wales** is proposing the same for local plans.
- In **Queensland**, the larger local governments must review their infrastructure plan components at least every four years.
- In **Victoria**, schemes must be reviewed every three years and a regular business process review of development assessment processes is also soon to be required.

Existing DAF resource or project:

The DAF Benchmarking Project is currently comparing mechanisms for system and process reviews around Australia.

STAGE 2 ASSESSMENT	Clear requirements and criteria for submitting and assessing an application should be available at the outset to ensure appropriate outcomes.

Four leading practices are proposed for the improved assessment of development applications. The first is the creation of six clearly defined assessment tracks, by which applications may be assessed. These tracks will ensure both the community and the applicant fully understand the requirements of the development assessment process.

The model also proposes that development decisions should be made by a single entity. A single assessment authority makes a development assessment system more user-friendly, increases policy consistency and fosters a whole-of-government approach.

If the rules and expectations associated with the assessment of development applications are based on clear principles, then the need for third-party notification can be reduced. For instance, where it is clear that consent will be given if objective rules and tests are met (as in the code track) there is no role for third-party notification.

For many (but not all) matters in the merit track, decisions may benefit from third-party involvement, although clear principles are needed to determine how this is to occur.

Finally, in the assessment of applications where objective rules and tests are clear and essentially technical, there are considerable gains in efficiency to be made from private sector assistance.

LEADING PRACTICE FOUR: TRACK-BASED ASSESSMENT

Development applications should be streamed 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.

What this leading practice achieves:

The relevant track for assessing an application is directly related to the complexity of the project and its impacts. The issues that require consideration in the decision are clearly stated. Unnecessary application or information requirements are avoided.

Six tracks are proposed:

- Exempt
- Prohibited
- Self assess
- Code assess
- Merit assess
- Impact assess.

Each track will be consistent with the ten leading practices and provide a process of assessment that is relevant to the project's complexity and impact on the built and natural environments.

The track in which an application is to be assessed must be clear before an application is submitted. The track is set by the statutory instrument. See **Section 4** for more detail about the six proposed tracks.

What CDC said:

"Different categories of project follow different tracks. Straightforward development projects go through about 24 processes from beginning to end, while more complex urban projects go through 32 processes. There are six tracks in the model:

1. *Exempt*
2. *Prohibited*
3. *Self assessment*
4. *Code assessment*
5. *Merit assessment*
6. *Impact assessment*

One of the first acts of the assessment authority is to categorise a project into one of these tracks: in accordance with adopted criteria the track will determine whether people are notified, whether impact is assessed, whether decisions are appealable, and whether processes can be carried out by a private certifier." (CDC Vol 1 p21)

Stakeholder feedback:

Stakeholders generally accepted the concept of tracks and agreed that each jurisdiction should be able to select the tracks that they need. The details of the tracks will need to be more fully described to assist implementation.

Where does this practice already operate in Australia?:

- Most jurisdictions provide a range of assessment tracks that are generally similar to those proposed, although the 'code' and the 'self-assessable' tracks will be new to some.

- Some jurisdictions will also currently have tracks with no direct equivalent to those proposed.

Next Steps:

Prepare a more detailed explanation of the six proposed tracks.

Explore opportunities to pilot the proposed tracks.

LEADING PRACTICE FIVE: 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.

What this leading practice achieves:

A single point of assessment ensures the consistent application of policy, through objective rules and tests.

Where referrals are required, the assessment criteria or policy are clearly expressed in advance. Applicants therefore know what is required before submitting an application.

What CDC said:

"...the principles are simple and clear:

- *One agency is the assessment authority for any one project (or stage of a project)*
- *Advice (concurrence) agencies implement their assessment criteria only through the assessment authority, after they have legislated technically excellent criteria*
- *Subject to the criteria, the project proponent is able to exercise significant choice as to which stages, aspects and components are submitted for approval.*

As a proviso, this does not imply a universal or blanket 'one-stop-shop'. While the single assessment authority is responsible for all of the one-off decisions made in approving a development, there may be many other functions of government involving ongoing programs, supervision, incentives, licensing and management which should not be rolled into development assessment." (CDC Vol 1 p15)

Stakeholder feedback:

There was general support for this concept. Stakeholders agreed that referral authorities should provide 'up front' guidelines or criteria for their requirements and provide responses in specified times.

