Local Government Association of South Australia

The voice of local government.

Expert Panel - Planning System Implementation Review

Submission

October 2022

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Overview

The LGA is committed to State and local government working together towards an improved planning system for South Australia that delivers better outcomes for all users. Councils want to provide an excellent level of service to both the community and the development industry.

Implementation of the planning system and adoption of the Planning and Design Code (the Code) will only be successful through a close partnership and collaboration between the State Government and its agencies, and the local government sector.

Local government has always recognised that with any new system there would be teething issues and a period of adjustment for all users including councils, the community and industry. Local government understood that errors would be identified within the iterative process of developing the Code, and the eplanning system may not initially work as anticipated. As these things have indeed eventuated, councils have used their best endeavours to support and implement the system.

From the beginning of the reform process in 2014, through the development and implementation of legislation, the Code, and the eplanning system, the LGA has positively and proactively engaged with the various planning ministers, their departments, and the State Planning Commission (SPC). The LGA has supported local government through each reform phase, providing advocacy, advice and support

The LGA has provided over 40 submissions during the reform, development and implementation stages on the legislation, Code and eplanning system.

It is acknowledged that some of the system's shortcomings, particularly with the eplanning system are being addressed, and a large number of enhancements to the system have been made (396 as at 31 July 2022). However, the LGA and its members remain of the view that more work is required, in close collaboration with local government, to create a planning system that benefits all South Australians.

The LGA calls for the Expert Panel to consider changes to the current planning system in response to the following priorities:

1. A well-informed community empowered to genuinely engage with the planning system.
2. A Planning and Design Code that encourages innovative policy.
3. Quality housing and urban design policy that is not considered as a cost add on, but as an essential part of an acceptable living environment.
4. Good design outcomes embedded in innovative, clear, and well-articulated policy within the Planning and Design Code.
5. Increased regulated and significant tree protection that recognises the importance of these trees and discourages removal through significant penalties.
6. A clearly defined role for Relevant Authorities within the planning system that is understood by the community.
7. Redirection of the financial burden of administering and implementing the planning system away from local governments and their communities.
8. Urgent resolution of inefficiencies in the eplanning system in collaboration with local government.

While it is recognised that planning policy outcomes may not be clearly seen or understood for two to three years, there are current concerns with the operation, efficiency and usability of the planning system. Our member councils have told us that they:

- Do not consider that South Australia has an effective, efficient and enabling planning system.
- Do not consider that the new planning system has enabled or provided improvements in planning outcomes in their respective LGAs.
- Do consider there are benefits in having a statewide Planning and Design Code.
- Consider there should be greater opportunity to provide for a more localised and nuanced policy to preserve and enhance local character.
- Consider the new planning system has simplified interactions but there is still a way to go in terms of understanding and usage of the system.

To assist the Expert Panel in its deliberations the LGA submission includes the following:

1. Documented LGA Position Statements on the Planning System.
2. Commentary on the original objectives of planning reform as expressed in the report by South Australia's Expert Panel on Planning Reform '*The Planning System We Want" and the* Panel's Vision and the 5 Guiding Principles established as a framework for reform.
3. Summary of LGA research into costs and resource implications associated with ongoing operations of the planning system.
4. Detailed comments in respect to the eplanning system.
5. Detailed comments in respect to the Planning and Design Code, and
6. Recommended amendments to the *Planning, Development and Infrastructure Act 2016*, associated Regulations and Practice Directions.

This submission has been supported through consultation with councils at both the elected member and staff level (CEO, planning and building practitioners and support staff), and developed with reference to a comprehensive survey with over 200 respondents.

LGA Position Statements on the Planning System

The Planning System

- The new planning system has resulted in a loss of community voices and local knowledge in its decision-making process.
- Developing a successful planning system depends on the State Governments commitment to ensure full participation of councils and communities in decision making. The State government should work with councils to maximise the local benefits of planning processes, strategies and policies.
- Local government should have a clear role as the primary authority for planning, and its role and responsibilities for statutory functions should be clearly defined within the legislation.
- Local autonomy is the best way to promote interest of communities and to ensure consistent and transparent planning activities. Planning decisions should be made locally.
- Local government acknowledges the benefits of an improved planning system and will continue to work closely with the State Government and its agencies on the implementation of the *Planning, Development and Infrastructure Act 2016*. Through positive collaboration and mutual respect, we can establish a planning system that is in the best interests of local communities.

Funding the new Planning System

- Councils believe they should be the decision-making authority and consider that this role should be properly funded by fees and charges set at a cost recovery level. Local government opposes reforms that result in a more unfavourable financial position in relation to planning functions. Councils seek an enhanced role under the current system.
- Local government considers that the costs of the eplanning solution and the SA Planning Portal have been shifted inequitably onto councils and councils consider that the system is costing them more not less. These additional costs are required to be funded through council rates. A more equitable system would enable councils to cost recover from the applicant the cost of implementing the planning system.

Education

- Planning and building staff shortages across the state have reached breaking point and needs urgent attention. South Australia is seeing increased residential growth, particularly on the outskirts of metropolitan Adelaide, and this increased demand has placed greater strain on council planning resources. The absence of university pathways for planning, surveying and valuation in our state means there is a deficit of qualified graduates to fill roles and meet demand. If economic growth is to occur, there needs to be sufficient resources to facilitate and sustain it. Bringing together state and local government, academia and industry is an important step to understand the issues and find a solution to meet the skills gap.
- Education is vital to achieving effective engagement in planning processes affecting communities. Councils can undertake and support local education, awareness and consultation

activities. The State Government and State Planning Commission also have responsibilities in educating and supporting the community and stakeholders around the planning system.

Transparency

- The State Planning Commission should be independent of the State Government with only impartial representatives being members of the Commission and the committees it establishes. A person with contemporary local government understanding should be a continuing member of the Commission.

Developer Contributions

- Infill development, green and brown fields development is putting pressure on existing council infrastructure. A mechanism should exist for councils to seek a development contribution to be charged against new development that require upgrade of local infrastructure to support the proper servicing of the intended development proposal. Developer contributions are a fair and viable means of raising revenue to improve local infrastructure and assets. The application and regulation of developer contributions to address pressures on existing infrastructure should be addressed in the Planning, Development and Infrastructure Act 2016.

Infill Development

- Building sustainable densities is an important aspect to healthy and vibrant communities. The current policy on cumulative impacts of infill development should be reviewed and monitored with appropriate targets and controls established, and enhanced policy relating to infill development to address issues such as loss of character, carparking, the loss of private open space and the urban tree canopy.

Heritage and Conservation

- Local government recognises the benefits of protecting our heritage while emphasising that classification of ‘heritage’ and ‘conservation’ status should be made locally and based on sound evidence. Local government does not support the implementation of policies that lack a sufficiently robust evidence base.

Principles of Good Design

- Planning decisions should be made cognisant of good design principles and in the best interests of the local community. Further consideration of good design within the Planning and Design for all forms of development is required.

Hazards

- Local government recognises its obligations to identify hazards in making planning decisions, and in applying hazard policies stringently unless suitable mitigation elements can be incorporated into proposed developments.
- There should be greater consideration within the Planning and Design Code for the effects of climate change.

Areas of Cultural and Spiritual Values

- Protecting areas of cultural and spiritual value is a shared responsibility of all tiers of government and communities. Further work is required to include policies within the Planning and Design Code that consider non-European cultural and spiritual values.

Urban Greening, Tree Planting and Offset Fund

- Local government understands that higher levels of natural plant life (trees and shrubs located in street verges, parks and on private properties) in local communities has many social and environmental benefits, particularly in urban communities.
- To achieve urban greening and the Tree Canopy Cover Target in the Greater Adelaide 30 Year Plan there is a need for increased urban greening on both public and private land and a consistent canopy cover established to both reduce the heat island effect arising from increased paved areas and mitigate the effects of climate change. This can only be achieved by increased greening and trees being planted on both public land (reserves, open space and streets) and private land. To reduce the heat island effect in the higher density infill areas there is a need to ensure that trees are planted on private land and green space is provided.
- The cost of paying into the Offset Fund in lieu of planting a tree should be commensurate with the full life cost of the tree.

Planning and Development Fund

- Local government supports the Planning and Development Fund being used for the purpose it was established for:
    i. To improve access to public open spaces and places, and
    ii. To enable the planning, design and delivery of quality public space that is essential to healthy, liveable communities.
- The Planning and Development Fund should not be used for administrative purposes including the ongoing management of the online planning system, or public works or public policy that is not consistent with the aims and intent of the Planning and Development Fund which is to improve access to public open space, and to enable the planning, design and delivery of quality public space that is essential to healthy, liveable communities.

PDI Act and Regulations

The following amendments to the *Planning, Development and Infrastructure Act 2016* (PDI Act) and associated regulations are recommended:

- Division 1, State Planning Commission, re-establish the Commission as a body independent from government. Amend s33 to provide for an independent Chief Executive Officer and amend s18 to ensure that a person with contemporary local government experience is an ongoing appointment on the State Planning Commission, based on the advice provided by the LGA.
- Amend s18(b) to clarify that the public sector member (ex-officio) is a non-voting member.
- S44 Community Engagement Charter, a comprehensive review of the operation and implementation of the Charter should be undertaken.
- Amend the regulated and significant tree legislation with the aim to protect regulated and significant trees, this would include expanding the definition, determine a value for trees and

include as a fee when a regulated or significant tree is to be removed and increased penalties for the illegal removal or damage to these trees.

- S56, Fees and Charges, the requirement for councils to pay the eplanning levy should be repealed.
- Sub- section 67 (4) and (5) should be repealed to ensure that planning policy is determined by proper planning principles through broad community consultation, rather than through a selective vote of property owners.
- S106.2 and Reg 54(1), Deemed to Satisfy (Minor variations), the ability of Private Certifiers to make minor variations to applications should be repealed or at the very least provide greater guidance and controls on what are minor variations.
- S121 (2) Design Review, a person undertaking specified forms of development should be required to undertake design review, rather than being a voluntary process.
- S125, Timeframes in which to make a decision, sub section 2 Deemed Consents should be repealed.
- Reg 125, Timeframes within which a decision must be made. More flexible time frames for complex applications that are not subject to public notification should be introduced.
- Public notification provision should be reviewed, with more targeted public notification provided and third-party appeal rights introduced for identified forms of performance assessed applications assessed by Assessment Panels and subject to public notification.
- S136, 137, regulation 3F and definitions relating to Regulated and Significant Trees. An independent review of the regulated and significant tree legislation should be undertaken with the aim to increase protection of regulated and significant trees, this would include expanding the definition. A value for trees should be determined and regulated and included as a fee when a regulated or significant tree is to be removed.
- Planning and Development Fund, amend s194 and 195 and regulation 119 to ensure that the fund is only used to improve access to public open spaces and places and enable the planning, design and delivery of quality public space that is essential to healthy, liveable communities.
- S197, Off-setting contributions, the operation and applicability of the Urban Tree Off Set Scheme should be reviewed and the contribution for not planting a tree under the Urban Tree Off Set Scheme to be substantially increased to provide an incentive to plant trees on private land and to enable councils to recover the cost of planning and maintaining the trees on public land.
- Include mechanisms by which developer contributions can be regulated and applied to address the pressures on existing local infrastructure.
- A comprehensive review of fees and charges should be undertaken with consideration being given to the lodgment fee currently being paid to the State government being paid to the council and consideration should be given to a verification and development approval fee.

More detailed amendments are included in Section 6 of this submission.

Eplanning

It is recognised that the State government has worked with local government to address numerous concerns with the eplanning system. However, councils have told us that the eplanning system is not delivering on the 'promised' efficiencies and cost savings to councils and users of the system. Ninety eight (98%) percent of councils have identified that their costs have increased because of the implementation and actioning the new planning system.

Concerns remain with the operation, efficiency and usability of the Planning Portal, concerns highlighted with the planning portal include:

- inefficiencies the planning portal is causing within councils, particularly increased administration requirements and increased time verifying, assessing and determining basic applications. The consensus is that the enhancements being made are effectively 'tinkering' at the edges rather than addressing some of the fundamental shortcomings, the only substantive fix in 18 months being to public notification.
- as a result of the inefficiencies of the planning portal, timeframes for verification, assessment and building inspections as required by the PDI Act are proving difficult to achieve without councils having to allocate further time or resources;
- these inefficiencies are also resulting in reduced customer service outcomes as a result of the interface with the planning portal and communities understanding of the portal;
- reporting system and system indicators not enabling accurate data analysis or reporting to be provided to councils, this has implications for budgeting and resource provisions. There is also concerns with the veracity of the recently released Performance Indicators Report and how that might be interpreted; and.
- planning portal compliance with the provisions of the PDI Act. There are examples where timeframes or decision pathways are not consistent with the interpretation of the PDI Act.

As with the arterial road network and the health system, the eplanning system should be regarded by the State government as an essential and critical service which is funded through general revenue rather than being dependant on funding from external sources (eplanning levy and lodgement fees).

There is a need to work more closely with local government to address the concerns identified and to make the system more effective and less time consuming. To that end it is recommended that the State government enter into a service Level Agreement with the LGA that identifies a program of priority issues that require resolution.

Planning and Design Code

The following recommendations are provided in respect to the Planning and Design Code:

- Include the ODASA Design Guidelines into the Planning and Design Code –Principles should be incorporated in the Planning and Design Code to ensure that Object 4 (d) and s59 of the Act are fully addressed and incorporated within the Code.
- Reintroduce detailed Desired Character Statements for zones to provide clarity in relation to outcomes sought.
- Enable councils the opportunity to include more localised policy within the Planning and Design Code to reflect local neighborhoods and local character.

- Undertake a comprehensive independent review of the benefits and impacts of infill development in inner metropolitan Adelaide and amend the D Code based on the findings.
- Provide greater policy consideration and detail for regional South Australia in the Code
- Engage with local government on the provisions of policy and design guidelines required to protect heritage and character areas.
- Ensure policy is well written and understood and the language used is not ambiguous and non-contradictory and enables clear outcomes.

Section 5 of this submission contains more detailed discussion on recommended changes to the Code.

Planning Reform Objectives

Throughout the planning reform process, the LGA has had regard to the report by South Australia's initial Expert Panel on Planning Reform '*The Planning System We Want",* that Panel's Vision *'to ensure that South Australia has an effective, efficient and enabling planning system'*, and the 5 Guiding Principles established by it as a framework for reform:

1. Partnerships and Participation
2. Integration and Coordination
3. Design and Place
4. Renewal and Resilience
5. Performance and Professionalism

It was in this broader reform context that the LGA developed 13 Planning Reform Objectives endorsed by the LGA Board.

As part of its submission on Phase 2 and Phase 3 of the Code the LGA provided the following table, which provided a summary of the relationship between the Expert Panel's Guiding Principles and the LGA Planning Reform Objectives, and the LGA's view at the time as to whether the Goal or Guiding Principles of the Expert Panel were being successfully achieved in the development of the draft Code.

The LGA has updated its comments following the full implementation of the Code in March 2021 (see below) and incorporated comments provided by our members from our recent survey.

Original Expert Panels Guiding Principles	LGA Original Planning Reform Objectives	What we have heard from our members
Partnerships and Participation An easily understood planning system that establishes constructive engagement between users and decision-makers	Opportunities for public participation in the planning system are clear, with an emphasis on influencing outcomes at the strategic planning and policy development stages. Council 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.	*'The system is clunky, bureaucratic, unintuitive, inefficient, difficult to navigate'.* *'Portal is not user friendly. It has shifted responsibility away from local government'.* *'System difficult to navigate, takes more staff time, creates ratepayer dissatisfaction'* *'There are still flaws on the system and a lot of time wasted for what should be simple and straight forward applications. '* *'Most ratepayers are unaware that the planning system is on-line and so are not aware of the Portal for submitting applications or how to check the Code. A lot of developments proposed do not have a pathway and as such the document generated by the Code is too large for a member of the general public to work through'* *'The assessment time takes much longer, and the policy is cumbersome and difficult to interpret. The DA portal is rigid and does not allow for the path of applications to change as the assessment and further information is obtained. However, I will note there has been some enhancements to make this better but still needs a lot of*

Original Expert Panels Guiding Principles	LGA Original Planning Reform Objectives	What we have heard from our members
		work. A lot more time is spent explaining the policy to customers as the cannot understand.'
Integration and Coordination A planning system that enables an integrated approach to both high-level priorities and local policy and decision delivery.	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. Planning policies and processes are underpinned by triple bottom line thinking, which balances the State's economic, environmental and social interests. 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.	*'I see the benefits but there needs to be some opportunity for local area content and taking into consideration the communities needs and wants'* *'By consolidating the many development plans into one document, the system is easier to navigate and there is an improved level of consistency across LGAs'.* *'It has simply led to adopting a lowest common denominator approach to planning'.*
Design and Place A planning system that supports the creation of places, townships and neighbourhoods that fit the needs of the people who live and work in them now and in the future.	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.	*'The Code provisions are weak and/or too prescriptive and doesn't provide consistent high-quality design or built form outcomes.'* *'I think the consistent zoning across the state is a good move however there is a loss of locality specific planning policy. It is very generic and despite being the 'Design' Code I think that there has been a real dumbing down of good planning policy with respect to high quality design'* *'The Code provides very little sustainability or environmental features and does not address aspects such as urban heat island effects or climate change'.*
Renewal and Resilience A planning system able to respond and adapt to current and future challenges through innovation and the implementation of sustainable practices.	Planning policy can be updated quickly and efficiently, with amendments that are not seriously at variance with the Planning Strategy taking no more than six months to be finalised from the date of lodgement	*'It feels as if there has been a reduction in the level of understanding of the Planning system and policies by the general public'.* *'Going online has created significant improvement, timing and records management'* *'The portal works but is still buggy and requires improvement'* *'There is a fair way to go with mapping and interactivity'*

Original Expert Panels Guiding Principles	LGA Original Planning Reform Objectives	What we have heard from our members
Performance and Professionalism A planning system that is consistent, transparent, navigable, efficient and adaptable, that supports clear-decision making and encourages and facilitates investment.	Policies and processes are clear and consistent, resulting in equity, fairness and certainty. 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. The development assessment process is robust but is more efficient through the removal of red tape. The appeal and review process is timely and cost effective and compliance and procedural matters are principally resolved through a non-judicial process. 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 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.	*'It has simplified 'easy' applications yet has imposed measures that negatively affect complex applications'* *'The loss of appeal rights limits involvement by members of the public and deemed consents put pressure on staff to make quick rather than better decisions'.* *'Online system creates efficiencies in lodgement and assessment, however effectiveness is undermined by limited policy, enabling planning system is compromised by increased consultation, but with no appeal rights which creates misleading levels of communication to the public.'* *'It is confusing for the general public to know who is responsible for planning assessments and it is confusing for many people to access the new planning system. Council Assessment Panels have gone from having to assess new development applications against 250 pages of guidelines in our council's Development Plan to having to assess applications against several thousand pages of criteria in the Planning and Design Code. Plus, we have lost much valuable detailed planning criteria which have been replaced with broad generic criteria which give little guidance to planning authorities and leave the door open to poorer quality development being approved. The new planning system has removed power from local communities and their local representatives.'* *'Portal is not user friendly. Shifted responsibility away from local government. It is not easy to fix errors'.* *'The digitalisation of the state planning system has brought many benefits for people wanting to undertake development and councils administering the Act.'* *'The process is longer, the clock rushes and forces poor decision making and added stresses from the applicant onto assessing officers, the portal is cumbersome to work with.'* *'The role of certifiers should be reviewed in particular the quality and correctness of their decision making. Also, despite an electronic system there are many steps where applicants don't have to use the portal and council becomes responsible for filling in the blanks.'* *'The new system does not have a hard copy of the plan and there are more than 5000 pages to navigate if printed out in its entirety. There is no digital democracy for all community members (particularly the general public) who are not able to navigate the online system. In fact, the system actively discourages them.'* *'It's more cumbersome, more time consuming, more expensive to administer, and it stripped fine-grained detail from desired character statements that mattered to locals'.*

Planning system costs and resourcing

Local government anticipated increased financial costs and resourcing implications during the period of transition from the old to new planning systems.

In 2018 the then Department of Planning, Transport and Infrastructure identified the following potential financial benefits and savings for local government with the introduction of the new planning system and eplanning system:

Potential financial benefits:

- Saving of $50 per development application for each council (minimum)
- $70 – 250K saving for each council per annum (supported by LGA report data)

Savings for councils across a range of areas:

- DPTI managed system maintenance
- DPTI managed system help and support
- Licensing
- Staff efficiency
- Legal costs

The LGA has sought advice from councils regarding the financial and resource impacts of the new planning system. Almost all councils reported increased ongoing costs or resourcing burden associated with the new planning system. Very few councils consider that the fees associated with the new system offset these additional costs.

The most frequently experienced source of additional costs and resource implications were planning consultants, legal costs, and administration costs relating to Section 7s. Many councils have identified the need for additional planning staff and the need to engage contractors to act as Assessment Manager.

Other sources of additional costs specified by councils include:

- Existing staff working longer hours to complete manual tasks required by the planning portal
- Cost of hardware and IT staff to support portal
- Payment to PlanSA to administer the portal
- Staff time on calls to PlanSA to fix issues with portal
- Staff time to communicate new system to the community
- Loss of income from fees
- Administration of concurrence checks

ePlanning Levy

Section 56 of the PDI Act enables the Chief Executive of the Department of Trade and Investment with the approval of the Minister to impose fees and charges with respect to gaining access to, or obtaining information held and may require a council to contribute towards the cost of establishing or maintaining:

a) the SA Planning Portal;
b) the SA planning data base; and
c) any online atlas and search facilities.

The eplanning levy was introduced during 2018/19 prior to the system becoming operational, following advocacy from the LGA, councils with low rates of development applications were not required to pay a

contribution, while for remaining councils in years 2018/19 and 2019/20 received a 50% discount on the contribution.

The full contribution became payable in 2020/21 and the contribution is based on the groupings shown in the table below:

Council	No. Councils	Contribution	
Group A Development values>$100mil	19	$59,100	$1,122,900
Group B Development Values >$50Mil & < $100Mil	6	$18,300	$109,800
Group C Development Values >$10Mil & < $50Mil	25	$6,100	$152,500
Group D Development Values < $10Mil	18	$0	$0

It is estimated that local government is required to pay $1,385,000 annually towards the cost of maintaining the planning portal and data base. The determination on the Group is based on a three year rolling average on the development values, a council may therefore move up or down on an annual basis between categories. This can place some uncertainty during the budget setting process.

There is no sunset clause to this requirement in the PDI Act, and the contribution requirement has increased annually since inception.

To reduce the cost impacts of the new system, Section 56(2) of the PDI Act should be repealed to reduce the financial burden on local government. If this is not recommended, the Chief Executive of the Department of Trade and Investment should be required to enter into a Service Level of Agreement with the LGA, that establishes an agreed project plan, priorities and pathways for the improvement of the eplanning system which are a priority for local government

The LGA recommends Section 56(2) of the PDI Act be repealed to reduce the financial burden on local government.

Lodgement Fees

Under the previous Development Act the relevant authority (generally the council), received a $80 lodgement fee for each development application lodged, this was in addition to the assessment fee. Under the PDI Act, the State Government now receives this lodgement fee which has increased to $184 per application.

The State Planning Commission's Performance Indicator Snapshot for 2021-2022 indicates that over 40,000 applications were lodged in the period. The State Government would have received more than $7.3M in lodgement fees. When combined with the eplanning levy councils are required to pay, the financial impact of these two charges is more than $8.3M dollars annually to local government.

It is acknowledged that some application fees and compliance fees have increased, however the responses from local government suggests that these increases do not address the shortfalls as a result of the eplanning levy and loss of the lodgement fee in addition to the other costs associated with the new system.

Councils support their role as a local decision-making authority and consider that this role should be properly funded by fees and charges set at a cost recovery level. Local government opposes further reforms that result in a more unfavourable financial position in relation to planning functions.

The LGA has not undertaken a detailed analysis of the recently introduced fees and charges under the PDI Act and is currently seeking information from Planning and Land Use Services in relation to income received through the SA Planning Portal, to enable the LGA to undertake a Cost Impact Assessment. This information is not currently forthcoming. If the State government is not willing to provide this information to the LGA the State Government should undertake this review.

The LGA recommends that to in order to fairly and adequately resource the assessment of development applications:

1. Fees and charges should be based on a cost recovery approach,
2. The lodgement fee paid by applicants be paid to the relevant council and not the State Government, and
3. The State Government undertake a review of statutory fees and charges set under the PDI Act to ensure that the fee structure adequately reflects the costs to councils of administering the requirements of the Act

ePlanning System

The eplanning platform introduced as part of the South Australian planning reforms sought to benefit the planning system by improving ease of use, efficiency, and consistency, and by centralising and simplifying the planning assessment process. In December 2021 the LGA surveyed its members on the eplanning system. We heard from our members that:

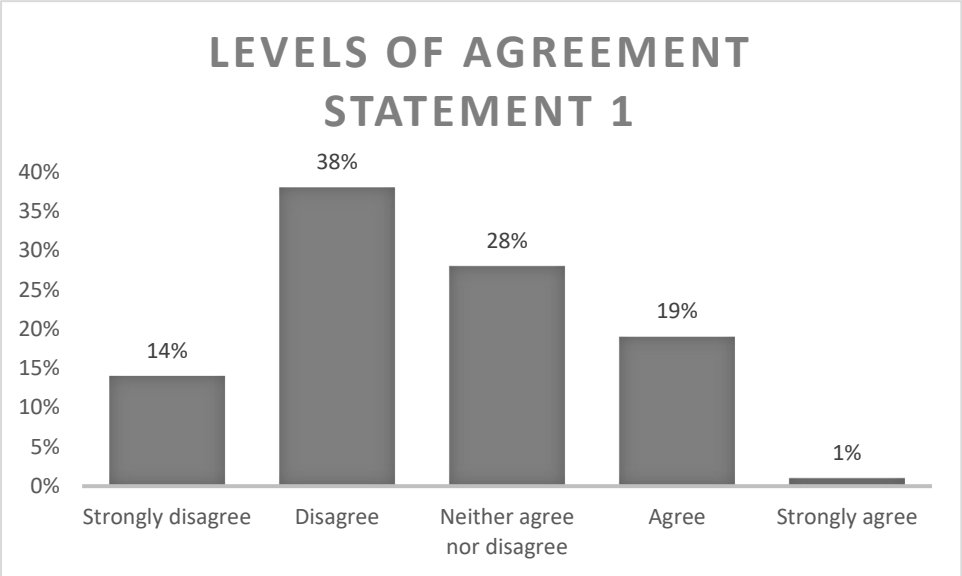
1. The planning portal is causing inefficiencies within councils, particularly increased administration requirements and increased time verifying, assessing and determining basic applications. The consensus is that the enhancements being made were effectively 'tinkering' at the edges rather than addressing some of the platform's fundamental shortcomings, with the only substantive fix in 18 months being to public notification. There does not appear to be a clear and agreed system improvement framework to identify agreed priority areas and a timeframe for system improvements.
2. As a result of the inefficiencies of the planning portal, timeframes for verification, assessment and building inspections as required by the PDI Act are difficult to achieve without councils having to allocate further time or resources.
3. Inefficiencies are resulting in poorer customer service outcomes as a result of both the shortcomings of the planning portal interface, and communities' limited understanding of the portal.
4. Reporting systems and system indicators are not enabling accurate data analysis or reporting to be provided to councils, with implications for budgeting and resource provision. There are also concerns with the veracity of the recently released Performance Indicators Report and how that might be interpreted.
5. In some instances, planning portal timeframes or decision pathways are not compliant with the PDI Act.
6. The eplanning system is not delivering on the 'promised' efficiencies and cost savings to councils and users of the system. Ninety-eight (98%) percent of councils have identified that their costs have increased because of the implementing the new planning system.

The LGA survey sought to provide an understanding of the extent to which councils had experienced the proposed benefits of the eplanning system, specifically:

- An online eplanning system that is easy to use and understand
- One centralised place for all of South Australia's planning and development matters
- An electronic planning system to simplify processes and speed up the movement of information, saving all users time and money
- Improved consistency of all planning decisions, with legislative amendments implemented centrally under standardised interpretation
- eplanning simplifies how community members, developers, decision makers and others interact with the planning system

The LGA sought feedback from councils based on the four statements above for which respondents were asked to note their level of agreement. Findings in relation to each statement are described below.

Statement 1: The eplanning platform is easy to use and understand

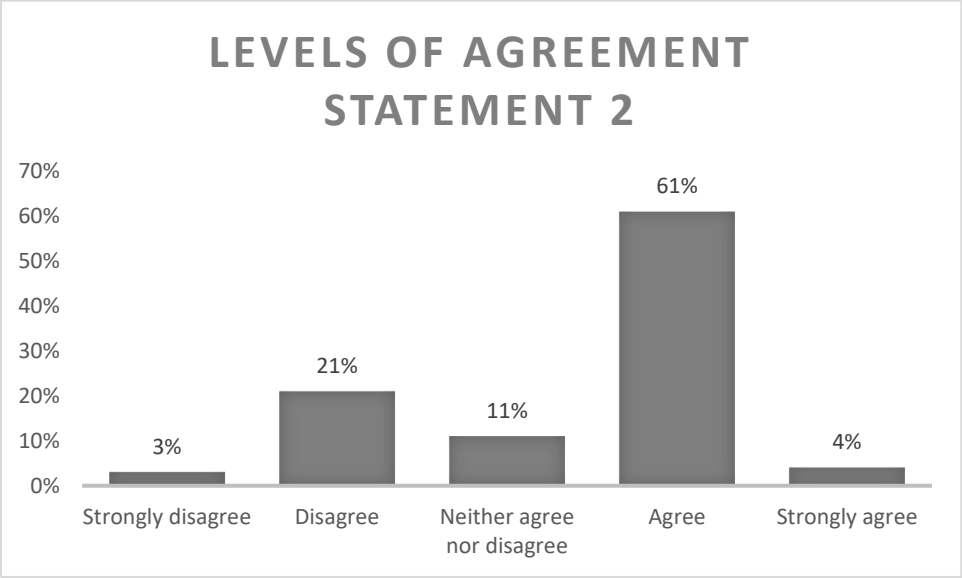


More than half of respondents (52%) disagreed to some extent with the statement, while almost a third (28%) neither agreed nor disagreed, and 20% agreed to some extent.