Where does this practice already operate in Australia?:

- Most jurisdictions have referral arrangements of one form or another, although the criteria and processes for referral are not always clear or efficient.
- Some states, such as **South Australia** and **Victoria**, have prescribed referral authorities whilst others do not limit referrals.
- **New South Wales, Western Australia** and **Victoria** are in the process of streamlining referral arrangements.

Existing DAF resource or project:

The DAF Benchmarking Project is documenting the existing arrangements in jurisdictions and will suggest appropriate benchmark response times for referral authorities.

Next Steps:

Develop guidelines for referral to assist local government and referral agencies.

LEADING PRACTICE SIX: NOTIFICATION

Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.

What this leading practice achieves:

Applications that meet objective rules and tests would not be subject to notification, resulting in greater certainty and fewer delays.

Community notice and consent processes are targeted to those applications where decisions that require balancing of policy objectives will be informed by community views.

By including relevant notice provisions in the six proposed tracks, opportunities for effective community involvement are generated and process efficiency is maintained.

What CDC said:

"Consultation and community engagement are significant in the formulation of criteria and possibly during the formulation of projects and the design of applications; during assessment consultation is primarily about citizens knowing about changes in their neighbourhood, and debate about a proposed project should be about the quality of the criteria to be applied in future." (CDC Vol 1 p16)

Stakeholder feedback:

The opportunity for notification should be available to applications in the merit or impact tracks, where assessment would be against one or more policies, or where objective rules and tests are not available or do not cover the application.

Where does this practice already operate in Australia?:

- All jurisdictions have notification requirements for most types of applications.
- In **South Australia**, defined notice requirements are linked to the degree to which an application complies with development assessment policies.
- **Western Australia** links classes of applications to defined notice requirements.
- A similar proposal is being considered as part of the *Better Decisions Faster* program in **Victoria**.

Next Steps:

Develop guidelines that set out the appropriate circumstances for notification and identify relevant techniques to use. This could be done in conjunction with the development of guidelines proposed in Leading Practice Ten.

LEADING PRACTICE SEVEN: PRIVATE SECTOR INVOLVEMENT

Private sector experts should have a role in development assessment, particularly in:

- **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.**

What this leading practice achieves:

The use of private sector experts has the potential to improve the speed and efficiency of a range of decisions and enable local government staff to concentrate on more complex policy-related applications.

What CDC said:

"There are many functions that can be outsourced or performed by registered or accredited certifiers; good supervision is essential when the proponent is also the client. Certification options are integral to the formulation of the criteria." (CDC Vol 1 p17)

Stakeholder feedback:

Private sector involvement was generally accepted for providing advice to both applicants and decision makers. A role for the private sector in certifying compliance with technical criteria and in pre-lodgement certification was debated and there were divided views about the extent of benefits. All stakeholders agreed that private sector operators will need to have appropriate skills and competencies.

Where does this practice already operate in Australia?:

- In **South Australia** private planning consultants can assess and decide planning consent matters under delegation from council. **South Australia** is also proposing that the private sector can assist applicants in negotiating pre-lodgement agreements with referral agencies.
- In **New South Wales** a private certifier can approve certificates such as compliance and construction certificates, complying development certificates and conduct mandatory inspections of buildings.
- In **Victoria**, private building surveyors certify compliance with the building code and with certain Rescode requirements for specified classes of development. Pre-lodgement certification by the private sector operates in a number of **Victorian** councils.
- In **Queensland**, private building certifiers certify compliance with the building code and can issue development permits for building work. Local government can accept private compliance checking of plans and works required by permit conditions.

Existing DAF resource or project:

DAF has published a Practice Guideline: *Extending Private Sector Involvement in the Development Assessment Process*. This guideline outlines a variety of ways in which the private sector can assist in development assessment and decision-making.

Next steps:

Include guidelines about private sector involvement in the explanation of tracks recommended in Leading Practice Four, including the need to establish competencies for private sector operators.

STAGE 3 DETERMINATION	Decisions should be clearly made at the most effective level against specific assessment criteria.

Development assessment processes should encompass a range of options for the determination of applications, appropriate to the technical and policy complexity of the decision being made. Current practice includes decision-making by local government, planning officers under delegation, expert panels and private certifiers.

It is preferable that there be a clear separation of policy and decision-making for most types of applications, particularly those that are code-assessed against pre-set criteria. These non-discretionary decisions ought to be able to be made under authority delegated by the local council to officers or where appropriate, by private certification.

Consultation revealed a degree of scepticism that objective rules and tests could or should be developed that would cover all situations. For development in the merit track, there will be some applications that can reasonably be dealt with by assessment against objective rules and tests and policy statements and some that cannot.

Local government officers under delegation should determine those that can.

There will also be applications that involve a departure to policy, which require a decision that balances competing policy objectives or raises issues of public interest. There were differing views about the appropriate mechanisms to determine these types of applications. Because of this, the model suggests two options for the determination of applications in the merit track that are not determined by professional officers.

LEADING PRACTICE EIGHT: PROFESSIONAL DETERMINATION FOR MOST APPLICATIONS

Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:

Option A – Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council.

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.

What this leading practice achieves:

Objective and expert evaluation of applications against known policies and objective rules and tests provides efficient and transparent assessment of most applications.

Providing a call-in power allows the policy maker to take control of applications that will either have a significant impact on the achievement of policy or which, by their nature, are likely to establish policy.

What CDC said:

"It is estimated that over 95% of all original determinations are made by the professional staff of agencies and councils, most of the remainder by ministers and councillors.

...Since not all determinations can or should be made by staff, each level of government requires an independent assessor, whether one person, one or more persons from a panel, or a body such as the South Australia's Development Assessment Commission. Three subsidiary principles follow:

- *Assessment as an expert administrative process needs to take place under conditions of transparency and accountability....*
- *Public consultation in such a system of assessment is about access to information and accountability, to oversee the application of criteria which were adopted with active community engagement; it is about understanding the effect of the criteria and how they might be changed, but it is not about influencing a political decision on a specific project.*
- *The senior executive level of a particular jurisdiction – ministers, councils, possibly agency heads, etc – should be able, in defined circumstances and/or through defined processes, call in a proposal for determination, provided that the 'jurisdictional call-in' is an explicit, public intervention for stated reasons." (CDC Vol 1 p15)*

Stakeholder feedback:

Most applications are dealt with by officers now. Stakeholders generally agreed that professional officers (either public or private as appropriate) should determine proposals in the code track. However, while it was agreed that an independent expert panel should assess proposals in the impact track, some stakeholders believed that elected representatives (local government or the Minister) should make the decision. Local Government held that elected representatives must retain the authority to determine applications in accordance with community expectations and policy objectives. This authority could be delegated to officers or a panel, provided a call-in power is retained. Community representatives generally supported the retention of decision-making power with local government but accepted that it could be delegated to officers or a panel if desired. Industry preferred independent panels determining applications.