Comments indicated that the system was not easy to use or understand for the general public, with applicants often finding it confusing and seeking support from councils. Many respondents noted that some aspects of the system work well, but others do not. A commonly identified area for improvement was the system's ability to cope with errors or variations from the standard, as was the requirement for "double handling" and large amounts of administration such as managing automated emails and the need to save relevant non-system emails as pdfs.

> *"The Portal has tried to streamline too much but in doing so has added so many extra steps and work arounds now.*
>
> *The fact an applicant cannot stage a consent after gaining planning consent is a big issue and we now have to ask applicants to relodge an application.*
>
> *Our team is spending so much time trying to assist residents, builders, and other professionals with navigating the portal because they do not find it user friendly at all."*
>
> *- Respondents*

Statement 2: The eplanning platform is one centralised place for all of South Australia's planning and development matters.

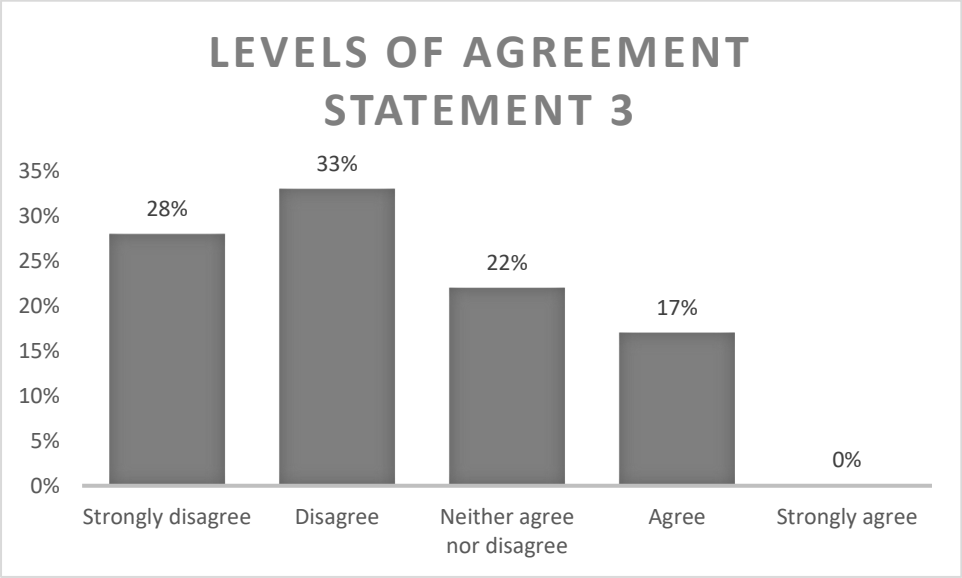


The majority of respondents (65%) agreed to some extent with the statement, while around a quarter (24%) disagreed to some extent, and 11% neither agreed nor disagreed.

Feedback provided noted that planning and development matters that are not part of the eplanning platform include customer inquiries (which still go direct to councils), wastewater applications triggered by development applications, Section 7 searches, building rules assessments and notifications, compliance and enforcement, site histories, details of applications under the previous system, Crown development applications, and Council referrals for restricted development.

> *"It is a centralized platform for application decision making. It is an inadequate platform for record management, reporting on development statistics and legislative obligations, and a prohibitive platform for post approval development compliance matters.*
>
> *"Whilst this may be the intent, the public will still contact Council and provide details to Council, so data is maintained outside of the portal. The public do not know where/how to find the information contained on the portal."*
>
> *"By nature is a central source as all applications must be lodged through portal. however vague policy leads to scope for differing interpretations and lack of knowledge from PlanSA help desk passes a lot of requests back to council when it is actually a DIT issue."*
>
> *- Respondents*

Statement 3: The eplanning platform has simplified processes and sped up movement of information, saving all users time and money.

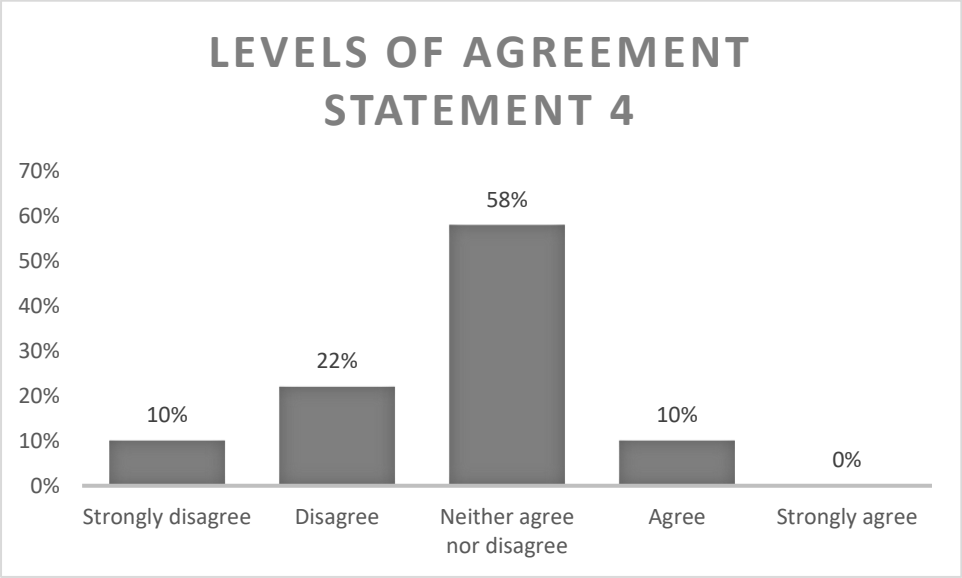


Most respondents (61%) disagreed with this statement to some extent, with almost third (28%) strongly disagreeing. Twenty two percent neither agreed nor disagreed, while 17% agreed – though none strongly agreed.

Several comments noted that application fees increased substantially with introduction of the planning portal. Some noted verification as a time-consuming part of the new process – effectively a pre-assessment. Others described straightforward applications becoming more involved within the eplanning platform and new system or described limitations of the eplanning platform in managing workflows and responding with agility to changes and new information.

> *"The majority of developers still try to submit their additional information directly to Council staff via email."*
>
> *"Prevents collaborative approach to assessment. It will result in more refusals."*
>
> *"The verification process is far more complex, applicants do not understand this process. The process does not stop the public from submitting low quality information it just makes it more difficult for Councils to work with. The inability of Council staff to change obvious errors in the portal extends the time and complexity associated with an application. The portal is clunky and not user friendly, it is not intuitive. I have been told by local builders that clients will avoid lodging an application all together rather than deal with the portal."*
>
> *"It is obviously an expensive platform for an applicant. Cost of lodging an application can be 1/2 of the cost of the structure itself. And I wouldn't necessarily agree the information is more readily available than before, I think users are more confused about where to find information such as RFI's and documents."*
>
> *- Respondents*

Statement 4: The eplanning platform has improved consistency of all planning decisions with legislative amendments implemented



Over half of respondents (58%) neither agreed or disagreed with the statement. More than a third (32%) disagreed to some extent, while 10% agreed and none strongly agreed.

Comments noted that while the documentation of applications is consistent under the platform, the less specific nature of the Planning and Design Code allows broad scope for policy interpretation leading to less consistency in planning decisions.

> *"Policies are to broad based and open for different interpretations. It should be more specific. We have found that those who operate across various council areas find it confusing due to differences in interpretation."*
>
> *"Assessment processes don't necessarily result in the same decision so the platform cannot guarantee legislative compliance. There is still human interpretation that can never be overcome. People lodge applications as accepted or DTS even though they aren't fitting that particular pathway and the system allows that because plans can't be qualified by the computer it takes a person."*
>
> *"I receive a lot of feedback from applicants/ customers/ people on the industry that there is still a lot of inconsistency between councils in regards to advice/ interpretation and application."*
>
> *Respondents*

A smaller number of comments spoke positively of their experience with the system, for example:

> *"Overall Council is extremely pleased with the new SA Planning System. Our costs have more than doubled however we believe the current system to be a definite improvement and more efficient. The applicants have accepted the online lodgement process."*
>
> *"The new state Planning system can be considered a very successful implementation of a new system and credit to the parties involved. There are a number of areas for improvement, including fair distribution of fees, code amendment process, the public notification system and reporting, however these are matters that can be rectified over time with proper consideration and consultation by DIT, AGD and councils. In particular reference to costs and resourcing implications, year to date fee development application income figures indicate that councils will*

recover less income for an unchanged resource expenditure, thereby further spreading the costs of private development to all ratepayers."

- Respondent

Planning and Design Code

Many councils, particularly those in regional areas with limited resources, have acknowledged the benefits of the statewide Code, particularly noting that the SPC is the relevant authority for developing policy and maintaining the document. Notwithstanding this, councils have identified a number of concerns with the Code in its current form.

Innovative policy

The opportunity to develop and improve on policy, to test and to be innovative has been lost with the introduction of a single Code that is managed through Planning and Land Use Services and the SPC.

Under the previous system councils had the opportunity to be innovative through developing and testing policy in their local areas. This enabled other councils to look at the success or otherwise of the policy and often 'borrow' the policy, adapt and improve on it for their own local communities.

While this approach has drawn a negative response from the development industry due to varying policy across council areas, it led to innovation and ongoing improvement in policy content.

While some see value in the new centralised approach which has created 'homogenous' policy across both urban and rural areas, it has stifled innovation and reduced policy content to the "lowest common denominator".

To overcome this, councils should be provided the ability to develop and test policy at a local scale and other councils should be able to adapt the policy to suit their own local circumstances.

If the current approach is to remain, the SPC must provide more detailed and comprehensive feedback on issues raised by councils and provide a clear framework and understanding on how policy issues raised by councils can be addressed. The current approach with Planning and Land Use Services acting as a 'gate keeper' and the confidential nature of many of the SPC's discussions lacks transparency, reduces confidence in the system and reduces the ability of councils and the community to be engaged in policy development.

Local policy content

The State Government, in the early stages of development, communicated that the Code would be comprised of current Development Plan policies in the new Code format, in effect a "like for like" transition to precede future changes to policy content developed in consultation with councils.

The Code in its current form does not uphold that commitment. Policy intent, content and tools fundamental to councils' ability to sustain and enhance the quality of suburbs and neighbourhoods from existing Development Plans have not been replaced with substantive planning policy of a level of detail or rigour necessary to enable good development outcomes.

The Code omits local policy that has been developed by councils in consultation with their communities over considerable time and at considerable expense. The State-based approach as adopted in the draft Code has seen the removal of both this local policy, and in many instances, Structure Plans and Master Plans specifically developed for local and unique areas. Inclusion of these local area plans was supported by the Expert Panel in its original recommendations for Planning Reform (specifically Reform 9).

While councils now have the opportunity to seek amendments to the Code, including the inclusion of sub zones, it is disappointing that the SPC did not work more closely with councils during development

of the Code to identify these local variations for inclusion in the Code as part of the current consultation process.

Councils now face a loss of local policy in the first instance, and through an amendment process (that is not yet well understood) will be required to renegotiate policy that has previously been publicly consulted on and received Ministerial approval.

Good design

A key premise of the South Australian Planning Reforms and as identified in the PDI Act and State Planning Polices is the focus on good design outcomes under the Code. Good design and placemaking must be a central objective of the Code and must be enforceable in the assessment process.

The importance of design to good planning outcomes has been emphasised throughout the reform process, including:

- The Expert Panel's proposed Reform 9 *Build design into the way we plan*, recommending protections for streetscape, townscape and landscape character to be embedded within the Planning Code, and the use of urban design approaches such as structure plans, Master Plans or Urban design frameworks at the local level.
- The PDI Act's specific reference to high quality design, including explicit direction that amongst other attributes design should respond to local setting, character and context, be adaptive and compatible with the public realm, be inclusive and accessible to people with differing needs and capabilities, and support active and healthy lifestyles and to cater for a range of cultural and social activities1.
- State Planning Policy 2 Design Quality (SPP2) which aims to *elevate the design quality of South Australia's built environment and public realm*, sets out *Principles of Good Design* and *Principles of Universal Design*.

While the intent to enthusiastically promote good design is clear, this is not fully realised in the Code, which is the most practical and effective instrument available to realise the intent of the PDI Act.

SPP2 explicitly aims to "*recognise the unique character of areas by identifying the valued physical attributes in consultation with communities*, and *respect the characteristics and identities of different neighbourhoods, suburbs and precincts by ensuring development considers existing and desired future context of place.".* As the Code currently stands, these objectives have not been met. The reduction of the number of zones overall, and stripping away of well developed, locally responsive policy guidance, will result in standardised policy across many neighbourhoods and suburbs which fails to recognise and respect unique character.

The LGA remains supportive of the *Design Guidelines- Design Quality and Housing Choice*, prepared by the Office for Design and Architecture and the Principles of Good Design included within the Guidelines. To be effective, these Guideline and Principles need to translate into the Code to enable them to form part of the assessment process.

Councils and the community have an expectation that the Code will significantly "lift the bar" in terms of the quality of design outcomes being achieved through the planning system. Therefore, good design and placemaking must be a central objective of the Code and must be enforceable in the assessment process.

Good housing and urban design should not be considered as an add on, but as an essential part of an acceptable living environment.

Infill development

Local government recognises that building sustainable densities is key to healthy and vibrant communities. However, current policy should be reviewed to gain a greater understanding on cumulative impacts of infill development, particularly as it related to the loss of local character, the loss of the urban tree canopy, carparking, stormwater and other council managed infrastructure, and both public and private open space.

While the Code accommodates continued infill development in the metropolitan area, the design, impacts and management of infill development should be addressed more thoroughly in the Code, ideally with the guidance of a broader strategy. In the Code, infill development should be considered with regard to policies addressing design, neighbourhood character, and local context.