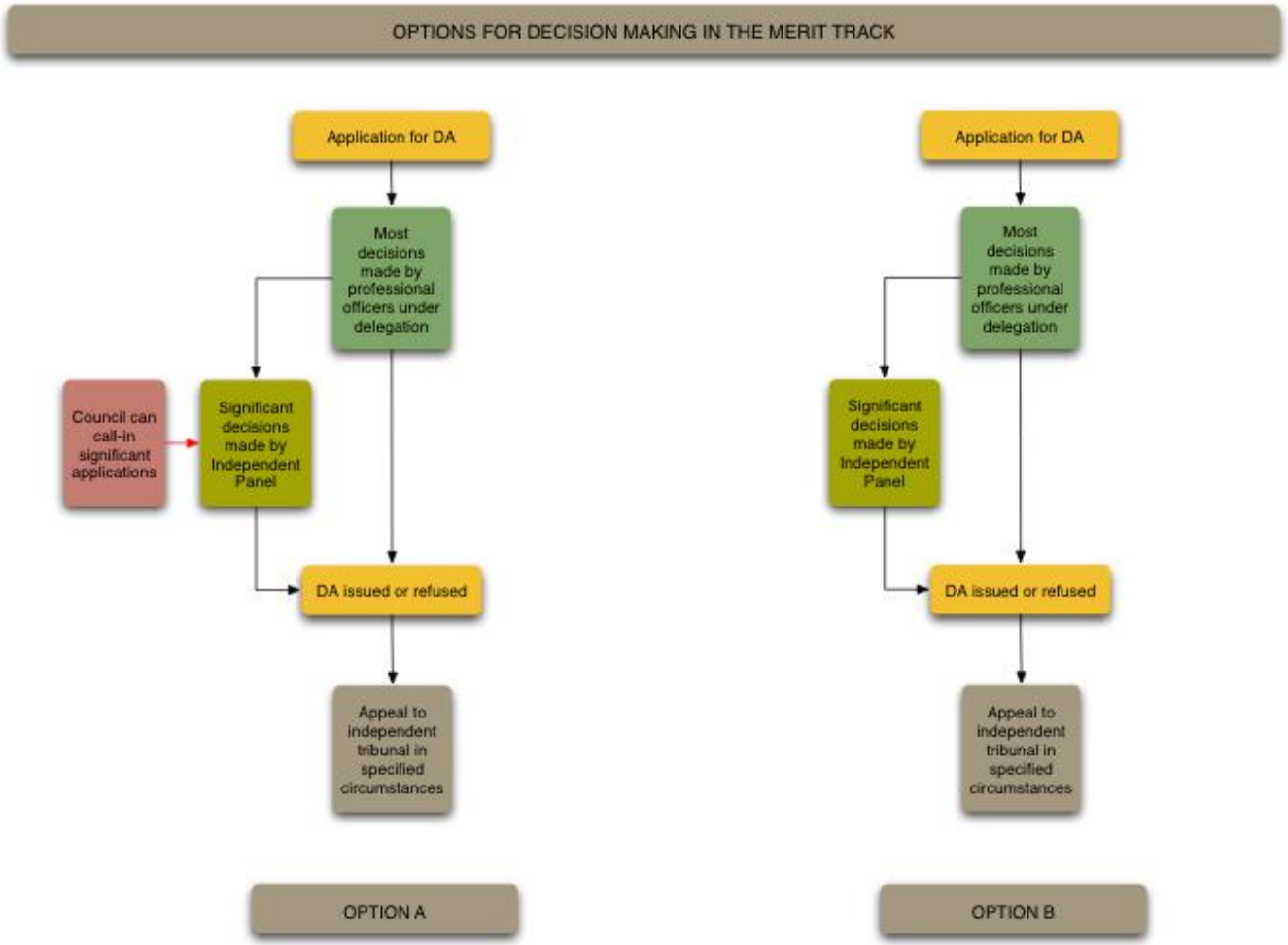
Where does this practice already operate in Australia?:

- South Australian legislation provides for development assessment panels and is moving to increase the proportion of specialist members. The Minister has the ability to list in the regulations developments which are to be assessed by a State Development Assessment Panel.
- The Northern Territory has development consent authorities that include representatives from local government and the community.
- Independent Hearing and Assessment Panels (IHAPs) are used by some councils in New South Wales but have an advisory capacity only.
- State significant development is identified up-front under New South Wales legislation
- In Victoria, the Minister has publicly available guidelines under which he/she exercises a call-in power, provides reasons for each call-in, and reports annually to Parliament on the use of these powers.
- In Queensland, councils can form a development assessment panel. The Minister must report to Parliament the reasons for any call-in and the reasons for the decision.

Next Steps:

Develop guidelines on how development assessment panels might work, including information regarding their make-up, their period of tenure, their funding and their relevance to both local and regional circumstances.

Develop guidelines for effective delegated authority decision-making and for the appropriate exercise of call-in powers.


OPTIONS FOR DECISION MAKING IN THE MERIT TRACK
Application for DA
Most decisions made by professional officers under delegation
Council can call-in significant applications
Significant decisions made by Independent Panel
DA issued or refused
Appeal to independent tribunal in specified circumstances
OPTION A
Application for DA
Most decisions made by professional officers under delegation
Significant decisions made by Independent Panel
DA issued or refused
Appeal to independent tribunal in specified circumstances
OPTION B

STAGE 4 APPEAL	A right of review should be by an efficient and independent process.

A right of review should be less costly, less formal, less adversarial and quicker than a formal court process. Any such review should be carried out as a second assessment against the same rules and tests that applied to the initial determination.

In considering whether there is a role for third-parties, it is necessary to distinguish between the right of affected people to be informed and to make submissions about a proposal and the right to appeal after a decision has been made.

If the rules and expectations associated with the public notification of development proposals are clear and these processes are undertaken in accordance with policy, there should be no need for third-party appeal rights on many matters of merit, although there may be some benefit derived from notification.

LEADING PRACTICE NINE: APPLICANT APPEALS

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.

What this leading practice achieves:

Where a decision is discretionary, fairness and transparency of process requires that an applicant should be able to seek a second evaluation of the application, but only against the same policies and objective rules and tests as the first assessment.

What CDC said:

"...there needs to be a ladder of review processes – from simple and local for most cases through to full hearings at the State level for a few cases. ...Four subsidiary principles arise:

- *Review processes that are readily accessible and efficient can improve the efficiency of decision making...*
- *A right of review must be practicable, not entailing time and costs which are a significant proportion of the projects total time and cost...*
- *Conversely, review processes are of diminishing significance and frequency as discretion and political intervention is reduced; technically excellent criteria and objective assessment do not give rise to grounds for appeal..." (CDC Vol 1 p15)*

CDC also proposed that an applicant should have the opportunity to seek a review of a decision by a second assessment at a higher level in the consent authority. This approach could be implemented in both the options proposed in Leading Practice Eight if desired.

Stakeholder feedback:

It was accepted that for applications in the code track, there should only be an opportunity for the applicant to seek a review of the assessment against the code. For the merit track, proponents should be able to seek a review in appropriate circumstances. This review mechanism should be less costly, quicker and less formal than a legal review and should allow for the use of mediation in suitable situations.

Where does this practice already operate in Australia?:

- **Victorian** legislation allows an applicant for a planning permit to appeal to the Victorian Civil and Administrative Tribunal (VCAT).
- Applicants in **New South Wales** are entitled to seek a reconsideration of certain proposals within 12 months of the date of determination of the application.
- **Victoria**, **South Australia**, the **Australian Capital Territory**, **Tasmania**, the **Northern Territory** and **Western Australia** all have independent review tribunals.

Next steps:

Develop guidelines that establish consistent and appropriate criteria for the review of assessment decisions.

LEADING PRACTICE TEN: THIRD-PARTY APPEALS

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.**

What this leading practice achieves:

Avoids unnecessary review where objective rules and tests have already been established by a consultative process. Where Option B in Leading Practice Eight applies, an opportunity can be provided for a review of a decision by an expert panel that a council considers contrary to policy objectives.

What CDC said:

"…In a criteria-driven system, where value judgements are not being made in assessing a project, third party appeals are not required: instead, full community engagement should characterise the formulation of the criteria and the approval of the statutory documents. On a case by case basis, if the assessment authority believes that the criteria entail third parties being significantly affected by judgements about quality or impact, rights to third party review can be defined in the statutory document itself" (CDC Vol 1 p15)

Stakeholder feedback:

There were widely differing views about the benefits and appropriate circumstances for third-party appeals.

Where does this practice already operate in Australia?:

- **Victorian** legislation and planning schemes provide mechanisms to both limit and allow third-party submissions and appeals.
- Third-party appeals are limited by legislation in **New South Wales** to 'designated development' proposals only.