While there is some recognition of these issues in the State Planning Policies that have been approved by the Minister for Planning under section 58 of the PDI Act, there is no holistic policy to guide the land use planning and funding settings specific to infill development in urban areas. This policy vacuum contributes to disjointed decision making within the planning system about the intensity of development permitted within an area, and the capacity of that area to accommodate high levels of infill development.

A better understanding is needed of the cumulative impacts of the current policies that encourage infill development, whether the areas that are identified for further infill development have the service and infrastructure capacity to sustain further development, the level of investment that is funded. These issues should be thoroughly considered and clearly articulated in a State Planning Policy on Infill Development to address the loss of local character, the loss of the urban tree canopy, carparking stormwater and other council managed infrastructure and both public and private open space.

Car Parking

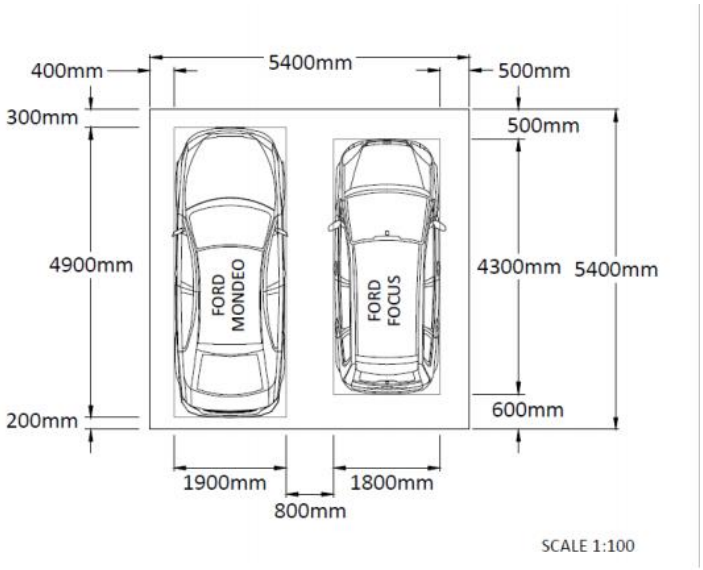
Garaging and on-street (Parking, Access and Public Realm)

Code policies have provided increased support for reducing driveway widths and provision for on-street parking. This has aided in improving design outcomes to support better amenity and public realm through reducing impacts of driveways, both on street trees, landscaping and on-street parking.

However, the Code has not addressed the issue of the internal dimensions of garages.

It is important that the policy recognises and responds to the function of garage spaces particularly given the limited storage and utility spaces within dwelling and external areas. The internal dimensions of the garage should include the ability to walk past parked vehicles within garages with household items, such as a bike or trolley, to ensure they are suitable for their intended use and function as flexible spaces.

The following diagram demonstrates the limited space available around two standard vehicles within a double garage of 5.4mx 5.4m in dimensions. The diagram highlights the difficulty of entering or exiting the vehicle, provision of storage and opening an internal door into the dwelling



The dimensions for garages used in the Code are based on Australia Standard AS/NZS 2890.1:2004, which uses vehicles sales data from 2000.

According to VFACTS[1], seven of the top ten cars sold in Australia in 2020 were either utilities or SUV's

- Ford Ranger: 5.36m (L) x 1.86m (W)
- Mitsubishi Triton: 5.2m (L) x 1.78m (W)
- Toyota Hilux: 5.3m (L) x 1.85m (W)
- Mazda CX5: 4.55m (L) x 1.76m (W)
- Toyota RAV 4: 4.6m (L) x 1.84m (L)
- Hyundai Tuscan 4.48m (L)x1.85M (W)
- Toyota Prado: 4.99m (L) x 1.86 (W)

Across the range of the most popular vehicle models, widths do not vary much. However, popular utility vehicles are significantly longer in length, and SUVs are slightly longer than a standard sedan. The diagram above demonstrates the difficulty in parking utility vehicles and SUVs within domestic garages due to their length.

In researching car parking provisions within other states, Victoria has carparking provisions that are provided in accordance with the Municipal Planning Strategy and the Planning Policy Framework. Amongst other matters the policy framework seeks to:

- To ensure that car parking does not adversely affect the amenity of the locality; and
- To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

These provisions identified below require the internal dimensions of garages to be both longer and wider than the Australian Standards:

> Car spaces in garages or carports must be at least 6 metres long and 3.5 metres wide for a single space and 5.5 metres wide for a double space measured inside the garage or carport.

[1] top selling cars in Australia 2020 - Bing

Source: *52.06 CAR PARKING (delwp.vic.gov.au)

On this basis, it is recommended the dimensions for garages within the Planning and Design Code be amended to:

1. Single width car parking spaces:
   a) a minimum length of 6.0m per space
   b) a minimum width of 3.5m
   c) a minimum garage door width of 2.4m
2. Double width carparking spaces (side by side)
   a) a minimum length of 6.0m per space
   b) a minimum width of 6.0m
   c) a minimum garage door width of 2.4m

Energy positive and carbon neutral housing

The current Code does not have clear policy outcomes that promote more energy efficient and carbon neutral buildings, apart from minimal standards of insulation and shading and tree planting.

Land use planning can play an important role in climate change mitigation and adaptation. The PDI Act requires the Minister for Planning to prepare a specific State Planning Policy relating to climate change. The Policy identifies the specific policies and principles that should be applied with respect to minimising adverse effects of decisions made under the Act on the climate and promoting development that is resilient to climate change. A key action for government is to strengthen these policies for climate smart development through the planning system.

Upcoming amendments to the National Construction Code will see a requirement for new constructions to increase from a 6 star to 7 star rating. The Code should also be amended to promote more energy efficient and carbon neutral buildings.

Heritage and Conservation

Conservation of heritage and historic character through the planning system remains a vital concern for councils and communities around the state. From the earliest stages of planning reform, the LGA and councils identified that highly effective heritage conservation policies existed in Development Plans under the *Development Act 1993*, and that these should be expanded rather than lost through the planning reform program.

Local government recognises the benefits of protecting heritage while emphasising that classification of ‘heritage’ and ‘conservation’ status should be made locally, based on evidence. Local government does not support the implementation of policies that lack a sufficiently robust evidence base.

Previous Historic Conservation Zones (HCZ) and Contributory Items (CI) were highly valued by local communities and councils and while local government supported the decision to transition many of the existing contributory items into the Code as ‘representative buildings’, concern has been expressed that these “representative buildings” are not defined in the Table forming Part 7 of the Code.

The interface of development assessment and heritage is particularly significant in the context of State Government directions for urban development. Urban infill development can be compatible with heritage conservation, and with good design offers opportunities for improving streetscapes and areas in ways that can benefit local heritage places and incentivise their restoration and use. Conversely, such development also has the potential to impact negatively on local heritage, and clear policies and frameworks for decision making are required where heritage conservation must be considered alongside other objectives in pursuit of infill targets.

While it is understood that the Code seeks to provide for flexibility of design response for development that impacts on heritage places, the loss of detailed development guidance currently contained in many Development Plans has the potential to result in more development proposals that fail to have appropriate regard to heritage significance and value. The policies as expressed in the Code further have the potential to slow down the development assessment process and result in more refusals of development applications.

The LGA reinforces its support for the following recommendations *2018-19 Inquiry into Heritage Reform* of the Environment, Resources and Development Committee of Parliament:

- *State Government commences a statewide, collaborative and strategic approach to heritage reform through development of a staged process and that any reforms undertaken must result in streamlined, clear and responsive processes and transparent and accountable decision making;*
- *A statewide, strategic approach to identifying heritage of local and state significance, involving the community and interested stakeholders, which is appropriately funded by state government,*
- *An audit or review be undertaken of local and state heritage places and contributory items, with the aim of working collaboratively with community and local government;*
- *A suitable long term funding base (that incentivises management for heritage and disincentivises deliberate neglect of heritage) for the management of heritage be identified and secured; and*
- *Sub- section 67 (4) and (5) of the Planning, Development and Infrastructure Act 2016 should be repealed in order to ensure that planning policy is determined by proper planning principles through broad community consultation, rather than through a selective vote of property owners.*

On the basis the LGA supports changes to the planning system to enable:

a) Policy provided in the Historic Area overlay that provides specific guidance and recognition in relation to ‘Representative Buildings’.

b) Clearer reference in the Historic Area Overlay (and Character Area Overlay) to specifically refer to the statements in the Performance Outcomes.

c) The State Government establish a Panel comprising persons of appropriate expertise, including representation from the Commission, Heritage Council, local government and relevant Government agencies to prepare a roadmap for a staged approach to heritage.

Urban Greening, Tree Planting and Offset Fund

Local government understands that having higher levels of natural plant life (trees and shrubs located in street verges, parks and on private properties) in local communities has many social and environmental benefits, particularly in urban communities. Councils shall continue to explore and implement strategies that maintain and increase levels of urban greenery to maximise the benefits of green cover.

To achieve the Tree Canopy cover in the Greater Adelaide 30 Year Plan there is a need to understand that to reduce the heat island effect arising from the increased paved areas and effects of climate change there is a need for a consistent canopy cover. This can only be achieved by trees being planted on both public land (reserves, open space and streets) and private land. To reduce the heat island effect in the higher density infill areas there is a need to ensure that trees are planted on private land. Developers and builders need to recognise and accept that they have a responsibility to ensure this occurs and the responsibility does not lie only with State and local government.

A significant improvement to planning policy proposed in the early draft of the Code was the requirement for tree planting and provision of deep root zones within infill development / small lot housing. Unfortunately, this policy has been significantly weakened due to the introduction of an Offset Fund for the planting of the trees required by the policy.

Concerns about the approach to providing opportunities for offsetting the planting of a tree on these sites include:

- It undermines the overall intent and purpose of the policy for improving amenity and comfort outcomes for occupants and surrounding properties to infill development sites that the tree would provide over time.
- It focusses planting by local councils into the public realm, which is most likely to be away from the locations where canopy loss is occurring on private sites, and arguably where the benefits of additional tree planting would be less beneficial to the overall policy intent (i.e. open spaces and streets already have tree coverage and lower urban heat island impacts).
- It assumes that this will be available as an option, whereas more established locations (where much of the infill is occurring) already have streets filled with mature street trees and open space areas with established trees (or in some cases limited or no open space areas within the same walkable neighbourhood).
- The inadequate cost is a disincentive to plant trees, which is what the community expects for development and will not result in better design and amenity outcomes for occupants. Some of the assumptions within the BDO Cost Benefit Analysis about those that would take up the fund payment in lieu of the trees planting on the site are open to question.

The cost-benefit analysis undertaken by the State government to support the Offset Fund, misrepresented the amenity benefits of trees within development sites from a comfort viewpoint, particularly considering increasing higher temperature days as a result of climate change (this is as opposed to direct energy cost savings).

The offset scheme option places increased responsibility on local government in achieving the 30 Year Plan's urban tree canopy target, when it is private landowners and developers that are reducing tree canopy, contrary to the policy.

The position also ignores the importance of trees to contributing to better design outcomes for infill development (spaces created to accommodate the trees are part of this), and this is a key objective of the and the PDI Act.

While the LGA understands the rationale for such a scheme particularly in areas with reactive soils which would result in an increase in the cost of footings, the LGA is concerned that the scheme is open to misuse and as such considers that the following should be taken into consideration in a review of the scheme:

1. The scheme is established to fulfil the requirements of a 'Deemed to Satisfy' application, many of which will be assessed and approved by Private Certifiers, local government has been concerned that given the minimal cost being proposed for the tree ($300), applicants and Private Certifiers will see the Offset scheme as the preferred option rather than a tree on the site. Clear rules and obligations are required to be placed on the Private Certifier and applicant to ensure that payment into the offset scheme in lieu of a tree on the property is the last resort. Where a tree is unable to be located on a property in conjunction with a dwelling because of reactive soils, footing costs or setbacks and the applicant is therefore required to pay into the

offset scheme these applications should not be determined as a 'Deemed to Satisfy' application but should become a Performance Assessed Application.

2. Noting that the BDO report suggests that the cost of planting and maintaining a tree on public land is $1600, it is unclear as to why the proposed contribution to the scheme is $300. It is recommended that the cost of the tree should be commensurate with the full life cost of the tree, notwithstanding the benefit the community will receive. While the purchase cost of a tree is low (<$100) the ongoing cost of maintaining the tree needs to be fully considered. The BDO Report identified that the cost of planting and maintaining a tree on council land is $1600 and identifies the community benefits of trees and has used the 'community' benefit as a reason for the offset contribution ($300). However, the BDO report fails to identify the long term economic benefits of a tree planted on private land to the landholder as a result of reduced cooling costs in summer arising from the cooling effects of a tree and its canopy.
3. The size requirement of the tree to be planted on the site, the LGA would recommend that the requirement should be for an 'established' tree, in addition the recent guidelines prepared by Green Adelaide and the State Planning Commission https://plan.sa.gov.au/__data/assets/pdf_file/0019/1100881/Adelaide_Garden_Guide_for_New_Homes.pdf should be mandated.
4. The LGA considers that the planting of an appropriate established tree on the site could form part of the Certificate of Completion/Certification of Occupancy, ie the builder/developer should take responsibility for the planting of the tree, rather than it becoming a compliance issue between the council and home owner.

To achieve the Tree Canopy cover in the Greater Adelaide 30 year Plan there is a need to understand that to reduce the heat island effect arising from the increased paved areas and effects of climate change that there is a need for a consistent canopy cover. This can only be achieved by trees being planted on both public land (reserves, open space and streets) and private land. To reduce the heat island effect in the higher density infill areas there is a need to ensure that trees are planted on private land.

Tree planting policy applied effectively, can contribute to the metropolitan green canopy and result in increased urban cooling, and greater amenity for residents and communities.

Performance assessed pathway

The issue of performance assessed development requiring the consideration on merit against all appropriate relevant provisions in the Code has been identified as an issue requiring further examination. The Code only identifies specific policies from the zone, or general policies that the Commission has deemed relevant to assess against individual development types.

Councils' concerns are two-fold:

1. The importance of getting the classification tables right, and
2. The onerous nature of assessing 'all other Code Assessed' development. In these instances, the relevant authority needs to read through thousands of policies to determine what is relevant.

This has raised an important policy consideration as policy may be missed in the assessment process such as material finishes and articulation of facades, tree planting and water sensitive design.

The completion of classification tables and sufficient time to verify by councils is considered a critical matter.

Environment Resources and Development Court determinations

The recent ERD Court determination, ***ERD-22-23 EVANSTON SOUTH PTY LTD v TOWN OF GAWLER ASSESSMENT PANEL***, 10 October 2022, gives weight and supports the concerns raised in this submission in relation to the eplanning portal and Planning and Design Code. The relevant comments made by Commissioner Rumsby in his determination is provided in Attachment A.

Planning Development and Infrastructure Act, associated Regulations and Instruments

Local government recognises its statutory role in planning for the future and its role as the closest level of government to the community. Communities also expect planning decisions affecting the future of their neighbourhoods to be made locally. The PDI Act, is a move towards a centralised planning system, with a less significant role for Local Government. These changes to the planning system, while expected to promote growth, have disenfranchised the community.

The restoration of local democracy in planning is therefore fundamental to strengthening communities.

During 2022 the LGA undertook a system-wide survey of its members, and has worked with practitioners to identify amendments required to address problems with the *Planning, Development and Infrastructure Act 2016*, (the Act) the associated Regulations and Practice Directions

The following aspects of the PDI Act, regulations and supporting documents should be considered by the Expert Panel:

State Planning Commission

The LGA has historically provided qualified support for the concept of a State Planning Commission.

A key role of the Commission is to achieve better integration of plans and processes across State Government, which has been a barrier for many administrators and users of the system, including councils.

The LGA and the local government sector has appreciated the Chair of the SPC and members of the Commission making themselves available to the LGA and councils, we also acknowledge the diverse skill sets and expertise of the Commission members. However, the LGA has noted that the membership of the Commission would be enhanced if there was a formal requirement to include contemporary local government experience and provide the opportunity for the LGA to nominate a person with local government experience onto the Commission (as is the case with a board range of other State Government boards and committees).

Given the importance of planning to local communities and the significant impacts the PDI Act will have on local government; a member of the Commission with contemporary local government experience is necessary in assisting the Commission to understand and manage these impacts while re-confirming local government's important role in the new planning system.

The LGA recommends that Section 18(3) of the PDI Act be amended to enable the LGA to nominate a person with contemporary local government experience onto the State Planning Commission.

State Commission Assessment Panel

The LGA considers the State Commission Assessment Panel (SCAP) lacks local expertise due to the limited panel size and there being no requirement for a Council nominee to sit on the Panel when applications are being considered for their council area. This is exacerbated by the PDI Act explicitly identifying what the CEO's report can address, and further there are only 15 days to provide the CEOs report to the SCAP.

The SCAP does not have the same requirements for meeting procedures or accreditation as a Council Assessment Panel (CAP). Recognising that the SCAP is required to assess applications of significance, it is considered that SCAP members should be required to have the same expertise and

accreditation requirements as independent CAP members, and the same meeting requirements should apply in relation to transparent decision making.

It is recommended that the SCAP follow the same provisions that apply to panels established by councils (Section 83 of the PDI Act) and the same procedures as a CAP (Part 3 of the *Planning, Development and Infrastructure (General) Regulations 2017.*

Joint Planning Arrangements

Sections 35 and 36 of the PDI Act considers Planning Agreements and Joint Planning Boards (JPB).

A core function of a JPB is the preparation of a Regional Plan, which are required to be completed under the PDI Act (s64).

Many of the state's regional councils would have collaborated to develop a Regional Plan for their area, however, are concerned with the cost and complexity of establishing a JPB under the PDI Act. The LGA identified these issues as potential barriers to the establishment of a JBP when this legislation was being considered by the Parliament. As a result of these barriers no Regional Plans are currently being prepared by councils and the responsibility has fallen on the SPC to prepare all Regional Plans along with the Thirty Year Plan for Greater Adelaide by March 2023.

An alternative option to the Joint Planning Boards the LGA has recommended be explored, would be using existing regional structures, such as Regional LGAs established under the Local Government Act to develop a Regional Plan and undertake the other functions of a JPB.

It is the LGA's understanding that the provisions of Sections 64 and 73 of the PDI Act would need to be amended to enable a Regional LGA to undertake the functions of a JPB.

Assessment Panels

The removal of elected members from assessment panels has been unnecessary and has not met community expectations. It has resulted in a loss of community voices and local knowledge in the decision-making process. A review of the current limit of one elected member on local CAPs should be undertaken to understand the impact of the loss of the community voice and local knowledge in the decision-making process.

Within both metropolitan and regional areas councils have identified a concern with identifying and appointing Assessment Panel members, and the current accreditation system does not encourage a diversity of professions and members. Specifically, this relates to the complexity of the accreditation system, particularly for non-planners, the cost of achieving and maintaining accreditation, and the ongoing Continual Professional Development requirements. These concerns could be addressed through enabling persons who are members of existing associations, such as the Planning Institute of Australia or Institute of Architects to be automatically accepted as an accredited profession, and exempting level two accredited professions from the accreditation fee. The restrictive provisions as to persons who can be appointed as Independent Assessment Panel members, the Continual Professional Development requirements and fees should be reviewed to increase flexibility for appointments.

The role of the Minister to dismiss and reappoint a local assessment panel is heavy handed and unnecessary. Councils can manage the assessment of the bodies they appoint. S86 of the PDI Act relating to local panels should be repealed.

Councils are responsible for the operations, costs, and liabilities of CAPs and Regional Assessment Panels (RAPs).

Currently under the PDI Act there is no statutory immunity from personal liability for members of Assessment Panels, instead liabilities of the Assessment Panel rest with the Council which is in turn covered by the LGA Mutual Liability Scheme.

Any individual appointed to an Assessment Panel acting honestly in that capacity would have rights at common law to be indemnified by the appointing authority.

The legislation is silent on that point in that there is no provision for immunity, transfer or responsibility of liabilities of individual members to the Assessment Panel.

While there have been regulations made to address this concern the LGA is of the view that an amendment to the PDI Act would address this uncertainty. An example of an amendment that would achieve the desired outcome is section 39 of the *Local Government Act 1999* (SA):

39—Protection of members

a) *No civil liability attaches to a member of a council for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or council's powers, functions or duties under this or other Acts.*

b) A liability that would, but for this section, attach to a member of a council attaches instead to the council.

Section 83 and 84 of the *Planning, Development and Infrastructure Act 2016* should be amended to include:

Protection of members

a) *No civil liability attaches to a member of an Assessment Panel for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's powers, functions or duties under this Act.*

b) *A liability that would, but for this section, attach to a member of a Assessment Panel attaches instead to the council.*

Heritage

Section 67 (4) and (5) of the Act requires a plebiscite of property owners where a heritage character or preservation zone or sub zone is proposed. The Act requires that 51% of property owners agree with the proposal.

The LGA strongly opposed this provision when it was proposed as an amendment during the debate on the bill and remains of the view that the requirement for 51% of property owners to agree by a vote to the establishment of a heritage conservation zone should be removed from the PDI Act.

Local Design Review Scheme

While it is recognised that the Local Design Review Scheme has only been in place since March 2021 and much of the guidance material has yet to be finalised, the LGA is recommending a review of this Scheme given the limited acceptance and take up by councils.

In its submissions on the Local Design Review Scheme the LGA expressed agreement with many of the Office for Design and Architecture South Australia's (ODASA's) stated objectives (and perceived benefits), but also argued that the scheme was overly bureaucratic, unlikely to have a positive impact, could be easily ignored by both developers and assessment authorities, and was likely to have limited positive impact on good design outcomes.

Based on this assessment, the LGA recommended the following major amendments to the scheme:

1. The Principles of Good Design should be embedded both within the scheme and the Planning and Design Code.
2. The scheme must operate both pre- and post-application lodgement.
3. Councils must have the discretion to determine which applications will undertake the design review process. Currently section 121(2) of the *PDI Act 2016* cannot accommodate mandatory application of the Local Design Review Scheme because it states that: "A person who is considering the undertaking of development to which this section applies **MAY** apply to a design panel for advice."

The LGA also expressed significant concern that much of the cost burden of the scheme, especially initial establishment costs, fall disproportionately upon councils, rather than the South Australian Government.

For the Scheme to be successfully implemented by councils the concerns raised by local government need to be addressed.

Timeframes and Deemed Planning Consents

The LGA acknowledges that a relevant authority should deal with an application as expeditiously as possible and within the time prescribed by the Regulations.

It is considered that the assessment timeframes in the *Planning, Development and Infrastructure (General) Regulations 2019* (Regulations) do not give adequate consideration to the resources available to councils, particularly regional and smaller councils, to deal with more complex applications. Nor do the timeframes consider those councils that strive for best practice or are in a period of growth and are required to consider multiple complex applications at once. This consideration process requires significant expertise on hand and time to work closely and negotiate with developers.

Under section 125 of the PDI Act, where the relevant authority does not determine an application within the prescribed time, the applicant may give the relevant authority a deemed consent notice. Upon receipt by the relevant authority, planning consent will be taken to have been granted, subject to the standard conditions in Practice Direction 11. Alternatively, within 10 business days, the relevant authority may grant planning consent itself and impose its own conditions. To overturn a deemed planning consent, the relevant authority must apply to the ERD Court for an order quashing it.

There is strong concern about deemed consent provisions applying to performance assessed development. It is the LGA's view that the assessment timeframes in the Regulations and the deemed planning consent provisions in Section 125 result in reduced opportunities for best practice outcomes to be negotiated and will encourage a more adversarial assessment environment, at the expense of the best possible planning outcomes.

Concurrent timeframes for public notification and referrals is considered unrealistic, particularly where the referral agency may need amendments to the application requiring additional notification.

The LGA is of the view that prescribed timeframes should apply to all categories of development, however, deemed planning consents should apply to accepted and deemed to satisfy categories of development only. This would be achieved by amending Section 125 (10) of the PDI Act to exclude all performance assessed development and restricted development from the operation of Section 125.

On this basis it is recommended that:

a) Timeframes for development assessment in the *Planning, Development and Infrastructure (General) Regulations 2019* be reconsidered or subject to flexibility, especially in respect of the resources available to smaller and regional councils and growth councils responsible for complex applications which require significant negotiations with developers to achieve positive outcomes.

b) Repeal the concept of deemed consents and amend s125 (8) to include the ability to apply to the Court for an order requiring the determination of an application for planning consent.

Infrastructure framework

Infrastructure Schemes are not serving the purpose they were intended for.

S162-184 of the PDI Act collectively deal with the establishment of infrastructure delivery schemes for basic and essential infrastructure. The issue for the sector is that the processes and associated resource implications of such statutory schemes are so complex and resource intensive that they have not been taken up. Rather, the traditional model of non-statutory infrastructure agreements tied to land by way of Land Management Agreement continues to be used.

Local government encourage the resolution of this issue in the Act, as a statutory process would be beneficial where land ownership is fragmented, and coordination of infrastructure is more difficult and for infill Councils where smaller scale public realm works are needed to be part-funded by developers. Councils are still having to set up costly and time-consuming legal agreements to leverage good public realm upgrades.

Public notification

Councils have noted concern within their communities around the changes to public notification. There is a view that people feel they have the right to be informed of developmental changes in their neighbourhood.

The Code reduces the public notification requirements, with significantly more land uses being classified as ‘Deemed to Satisfy’, and therefore not requiring notification. In addition, the appeal rights of third parties have also been significantly reduced, with only restricted developments being subject to third party appeal rights.

Notification is an important tool for informing and engaging with communities and the provisions relating to public notification should enable this communication in both metropolitan and regional contexts. The LGA recommends review of Division 2 (Planning Consent) under the PDI Act 2016 and Division 3 (Notice requirements and consultation) of the PDI (General) Regulations 2017 to more appropriately consider the impacts of land use and developments on adjoining owners and communities.

Regulated and Significant Trees

Metropolitan councils and their communities are concerned with the current protections that exist in the planning system to protect regulated and significant trees.

While councils and communities are working hard to plant new trees, there is not enough available space on public land to replace what is being lost from private land because of the reducing allotment size and increasing built site coverage across metropolitan Adelaide.

The LGA has previously written to the Minister for Planning requesting:

"the State Government promptly, conducts a review on the existing "Significant and Regulated" tree laws, with the aim of achieving the goals outlined in the 30 Year Plan for Greater Adelaide, which are:

Urban green cover is increased by 20% in metropolitan Adelaide by 2045:

a) *for council areas with more than 30% tree canopy cover currently, this should be maintained to ensure no net loss by 2045; and*
b) *'for council areas with less than 30% tree canopy cover currently, cover should be increased by 20% by 2045"*

It is acknowledged that the State Planning Commission has recently released an independent Arborist Review that contains a detailed analysis of tree species exemptions including a value/cost assessment of particular tree species and a separate Research Report from the Environmental Institute of the University of Adelaide entitled 'Urban Tree Protection in Australia' which analysed South Australia's tree protections as compared to other Australian states and territories, including the size of trees protected and the various exemptions which currently apply.

This research has demonstrated the weakness of the regulated and significant tree legislation in South Australia compared to other states and provide the evidence to inform planning policy and any the changes need to the regulated and significant tree legislation.

Planning and Development Fund and Open Space

The ability for councils to effectively 'fund and deliver' quality public open space is proving a challenge as Adelaide continues to grow and many parts of South Australia increase in population density.

In addition, in these extraordinary circumstances of social and physical distancing arising from the COVID-19 pandemic, public open space has provided opportunities to escape household confinement and enjoy a host of positive well-being effects, maintain social relationships (while maintaining physical distancing) and provided people with a sense of connection with the outside world.

South Australian councils have also experienced an increase in community usage of its open green spaces during the period of community isolation and social and physical distancing.

The current formula and fund are largely a legacy of greenfield development, which dominated the majority of urban growth when the system was conceived. This approach is no longer suitable for a contemporary context where medium and high-density development accounts for up to 70% of all metropolitan development, as encouraged by the planning framework in the *30-Year Plan for Greater Adelaide*.

The LGA has also previously raised the local government sector's concern with the *Planning, Development and Infrastructure Regulations*, which enable the State Government to use the Planning and Development Fund to pay for the implementation of the State's new planning system, when the purpose of the fund is to *"support the purchase, planning and enhancement of public spaces throughout South Australia".*

The LGA has adopted the following positions in relation to the Planning and Development Fund:

1. *Local government supports the Planning and Development Fund being used for the purpose it was established for:*
    i. *To improve access to public open spaces and places, and*
    ii. *To enable the planning, design and delivery of quality public space that is essential to healthy, liveable communities.*

2. *That the State government engages with local government on the strategic direction of the Planning and Development Fund to support local government in delivering a broad range of open space needs identified in Councils' Open Space Strategies.*
3. *The Planning and Development Fund should not be used for administrative purposes including the ongoing management of the online planning system, or public works or public policy that is not consistent with the aims and intent of the Planning and Development Fund, to improve access to public open space, and to enable the planning, design and delivery of quality public space that is essential to healthy, liveable communities.*
4. *That the annual reporting process on the Planning and Development Fund be reinstated and expanded to include both financial inputs and outputs and to display this for each local government area*
5. *Based on needs identified through open space strategic analysis, the funding process should explore:*
    i. *Funding that is uncoupled from the need for council contribution for strategically important open space projects based on solid analysis and evidence;*
    ii. *The ability for local government to lodge applications for funding all year round; and*
    iii. *State government agencies incorporated into this process where they are required to follow the same application process as local government.*

The LGA requests that the Expert Panel recommend an independent review of the Planning and Development Fund.