Next steps:

Develop guidelines that establish consistent and appropriate criteria for the review of assessment decisions.

4 SIX DEVELOPMENT ASSESSMENT TRACKS

The model proposes six assessment tracks based on project complexity and impact. The planning ordinance or regulatory instrument assigns classes of use or development to a track. An applicant therefore knows in which track their application will be assessed and determined before it is submitted.

The six tracks are summarised in the diagram below and described in more detail in the following pages.

How is the track for an application set?

The track is set by the statutory instrument.

When developing the implementation of a policy, the jurisdiction should consider the characteristics of the six tracks and assign classes of use or development to the track that appropriately reflects the minimum level of assessment necessary to achieve the policy outcome.

An applicant establishes the track for an application by consulting the planning instrument.

Who makes the decision?

The decision maker for each track is set by legislation or by the regulatory instrument, as appropriate. The construction of the six tracks is designed to provide the opportunity for decisions in the **Self Assess** and **Code Assess** tracks to be made by an expert professional assessor.

TRACK 1: EXEMPT

Development that has a low impact beyond the site and does not affect the achievement of any policy objective should not require development assessment.

Development that does not require development assessment should be simple to identify without the need to submit an application.

The statutory plan may specify parameters below which no consent is required. If these parameters are not met, it should be clear whether the proposal then requires a permit or is prohibited.

TRACK 2: PROHIBITED

Development that is not appropriate in specific locations should be clearly identified as prohibited in the ordinance or regulatory instrument so that both proponents and consent authorities do not waste time or effort on proposals that will not be approved.

It should not be necessary to submit an application to determine that a proposal is prohibited.

TRACK 3: SELF ASSESS

Where a proposed development can be assessed against clearly articulated quantitative criteria and it is always true that consent will be given if the criteria are met, self assessment by the applicant can provide an efficient assessment method.

The criteria must be set out in advance so that a proponent can prepare an application that conforms to the criteria and submit it with suitable documentation to show that it meets the criteria.

Assessment in this track is against the criteria only, so this type of application will generally be suitable for certification by a qualified person. Little judgement will be required as to whether the criteria are met and there would be no need for public notification. A standard consent would issue.

There is also no need for any review mechanism as an application will either meet the requirements or will not. Consent is only available to applications which comply with preset criteria.

TRACK 4: CODE ASSESS

Development assessed in this track would be considered against objective criteria and performance standards. Such applications would be of a more complex nature than for the self assess track, but still essentially quantitative.

Assessment would be by an expert assessor and judgement would be required, for instance as to whether or not a design solution meets a performance standard. Private sector certification is possible.

Provided the application meets the criteria, a standard consent would be given.

There should still be an opportunity for an applicant to seek review of an assessor's decision not to give consent, but no other parties would be involved.

TRACK 5: MERIT ASSESS

This track provides for the assessment of applications against complex criteria relating to the quality, performance, on-site and off-site effects of a proposed development, or where an application varies from stated policy. Expert assessment would be carried out by professional assessors.

In specified circumstances, the views of other parties or agencies may need to be sought before making a decision. Where assessment involves evaluating a proposal against competing policy objectives and where objective rules and tests are not available, or do not cover the application, opportunities for notifying the community may be provided.

Consent is likely to require the formulation of a set of consent conditions specific to the proposal.

Generally, an applicant will be provided with the opportunity to seek a review of conditions or of a refusal to consent. In specified circumstances, an opportunity for third-parties to seek a review of the decision may be appropriate.

TRACK 6: IMPACT ASSESS

This track provides for the assessment of proposals against complex technical criteria that may have a significant impact on neighbouring residents or the local environment.

Expert involvement would be required to prepare the application and generate predictions. Expert involvement is required to assess impacts and the accuracy of predictions.

This track expects that the proponent would prepare an impact assessment as part of the application and that there would be pre-set criteria for the content and quality standards of that impact assessment.

Assessment of these proposals is likely to benefit from the views of a range of parties and agencies and a decision about the need for and extent of public notice would usually be required.