Developer contributions

With infill development, green and brown fields development putting pressure on existing council infrastructure the ability for a council to seek a development contribution to be charged against new development that require upgrade of Council infrastructure to support the proper servicing of the intended development proposal need should be considered.

Developer contributions are a fair and viable means of raising revenue to improve local infrastructure and assets. The Centre for Economic Studies has recently determined the total taxation and fees for a new house and land package in Sydney was 50 per cent of the cost, while in Melbourne it was 37 per cent, Brisbane 32 per cent, Perth 33 per cent and in Adelaide only 29 percent.

Mechanisms by which developer contributions can be regulated and applied to address the pressures on existing infrastructure should be considered in the *Planning, Development and Infrastructure Act 2016*.

Private certification

Planning decisions should be made locally. Communities continue to perceive councils as responsible for planning decisions, and as such councils will continue to hold significant interest in all local development outcomes. However, councils have no formal responsibility nor resources to oversee privately assessed applications and may be legally vulnerable if they do so.

The LGA has previously raised concerns with the use of private certification in the planning system, specifically given that the system now allows for private certifiers to assess applications and approve 'minor' variations where a prescribed standard is not met. Section 106(2) of the Act provides that where

a relevant authority (which includes a Level 3 accredited professional) is satisfied that development is Deemed to Satisfy (DTS) except for 1 or more minor variations, they must assess it as DTS.

Feedback received from councils indicates that councils have continued to experience instances where developments had been privately certified where the development did not satisfy important criteria. Examples have also been provided of private certifiers exercising considerable discretion in the judgement of a 'minor' departure from the criteria.

The LGA is concerned that the system easily being flouted by private certifiers deeming significant variations to be 'minor' to achieve a quick approval that might not be in the community interest. This aspect of the system should be more tightly regulated. The ability for a planning level 3 accredited professional to act as a relevant authority where there are 1 or more minor variations under s106(2) should be removed.

The following amendment to the regulations is suggested:

Regulation 22(1)(b) should be deleted and (c) amended to reference both planning level 3 and 4 who could then only act as a relevant authority for a development that met all relevant DTS requirements. This would assure an Assessment Manager is the relevant authority in respect of s106(2) scenarios where he or she was satisfied that a non-compliance with 1 or more DTS requirements was minor (see Regulation 22(1)(a)(i)).

In addition, building private certifiers are not undertaking the compliance check as required by the Act to ensure that the building approval is consistent with the planning approval.

It is further recommended that:

a) Regulation 22(1)(b) be deleted and (c) amended to reference both planning level 3 and 4 who could then only act as a relevant authority for a development that met all relevant DTS requirements. If this is not accepted
    a. the regulation to require the Assessment Manager to approve the minor variations; and or
    b. for the Development Assessment Processing (DAP) system to require all relevant authorities to specifically record each departure from the DTS requirements and the reason for each departure, enabling the monitoring of accredited professionals' use of this provision; and

b) Accredited Professionals (Private Certifiers) be more effectively regulated by the Chief Executive of the Department in their role as the Accreditation Authority to ensure the proper operation of the system, and the quality of development outcomes are reflected in practice/on the ground.

Proposed changes and suggested additions

The following tables provide a detailed assessment and recommendations in relation to amendments proposed to the *Planning, Development and Infrastructure Act 2016*, associated regulations and Practice Directions.

Table 1 Planning, Development and Infrastructure Act 2016

Section	Issue	LGA recommended change
Part 1 Preliminary		
s3(1)	Business days definition requires review in light of COVID-19 lockdowns	Recommend review of definition
s3(1)	Regulated and Significant Tree definitions should be amended, noting the significant work recent undertaken by the State Planning Commission Urban tree protection in Australia (plan.sa.gov.au) Open Space and Trees Project - Part 1A (Arborist Review) (plan.sa.gov.au)	Recommend review of definitions - canopy, maintenance pruning, distance from buildings, circumference, crown, canopy, trunk, deep soil zone.
s3(1)	Tree damaging activity definition requires review in light of extensive regulation exemptions and to provide clarity over wording, for example maintenance pruning.	Recommended review of definition in association with a review of Regulation 3F and noting the significant work recent undertaken by the State Planning Commission Urban tree protection in Australia (plan.sa.gov.au) Open Space and Trees Project - Part 1A (Arborist Review) (plan.sa.gov.au)
s3(1)	A review of the current definitions is required	Suggested definitions to be reviewed or included: • definition is required in the Act with reference to mapping in the Code • Regional LGA, • Representative Building • Financial Institution, • Special Event, • Airport, Aerodrome, • Multiple Dwelling, • Tourist Accommodation,

Section	Issue	LGA recommended change
		• Function Centre, • Short Term Accommodation, • Solar Farm, • Crown, trunk and canopy of a tree.
s3 (7)(a)	The former definition of "relative" in the *Development Act* has not been carried forward for the purposes of a person being "associated" (see also section 83(3)).	Reintroduce "relative" definition into s3(1).
s4(1(d)	The Code can prescribe an increase in intensity of land use as a change of use. At present there is no prescription.	Consider prescription of material increases in use into the Code for the purposes of this section.
s4(3)	The Code can allow for the revival of a use after a period of discontinuance to be regarded as the continuance of an existing use.	Consider the introduction of principles into the Code for the purposes of this section.
s4(3)(a)	Principles are not used as terminology in the P and D Code	Replace principle with appropriate wording
s4(4)(a)	Where an activity is also inconsistent with an overlay should resumption of the land use also not occur?	Include the word overlay This clause can be difficult to interpret and impose because some zone policies are ambiguous.
s4 (6)	The Code can specify land use classes whereby a change in use within a use class will not be regarded as a change in use.	Consider the introduction of appropriate use classes into the Code for the purposes of this section.
s4 (7)	The Code can specify a change of use as a minor change which will not be regarded as a change in use.	Consider introduction into the Code of appropriate specifications for the purposes of this section.
s12	The objects of the Act should be reviewed in light of the emphasis in development promotion and the reduction of appropriate public participation in the assessment of development proposals.	Reintroduce as an object of the Act the promotion of public participation in the assessment of development proposals including the opportunity for third party appeal in respect of notifiable performance assessed development.
s14c(1)	Development should be designed to reflect local setting and context, to have a distinctive identity that responds to the existing character of its locality. In the absence of a desired character statement, the design qualities sought are open to subjectivity.	'Character' should be articulated by way of statements that inform the design response of new development

Section	Issue	LGA recommended change
s18	Review constitution of the State Planning Commission to introduce a greater emphasis on qualifications and experience in local government, planning and urban design.	Consider amendment to s18 (2) Amend Section 18(3) of the *Planning, Development and Infrastructure Act 2016* to enable the LGA to nominate a person with contemporary local government experience onto the State Planning Commission.
s18	The ex-officio public sector employee on the State Planning Commission should not have a voting right	Consider amendment to 18(1)(b)
s20	State Planning Commission members are not restricted on the number of consecutive terms they can sit on the Commission	Consider an amendment to 20(1) restricting membership to two consecutive terms
s27 (1)	The Commission quorum provisions have been the subject of recent court challenge. Legislative clarification is desirable to remove any ambiguity with respect to "occasional members".	Legislative amendment to clarify that occasional members are not to be considered as members for the purposes of ascertaining a meeting quorum. Clarification is also required as to whether a quorum includes the 'ex-officio' member
s33	There should be a clear separation between the function of the Chief Executive and function of the State Planning Commission. Consideration should be given to an independent State Planning Commission with their own CEO and staff	Consider amendment to s33
s35 and 36	The onerous nature of the legislation has resulted in no planning agreements being entered into or joint planning boards established. The section does not recognise existing established organisations such as Regional Local Government Association which could perform the functions of a joint planning board	Consider amendments to s35 and s36
s42	Practice Directions and Practice Guidelines are statutory instruments, they should be subject to public consultation in accordance with the Community Engagement Charter, currently they are excluded from the public participation process.	Suggest sector, industry and relevant authority consultation under the Charter's principles is more appropriate than general public consultation.
S55	This exemption (for documents received, created or held in the SA Planning Portal) from the Freedom of Information Act 1991 has created industry	Make all documents, including approved plans, available on a conditional basis within the SA Planning Portal.

Section	Issue	LGA recommended change
	confusion as to the accessibility of documents which is far more limited than under the previous regime (see former Regulation 101 of the Development Regulations).	
s56	Continued and excessive council contributions towards the costs of maintaining the portal, planning database and online atlas.	Remove the requirement for councils to make a contribution. At the very least there should be a requirement for the Minister or Chief Executive to enter into a Service Level Agreement with the LGA to establish clear agreement on how the contribution is to be used on an annual basis.
s75	Complying changes Risks that: The community will not engage with consultation on a Regional Plan in the same way the community would engage with a Code Amendment Property owner or occupier changes occur between the Regional Plan consultation and the Code Amendment.	Include maximum timeframe between consultation of the regional plan and the complying Code Amendment
	A Practice Direction and Guideline is included in the definition of a Statutory Instrument but they are not referred to in Part 5	Reference Practice Directions and Practice Guidelines in Part 5 Suggested Guidelines and Building Envelope Plans be brought into the Code to have same status
s58	There is no specific State Planning Policy relating to infill development	Include a State Planning Policy relating to infill development
s66 (2)c	The Planning and Design Code is to include definitions and land use classes. It is yet to include land use classes.	Code amendment to establish and introduce classes for the purposes of s66 (2)c of the Act.
S73(2)(b)	Councils are being encouraged to work together to pursue a Code Amendment affecting more than 1 council, however s73(2)(b)(iv) suggests only 'a council' can only prepare or amend a designated instrument	Amend s73(2)(b)(iv) to read 'a council or more than one council'
S83	Risk and Liability for councils and Assessment Panel members not addressed under the Act	Amend Section 83 and 84 of the *Planning, Development and Infrastructure Act 2016* to include: *Protection of members*

Section	Issue	LGA recommended change
		No civil liability attaches to a member of an Assessment Panel for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's powers, functions or duties under this Act. *A liability that would, but for this section, attach to a member of a Assessment Panel attaches instead to the council.*
s83	The requirements relating to the establishment of a Council assessment Panel also apply to Panels established by the Minister, including membership and requirements relating to accreditation	Amend s84 to be consistent with s83
s83(1)(b)(i)	Stipulates only one CAP member can be a member of a council. Query whether this limitation extends to appointing a second member who is a member of a different Council to that establishing the CAP.	Clarify whether limitation applies to membership of any council.
s83 (3)	Associate is not defined in the Act	Provide a definition of 'Associate'
S87(d)(iii)	Is it necessary that the CEO of the Department to appoints the Assessment Manager for a Regional Assessment Panel?	Consider amending s87(d)(iii) to enable the council s to appoint the Assessment Manager
S93 (1)	Where an application does not involve a proposed "development"; such as a variation of a condition limiting operational hours; it is unclear as to who is the relevant authority as the application does not involve a category of development nor have a defined assessment pathway.	Amendment to designate relevant authority in these circumstances and an appropriate assessment pathway.
s100	Only allows delegation by a "relevant authority". This is to be compared to the broader delegation power in Section 20 of the former *Development Act*. This has meant that Council delegations have been required pursuant to the *Local Government Act* involving increased complexity. Further, PDI Act powers sitting with Council CEOs cannot be delegated.	Amend s100 to enable powers of any body, person or entity under the PDI Act to be delegated pursuant to s100(1). Amendment to Practice Direction 2 also required.
s102(1)(c) and (d)	These assessments should be defined as "land division" consents ie they should be treated as is a "planning consent" and a "building consent". All consents should be defined within s102(1).	Amend section to define all consents.
s102(1)(c)	This is missing the important requirement from the former s33(1)(c)(iii) of the *Development Act* that required adequate provision be made for the	Amend section to reintroduce the requirement that adequate provision be made for easement and reserve creation and that part of the assessment

Section	Issue	LGA recommended change
	creation of appropriate easements and reserves for infrastructure. This should remain a part of a land division consent assessment as it relates to such interests being vested in a council. It is not cured by a planning consent assessment against the Code which only provides general provisions regarding land division that public utility infrastructure be placed within road reserves. This sub section is also missing the previous requirement that allotments resulting from a land division be lawfully used for the proposed purposes as per the previous provisions of s33(1)©(i) of the *Development Act*.	involves ascertaining whether the proposed allotments can be lawfully used for their intended purpose.
s102(1)(f)	Open space is now treated as a separate “consent” as opposed to being a consideration in the granting of land division consent (see previous s33(1)I(ii) of the *Development Act*). Yet no such “consent” appears on the Decision Notification Form.	DNF requires amendment to incorporate provision for an open space consent and specification of conditions such as a requirement to make an open space financial contribution.
S102 (3)	This provision allows a relevant authority to not only reserve its decision on a specified matter; but also reserve its decision to grant a planning consent. How does this sit with the ability for a deemed consent to be triggered?	Amendment to remove deemed consent option in the event of a reservation of this nature.
s106 (2)	Development must be assessed as DTS where the relevant authority is satisfied it would be DTS but for one or more "minor variations". This provision has created difficulties for councils where private accredited planning professionals at level 1 or 3 have inappropriately treated material variations as "minor".	Delete the sub section such that if an application does not meet DTS requirements it is always to be assessed as a performance assessed development. Alternatively, a practice guideline pursuant to s43(2)(b) could be made which specifies variations that will constitute "minor variations" in relation to DTS development. A further alternative option is for an amendment to be made that requires the Assessment Manager to make a determination as to whether the variation is minor or not.
s110 (10)	While the Commission in assessing restricted development must take into account the relevant provisions of the Code; it is not bound by those provisions. Restricted development should be assessed against the Code like other code assessed development.	Amendment to the section to require restricted development to be assessed against the Planning and Design Code

Section	Issue	LGA recommended change
s119 (3), (4) & (5)	A relevant authority may request further information as it may reasonably be required to assess an application. This section limits the ability to request further information, either at all or to one occasion only and within ten business days of the verification notice (see also Regulation 33). There should be greater flexibility in respect of performance assessed development.	Amend the associated regulations to give the relevant authority greater powers and flexibility to request additional information.
S119 (11)	An applicant can request additional time to respond to a matter and that time is not included in the time within which a relevant authority is required to decide the application. Regulation 34 (2) suggests that any period in excess of 1 year is to be included ie the assessment clock restarts after 1 year. Why should the clock restart after 1 year? Some clarification is required that this only applies where an applicant has requested more time to address an issue.	Amendment to remove the 12 month restarting of the clock. A recent update to the Plan SA portal 5/05/2022 enables the clock restarts for application once the 60 business has expired on the RFI which is not in line with the Act and Regs.
S120 (2)	Outline consents may be granted in circumstances specified by practice direction. To date, no such practice direction has been issued by the Commission.	Define what is meant by an 'outline' consent Recommend that the State Planning Commission prepare and consult on a draft practice direction.
S121	A local design review scheme has been approved. Participation in a scheme is discretionary and a relevant authority need only take into account any design panel advice. The administrative costs and non-binding nature of this scheme is such that it has not as yet been adopted by local government.	Review the discretionary nature of the scheme, associated establishment and maintenance costs and its non-binding nature.
s125 (2)	The concept of deemed consents is problematic and does not encourage well considered decision making.	Repeal the concept of deemed consents and amend s125 (8) to include the ability to apply to the Court for an order requiring the determination of an application for planning consent.
s125 (6)	The relevant authority may apply to the Court for an order quashing a deemed consent if it considers the application should have been refused. Often it will not have had time to make that assessment; particularly where the relevant authority is an assessment panel.	Amend the provision by deleting s125 (6)(b) so as to give the relevant authority complete discretion to apply to the Court.