Generally, assessment would require the evaluation of the applicant's documentation and the views of other parties by an expert assessment panel. This type of application would generally be of such a scale or significance that it should appropriately be determined by elected representatives (local government or the Minister) based on the advice of the expert assessment panel.

Consent would always include complex performance conditions that would require ongoing compliance.

As the views of all parties would have been considered during the expert panel process, a further opportunity for review is not necessary.

5 RECOMMENDATIONS

Government, industry, and the community agree that current development assessment processes can be substantially improved.

DAF has presented an effective framework to guide reform and ensure the most appropriate outcomes are achieved for the built environment.

Further work is required in strengthening elements of the leading practice model. Adoption of the model framework presented in this paper, however, is an essential first step towards real reform.

THE MODEL

DAF commends the leading practice model to Australian Governments as an important first step in the process of development assessment reform and harmonisation.

NEXT STEPS

To support the implementation of the leading practice model, DAF recommends that the following work be undertaken:

1 Develop guidelines for writing planning policies that support effective development assessment and facilitate the achievement of good development outcomes.

2 Develop guidelines for writing objective rules and tests relevant to development assessment.

3 Prepare a more detailed explanation of the six proposed tracks. Include guidelines about appropriate private sector involvement in administering the tracks.

4 Explore opportunities to pilot the proposed tracks.

5 Develop guidelines for referral to assist local government and referral agencies.

6 Develop guidelines that set out the appropriate circumstances for notification and identify relevant techniques to use.

7 Develop guidelines on how development assessment panels might work, including information regarding their make-up, their period of tenure, their funding and their relevance to both local and regional circumstances.

8 Develop guidelines for effective delegated authority decision-making and for the appropriate exercise of call-in powers.

9 Develop guidelines that establish consistent and appropriate criteria for the review of assessment decisions.

REFERENCES

Links to all referenced documents can be found on the Development Assessment Forum website **www.daf.gov.au**

Centre for Developing Cities 2003a, **Leveraging the Long Term: A Model for Leading Practice Development Assessment. Volume 1**, University of Canberra, ACT

Centre for Developing Cities 2003b, **Leveraging the Long Term: A Model for Leading Practice Development Assessment Volume 2**, University of Canberra, ACT

Development Assessment Forum 1999 **Principles of Leading Practice in Development Assessment Processes**, Department of Transport and Regional Services, ACT

Development Assessment Forum undated, **Practice Guideline: Extending Private Sector Involvement In The Development Assessment Process: Towards A Certification Model**, Department of Transport and Regional Services, ACT

Development Assessment Forum 2001 **Good Strategic Planning Guide**: Strategic Land Use Underpinning Local Government Planning and Development Assessment Systems and Processes, Commonwealth Department of Transport and Regional Services, ACT

Development Assessment Forum 2004 **Road Map to a Model DA Process: Engaging with Stakeholders**, Department of Transport and Regional Services, ACT

Small Business Deregulation Taskforce 1996 **Time For Business: Report of the Small Business Deregulation Taskforce** November 1996, Commonwealth of Australia, ACT

Socom Pty Ltd 2004 **Improving the Planning and Development Systems in Australia: Consultation Report**, Socom Pty Ltd, VIC

GLOSSARY

Objective rules and tests –

(a) "…are transparent and binding (embodied in statutory documents not discretionary policy),
(b) can be objectively applied by experts,
(c) with consistent and predictable results,
(d) are as precise, specific, quantified and objective [measurable] as possible (based on evidence not guesswork),
(e) use the appropriate dimensional, performance or impact techniques to be both effective and efficient, and
(f) are expressed in plain English using common terms." (CDC Vol 1 p18)

Planning policy –

Planning policies can take a variety of forms and serve a variety of purposes. They may be expressed in the form of spatial plans, written statements, standards or programmes, or a combination of these forms. They may be contained in a statutory instrument which carries legal force and effect, or in a non-statutory instrument which is used as a guide to decision-making. They may range from prescriptive policies which are very explicit in stating what is and is not allowed, to more promotional policies which are concerned with promoting desired patterns of land use and development.