Section	Issue	LGA recommended change
S127 (2) (c)	A condition can be varied or revoked by way of further application. There is no assessment pathway nor relevant authority prescribed where such applications do not involve “development”.	Amendment to clarify assessment pathway and relevant authority in such circumstances.
s127(4)	Planting replacement trees causes some difficulty when the applicant is a neighbour, or when the applicant is the Council.	Clarify requirement in circumstance that an applicant applies to remove a tree on their neighbour’s property, with reference to issues of location, maintenance and consent. Include an exemption where the applicant is a Council / SPC / Minister or where the tree is on public land.
S128	Variations of a development authorisation may be sought. Where these do not involve “development”, no assessment pathway or relevant authority is prescribed. It is unclear as to how a variation of a historical non-complying category 3 authorisation would be assessed.	Amendment required to clarify the assessment pathway and relevant authority in such circumstances.
s131 (13)	Crown development is only subject to public notice if the total value of all work exceeds $10,000,000 (see previously s49(7d) of the *Development Act* where the relevant figure was $4,000,000).	Consider amendment to reduce the expenditure quantum to allow for greater public participation.
s136(2)	Reference the 'minimum amount of damage to the tree', should minimum amount be clearly defined?	Consider an amendment to establish clarity of intent
S140(2)	‘a person seeking access to the adjoining allotment MAY serve notice”, should this be ‘must’?	Consider an amendment delete ‘may’ and replace with ‘must’
s146	This section, in association with Regulation 93, imposes mandatory notification requirements and time limits upon councils to undertake inspections. Issues around the timing of the giving of notice and the limited time for a council to stop work and inspect have arisen.	Consider amendment to allow councils greater power and time to stop work pending an inspection. A minimum of two business days is suggested.
152(2) and (3a)	Reference to Council as issuing the certificate or Occupancy - People contact council to issue the certificate of occupancy having read s152 not realising that s154 applies	Include note to reference to s154 within s152

Section	Issue	LGA recommended change
s155	Emergency Orders may be appealed to the ERD Court. There is currently no provision that empowers the Court to award costs.	Consider amendments to provide the Court with the power to award costs.
s156	This section deals with swimming pool safety. Amendments to the Act and the PDI (Swimming Pool Safety) Regulations should be considered to address different designated safety features for pre 1 July 1993 pools, amendments to MBS004, appropriate fencing requirements and the 300mm depth trigger.	Consider amendments to rationalise the control of safety features.
s157	Building Fire Safety notices may be appealed to the ERD Court. There is currently no power for the Court to award costs on an appeal.	Introduce amendments to provide the Court with the power to award costs in appropriate circumstances.
s197	Practical and technical difficulties transitioning from car parking funds established under the Development Act 1993 and establishing new car parking funds.	Amend to address reviewing current car parking funds and their use under the new legislation.
ss162-184	These provisions collectively deal with the establishment of infrastructure delivery schemes for basic and essential infrastructure. The issue for the sector is that the processes and associated resource implications of such statutory schemes are so complex and resource intensive that they have not been taken up. Rather, the traditional model of non-statutory infrastructure agreements tied to land by way of Land Management Agreement continues to be used.	Consider a complete review of these schemes with a view to adopting a simplified alternative. It is noted that s245 requires the Commission to conduct an enquiry into the provision of essential infrastructure schemes and the open space scheme and to report to the Minister within 2 years after the commencement of the Act. While overly complex there is value in infrastructure schemes for local infrastructure networks i.e. land and embellishments for parks, land for bus stops, stormwater infrastructure. Offset schemes can work to provide coordinated land supply and infrastructure and/or monetary contributions if developer does not wish to offset the charges.
s202 (1)(g)	Provides a limited right of review for a land owner/occupier or adjacent land owner/occupier as to the nature of development (i.e. the assessment pathway). There is no longer the ability to review notification decisions.	Consider the expansion of review rights, consistent with the previous equivalent under s86 (1)(f) of the *Development Act,* to include notification decisions in relation to performance assessed development.
s202 (1)(h)	The only third party rights for merit appeals apply with respect to restricted development.	Consider amendment to s202 or regulation to provide for third party appeals with respect to notifiable performance assessed development that are identified as having an impact on adjoining properties or surrounding areas.

Section	Issue	LGA recommended change
s205 (1)	While the Court has limited powers under its own Act to award costs in certain circumstances where proceedings are adjourned; there is no general power to do so where an appellant withdraws or discontinues its appeal on the eve of the hearing where the assessment panel or assessment manager has incurred expert and legal fees in preparation.	Amend the Act to make provision for the Court to award costs in such circumstances.
s213 (12)	Directions pursuant to an Enforcement Notice may only be used where the breach occurred within 12 months. While this provides no issue with respect to changes in use which are considered to be continuing offences; the pursuit of unlawful building work by way of Enforcement Notice can be more problematic.	Consider amendment to delete the 12 month time limitation to enable a broader use of Enforcement Notices.

Table 2 Planning, Development and Infrastructure Regulations (General)

Regulation	Issue	LGA recommended change
Part 1 Preliminary		
Regulation 3(4)	Contains a definition for the natural surface of the ground for the purposes of the Regulations. Would it be better aligned with case authority with respect to the term "natural ground level".	Review definition and consider benefit of introducing a definition in Part 8 of the Code. once the definition has been reviewed, the definition of building height in Part 8 (P and D Code) needs to be reviewed as it hedges between the lower of natural ground level or finished ground level - should just reference natural ground level.
Regulation 3G	Above ground and inflatable pool provisions, where capable of being filled to a depth exceeding 300mm, have created uncertainty with respect to safety fencing obligations.	Review the provision in association with a general review of legislation as it relates to swimming pool safety features. Suggest amendment also to Schedule 4(1)(c)(ii). The reference to the incorporation of a filtration system confuses the matter.
Regulation 3	Councils have sought legal advice on definition of a ‘storey’ under the Development Act. ‘Building level’ is defined in the Code but ‘storey’ is not, however the Code refers to ‘storeys’.	Define ‘storeys’.
Regulation 10 and 11	Where there is a Code of Conduct complaint against a member of a Joint Planning Board (JPB) or Assessment Panel, in the case of a JPB should the Chair be advised and in the case of an Assessment Panel the council or councils in the case of a Regional Assessment Panel?	Include provisions to enable the Chair of the JPB or the council to be notified where a Code of Code complaint has been made against a member of the JPB or Assessment Panel.
Regulation 19A	The concept and potential approval of building envelope plans for master planned zones is new as is the associated Practice Direction 15.	Little take up yet however, this should be the subject of general review following a greater level of take up. Recommend that the State Planning Commission review the effectiveness once this option is taken up further.

Regulation	Issue	LGA recommended change
Regulation 22(1)(b)	A planning level 3 accredited professional may act as a relevant authority for DTS development, including where there may be one or more minor variations under section 106 (2) of the Act. Issues have arisen where private planning professionals have inappropriately approved such developments as DTS notwithstanding material variations.	Regulation 22(1)(b) be repealed and (c) amended to reference both planning level 3 and 4 who could then only act as a relevant authority for a development that met all relevant DTS requirements. If this is not accepted a. the regulation to require the Assessment Manager to approve the minor variations; and or b. for the Development Assessment Processing (DAP) system to require all relevant authorities to specifically record each departure from the DTS requirements and the reason for each departure, enabling the monitoring of accredited professionals' use of this provision
Regulation 23(2)(b)	Where the State Planning Commission is the relevant authority and development is occurring in a council area, the Council CEO may provide a report within 15 business days on a range of matters limited by Regulation 23(c). Potential issues include that the CEO is unable to delegate this power and the restriction on the scope of his or her response.	Amend the regulation to remove restrictions on the scope of any report and increase the timeframe to thirty business days and enable the CEO to delegate the authority for providing the response
Regulation 30	Development applications are to be accompanied by details as specified in Schedule 8 to the Regulations.	Review schedule 8 and consider to additional requirements in particular the requirement to provide a Certificate of Title and where the subject land is not connected to mains sewer, evidence to show that an on-site scheme can be established.
Part 7 - Assessment - processes and assessment facilitation		
Regulation 31(2)	Requires verification within 5 business days after receiving the application. Timeframe is not realistic; the relevant authority be given more time?	Amendment to allow a greater period for verification. Suggested 10 days
Regulation 33	Limits the opportunity for a relevant authority to request further information and the period within which it can be sought to 10 business days from verification notice or payment of fees. Query whether this limitation and timeframe are too restrictive?	Expand the opportunity and time for further information requests. Suggested should reflect the complexity of the development- requires further discussion with practitioners.

Regulation	Issue	LGA recommended change
		Suggested RFI request period from when fees are paid, not verification (can't even open tab in the portal until fee paid)
Regulation 34(2)	Provides for the assessment clock to restart after 1 year from an applicant's request pursuant to Section 119(11) of the Act for a deferral to address a matter associated with their application. This has the potential to increase the risk of a deemed consent notice being given.	Delete Regulation 34(2) so that there is no automatic restarting of the assessment clock in these circumstances.
Regulation 47	Imposes requirements with respect to notification of an application for performance assessed and restricted development in association with Practice Direction 3. Uncertainty arises as to the effect of a notice on land not being in place for the required period.	Addressing through legislative clarification.
Regulation 38(2)	Provides a relevant authority the opportunity to lapse an application for development authorisation at least one year since the application was lodged.	Clarify the definition of lodged.
Regulation 53	Sets out the timeframes within which applications are to be determined pursuant to Section 125 of the Act. Given the potential for a deemed consent notice if timeframes are exceeded; are these considered reasonable?	Review the reasonableness of assessment timeframes in light of practical experience.
Regulation 57	Requires notice of a decision pursuant to Section 126 to be given in the prescribed form. The prescribed Decision Notification Form needs amendment to accommodate different consents such as the open space consent and any associated conditions.	Recommend Ministerial amendment to the prescribed DNF.
Regulation 65	For the purposes of Section 128(2)(b) of the Act a variation to a development authorisation can be treated by a relevant authority as minor in nature and approved without a further	Amend legislation to clarify who is the relevant authority in these circumstances.

Regulation	Issue	LGA recommended change
	application. An issue arises where the variation does not involve "development" as to who is the relevant authority.	
Regulation 80	Sets out prescribed land division requirements for the purposes of Section 102 (1)(c)(v) and Section 138 of the Act. Historically requirements have not included the planting of trees and landscaping of road reserves or within proposed reserves or the development of such reserves. Such works rely upon negotiation and non-statutory infrastructure agreements.	Consider amendment to include a wider range of landscaping and infrastructure works as potential prescribed land division requirements.
Regulation 93(1)	Provides for the giving of notifications during building work. Issues have arisen with councils then having inadequate time to undertake inspections following the giving of notice.	Review timeframes for the giving of notice for mandatory notification stages.
Regulation 103 and 103A	Certificates of Occupancy are presently not required for a Class 1a building. After 31 December 2024 they will be required. Education for this sector will likely be necessary.	Recommend to the Minister the need for comprehensive training and education or the building sector and local government.
Schedule 8	Schedule 8 prescribes the documents and information to be provided with an application for development authorisation pursuant to Section 119(1)(c). Query whether the current requirements are adequate and the level of applicant compliance.	Ensure that the Mandatory Information checklist lines up with Schedule 8 requirements in its entirety".
Regulation 110(1)	This imposes a requirement for councils to provide the Minister with a copy of any LMA to which it is a party within 20 business days after it is entered into and a requirement for the Chief Executive to keep a Register on the SA Planning Portal. See also the related obligation in clause 32 of Schedule 8 to the Act to furnish pre-existing LMAs to the Minister.	Ascertain compliance with these obligations.
Regulation 120	This imposes an obligation on the relevant authority to ensure that a range of matters in respect of an application for	Consider portal content and accessibility to approved plans.

Regulation	Issue	LGA recommended change
	development authorisation are recorded on the SA Planning Portal.	
	No limit/ triggers for the extent of excavating and filling that can be undertaken outside of specific circumstances in the Schedule. Excessive predevelopment filling outside this could lead to confusion about what is natural ground level as well as issues such as overlooking etc.	Include a trigger for excavation and filling on any site as being development.
Schedule 4(1)(h)	A moveable sign under the Local Gov Act doesn't require approval but this is only on a public footpath. Moveable signs on private property should also be allowed provided there are some parameters as to size and location.	Allow small, moveable signs on private land without development approval (limit one per site?)
Schedule 4(4)(1)(g)	A 10m2 / 4m high water tank can be installed in front of a dwelling which can have poor streetscape outcomes.	Include a clause that water tanks require approval where they are forward of the dwelling, other than in bushfire areas
Sch4(4)(1)(k)	Permeable screens attached to existing structures are not development however clarification is required as to whether the following require approval: • café blinds attached to carports, verandahs etc • freestanding screens (e.g. are they considered to be fences for the purposes of Sch4(4)(1)(d)?)	Clarify whether other forms of screens are development
Sch4(4)(3)	The height of shade sails should be measured above ground level only, rather than floor level given other Sch4 structures are measured from ground level.	Amend to read that shade sails be max 3m high above ground level.
Sch4(4)(5)(c)	Pergolas can be up to 4m high without needing approval.	Reduce maximum height of pergolas exempt from approval to 3 metres above ground level, or require posts to be a maximum of 3 metres and the total structure height to 4 metres.
Sch4(10)	Demolition of buildings doesn't require approval (other than heritage / HAO etc).	Require property owners to notify the council in advance prior to a demolition occurring.

Regulation	Issue	LGA recommended change
	Councils can no longer undertake dilapidation reports prior to work commencing on site for developments where damage to council infrastructure is likely to occur but we can no longer do this for demos. Damage to Council / service infrastructure has occurred without knowing who caused the damage and/or having any dilapidation reports undertaken prior to work commencing to use to successfully pursue action. Councils can no longer easily calculate net dwelling increase in a given area by subtracting demos from number of new dwellings.	
Sch6(4)	State Planning Commission (SCAP) is the relevant authority for development over 4 storeys in specified areas.	Return these decision making powers to Council Assessment Panels.

Table 3 Regulations (Accredited Professionals)

Regulation	Issue	LGA comment or recommended change
Part 1 Preliminary		
Regulation 3 and 4	The accreditation authority is the Chief Executive who is responsible for administration of the scheme. Question the appropriateness of this and the associated transparency as to the delegation of decision-making powers.	Consider whether there is a better entity to administer the scheme. Should the Accreditation Authority be a transparent and independent body? Undertake case studies of other sectors (i.e. architecture and engineering) and see how accreditation is administered.
Part 2 Classes of accreditation		
Regulation 5(2) and (3)	The Chief Executive determines the qualifications, experience and technical skills required for each class of accreditation and may vary these from time to time. Is this appropriate and should there be some form of formal consultation before any variation occurs?.	Consider the appropriateness and need for amendment to allow for industry consultation
Part 3 General provisions relating to accreditation		
Regulation 16	The Accreditation Authority may approve or refuse an application for accreditation. No clear decision making timeframe exists.	Amend the regulation and include a timeframe of 15 business days
Regulation 20	An accredited profession may surrender an accreditation, however, there should be provision i.e. timeframe for an accreditation to be reinstated without having to resubmit?	Introduce a provision i.e. timeframe for an accreditation to be reinstated without having to resubmit
Regulation 24	The accreditation authority must maintain a register of accredited professionals including full name and contact details. It is both unnecessary and undesirable to provide the contact	Amend the regulation to remove the requirement for contact details of Level 2 Planners (Assessment Panel members) to be on the public register.

Regulation	Issue	LGA comment or recommended change
	details of Level 2 Planners (Assessment Panel members) on the register	The Portal should be clearer about who can be engaged in a private capacity
Part 4 Continuing Professional Development		
Regulation 25	It is a condition of accreditation that an accredited professional undertake a prescribed amount of CPD set out in Schedule 1 in the proceeding 12-month period. Persons holding accreditation at multiple levels need to obtain the cumulative total of CPD units, for example a Planner who has both level 1 and level 2 accreditation is required to obtains 30 CPD points in any one year, with a duplication of areas existing.	Review Schedule 1 as to the current prescribed amount of CPD units; particularly with respect to an accredited professional holding both planning level 1 and 2 accreditations.
Part 5 Audits		
Regulation 27	Private accredited professionals must have their assessment activities audited by a qualified auditor at least once every 5 years. Is it appropriate that the obligation to commission these audits falls to the accredited professional and not the accreditation authority?	Review the appropriateness of this self-managed system.
Regulation 27(13)	The auditor need only report to the accreditation authority any contravention or failure of the accredited professional to comply with the Act, Regulations or Code of Conduct, in a significant respect or to a significant degree. This gives the auditor a substantial discretion. Should not all finalised audit reports be provided to the accreditation authority for review as to their adequacy?	Amendment to require all finalised audit reports to be provided to the accreditation authority.
Part 8 Miscellaneous		
Regulation 30	Sets out the circumstances where an accredited professional may not act. These include where the accredited professional has a direct or indirect interest in any body associated with the development and if the accredited professional is employed by	Amend Regulation 30(2) to include an officer, employee, or agent of a council.

Regulation	Issue	LGA comment or recommended change
	anybody associated with the development. While these prohibitions do not apply to an officer or employee of the Crown; they do capture a local government employee where an application is made by the Council that employs them.	
Regulation 34	The accreditation authority has a broad power to delegate any of its functions and powers. It has been suggested that there is a lack of transparency in this regard.	Impose an obligation upon the accreditation authority to publish all such delegated functions and powers.
Schedule 1	This sets out the amount of CPD units required and the relevant professional competencies for each class of accreditation. Issues have arisen as to the current required levels, particularly where a person has achieved accreditation in multiple classes.	Undertake a review CPD requirements.

Practice Directions

Clause	Issue	LGA recommended change
Part 2 Clause 5	The relevant authority is required to; "*include a **statement** on the relevant development approval to the effect that the additional allotments must not be used for residential purposes by virtue of the operation of section 7 of the Act*".	Practice Direction 12 Conditions 2020 provides that a condition to this effect must be imposed where the class of development involves the division of land in an Environment and Food Production Area. For consistency, suggest that the word *statement* be replaced with the word *condition.*
(Part 3, 7 (2)(b)	Professional expertise that the relevant practitioners must have qualifications and experience that is equivalent to an Accredited Professional - Planning Level 1 Under the Act. This does not require this person to be an accredited professional- planning level 1.	Formalise accreditation for those undertaking Code Amendments.
Clause 7(2)(g)	Sector has expressed concern with clause 7(2)(g) from an administrative perspective. The clause creates a non-delegable power of the CEO to respond to Private Proponents. Cannot rely on *Local Government Act 1999* sections 44 or 101.	Consider replacing reference to CEO with a reference to "a council" or amend section 100 of the PDI Act (delegations) to permit delegation.
Engagement process	Experience with the recent Riverbank Precinct Code Amendment has outlined short comings in the engagement process including timeframes, documentation and analysis. Council provided a submission to the ERDC of Parliament (ACC2022/50002). This submission sort improvements to the Practice Direction, Community Engagement Charter and legislation. Further, consultation on the engagement plan with the local council may support better practice as local government have more local knowledge to inform the engagement plan.	More guidance is needed on how to manage complaints throughout the engagement process.

Clause	Issue	LGA recommended change
Clause 10(3)	At present, the content of the notice is not annexed to the Practice Direction. Instead, the form is referred to as being that "available on the SA Planning Portal." No URL is provided.	Include the template notice as an appendix to the Practice Direction.
Clause 10 and Clause 4 (public road frontage)	Definition of public road frontage presents an issue for some regional areas where access to relevant land is only provided by private roads. Difficulty to comply with requirements of clause 10 as a result.	Refine definition of "public road frontage" or introduce alternate requirements in clause 10 to address issue. Suggest wording 'where there is no access to a public road reasonable efforts should be made to erect the sign in a visible location'
Clause 12	No directions relating to how a relevant authority should respond if a public notice is removed from the land during the notification period or is no longer present on the land at the time that a written report is required per clause 12(b). Clarification also sought as to whether the sign needs to be installed by no later than 12:01am on the first day of notification (as opposed to an applicant who may install it at, say, 8am) and when it needs to be removed. Notification is automatically set to commence four business days after being initiated in PlanSA portal, and sign on land is created as part of this workflow. Therefore, it is not achievable to provide the applicant with this information within the timeframe allocated in Clause 8.	Provide direction for the relevant authority in such circumstances where there is a defect in the public notice process. Consider provision for such in the Practice Direction. Preference is for the applicant to place the sign and upload evidence of its presence.
Clause 4	Matters requiring expert consideration – further matters could be included for completeness.	Suggest additions include: Lighting, agronomist, economics, access and inclusion, wind, waste, transport, energy and Aboriginal heritage and culture

Clause	Issue	LGA recommended change
	Does notification impact the assessment timeframes in the Portal? Is this accounted for formally or is it an informal agency approach?	Clarify notification impact on timeframes.
	Why is there a different approach for these areas?	More equitable for there to be consistency across the state.
Part 1 Clause 3	The construction of a fence under 2.1 metres in height that is (or is to be) a safety fence for a pool approved or constructed *before* 1 July 1993 (i.e. a ***pre-1993* pool**) is excluded from the definition of development in Schedule 4 of the *PDI (General) Regulations 2017,* and so there is currently no requirement to notify the council of the completion of such building work. Given the object of the practice direction is to ensure that swimming pool safety features are installed, ***replaced, or upgraded*** in accordance with prescribed requirements, it appears that the object cannot be achieved with respect to replacement or upgrade fencing works in relation to existing pools which were approved or constructed before 1 July 1993, because the council will not be notified of such works having been completed, and there will be no trigger for an inspection to be undertaken in relation to that work.	Consider amending Schedule 4(1)(d)(v) of the *PDI (General) Regulations 2017* to extend to include any fence that is (or is to be) a safety fence for a swimming pool or spa, regardless of when the pool or spa was approved or constructed (i.e., to include both a pre and/or a post 1993 pool or spa). In this way, a mandatory notification can be included on the decision notification form in relation to the development which will then require the owner to notify the council of the completion of such work. If not, then the practice direction should be amended to include inspection requirements for safety fencing replacements or upgrades for a pre-1993 pool or spa.
Part 3 Clause 1	Clause does not specify a specific level of accreditation required or even whether the authorised officer needs to be accredited. It leaves it to councils to "*ensure that an inspection … is carried out by a person who has the appropriate qualifications, skills, knowledge and experience*".	Query whether this should be specified and/or require a specific level of accreditation to avoid ambiguity. Suggest alignment with circumstances where an accredited professional may act as a relevant authority (section 97 and regulation 25) as starting point.
Part 4	Records of inspections are not provided to the owner of the land.	Consider amending Part 4 of the Practice Direction to include a requirement that the council must provide the owner with a copy of the record of inspection where the inspection records that rectification work

Clause	Issue	LGA recommended change
		is required, within 5 business day of the initial inspection being carried out or similar. Inspection outcomes should be recorded and accessible on Plan SA Portal.
General	Regional councils have expressed concerns that a requirement to inspect within 3 business days of receipt of the completed Statement of Compliance may not be a reasonable period of time given resourcing issues and particularly in areas where the council boundaries are extensive.	Seek sector feedback generally and consider increasing the time within which inspections must be carried out in regional council areas. There should also be a default stop work as per the previous Dev. Regs. 74. Current system allows builders to continue resulting in covering over of works without the opportunity for council to undertake thorough inspection.
Part 4	Records of inspections are not provided to the owner of the land.	Consider amending Part 4 of the Practice Direction to include a requirement that the council through the Portal must provide the owner with a copy of the record of inspection where the inspection records that rectification work is required.
Attachment 1.	Some standard conditions are worded in open terms and are likely invalid. Presents a problem for enforcement if the relevant authority does not apply to have standard terms overturned / impose its own conditions within time.	Consider a review and amendments to ensure that standard conditions are not so vague and uncertain as to be unenforceable.
All	Mandatory conditions requires developments to comply with Code policies and removes the relevant authority's ability to apply discretion when assessing against these relevant provisions.	Clarify legal position around mandatory conditions which impose policy outcomes?
UTC Overlay condition	Refers to trees being planted *or* payment into the Scheme.	Tree planting or payment into Scheme should be resolved at consent.

Clause	Issue	LGA recommended change
	If the condition remains with both options, this could be misleading for applicants who are not eligible for the offset scheme (due to their zone or soil type). DPF 1.1 could be superseded by Code Amendments over time and it will be difficult to determine what the requirements were relevant at the time of the consent, particularly for a future owner who may not realise trees on the site should be retained.	More detail should be provided in this condition rather than just referring to the DPF 1.1. Some abbreviated version could be included with reference to the policy for further info. RA could provide more specific info based on the site area(s) of the dwelling(s).
SMO Condition	Similar to UTC condition, it is not practical to just list the DPF. It is possible that alternative stormwater management solutions may be considered appropriate. Given this is a mandatory condition, it precludes us from determining a suitable alternative.	Condition should be clear and instructive. Reconsider mandatory status to enable consideration of alternative stormwater management solutions.
Reg tree Removal condition	Similar to UTC condition above.	It should specify that either trees are planted (and the number of trees to be planted is specified) or payment is made into the fund, depending on what the applicant and RA have determined.
Clauses 5 and 6 (interaction with the Urban Tree Canopy Offset Scheme and Urban Tree Canopy Overlay)	Difficult to determine whether a contribution to the fund is an option as opposed to the imposition of a mandatory condition to plant a replacement tree/s pursuant to Practice Direction 12. No standard mapping of designated soil types to refer to – can only be determined by analysis of the proposed development site (potentially lengthy and costly). Have to otherwise consider application of the Urban Tree Canopy Overlay where it overlaps with the identified zones.	Improve trigger for whether a contribution to the Fund in lieu of planting is acceptable.

Attachment A

EVANSTON SOUTH PTY LTD v TOWN OF GAWLER ASSESSMENT PANEL
[2022] SAERDC 14
Judgment of Commissioner Rumsby

10 October 2022

65. As is established law based on a number of legal authorities, in order to assess the merits of the proposal and 'weigh its pros and cons', it is necessary to consider the provisions of the Development Plan (now repealed), now the Code, as a whole. Under the Act, however, the portal curates the Code provisions that are to be considered and applied. By entering a property address and the type of development proposed into the State's planning portal ("the portal") it identifies the particular zone in which the land lies and any relevant subzone and overlay, together with the suite of policies from the general provisions of the Code to which regard must be had.

66. However, as I discovered from my investigations, many of the provisions identified by the Code had little or no bearing on the assessment required in this matter, in particular the Overlays and a number of the General Development policies. Further, not all of the relevant Code provisions were identified by the portal – underlining the vagaries of a system which seeks to confine the assessment against the Code to only those provisions generated by an algorithm from the portal.

67. For reasons I come to later, I consider the Court's consideration of the kinds of development reasonably contemplated in the OSZ, in the subject circumstances, is sufficiently uncertain as to call in aid an exploration of the Code beyond that curated by the portal. In order for the Court to grapple with the land use intent of the OSZ it is important to understand, at the very least:

- *where the OSZ sits in the hierarchy of 'like' zones; and*
- *whether the OSZ policies apply with the same force throughout the Zone and whether there are any subzones, or policy nuances, applicable to particular parts of the OSZ. This is particularly relevant in this matter given that the OSZ applies to a wide range of circumstances throughout the State.*

68. The spatial distribution of the zones or subzones under consideration is also a highly relevant consideration. In this respect, whilst it is possible to view the geographic distribution of zones, subzones and overlays on the South Australian Property and Planning Atlas ("SAPPA") the search is, at best, clunky and difficult to navigate and comprehend.

69. Exploring the Code itself is also something of a task, not the least because of the sheer size of the policy library and the very limited 'way finding' tools. The index of Code provisions is very limited and there are no hyperlinks which take the reader to the relevant parts of the Code. Further, when 'browsing' the voluminous document (of almost 5,000 pages for the metropolitan Adelaide region

alone) there are no identifiers, footers, or markers on each of the pages so that the reader can establish where they are at in the body of the Code.

70. In order to properly understand and apply the Code it is also essential that the reader has a working knowledge of an array of tools attached to the portal, including the 'Guide to the Code' and, as above, SAPPA. In some circumstances, not relevant here, it is highly likely that the user of the system would also need to refer to Ministerial practice directions and, when produced, guidelines.

71. Quite clearly, the authors of the digital planning system had not understood there would, on occasions, be a need to browse the Code and that the portal cannot be relied upon, in all circumstances, to call up the only provisions to which regard must be had.

72. Contrary to the Objects of the Act, ***the digital planning system is not simple and easily understood****.*

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