

# Legislative Review Committee

## **LGA Submission Petition No. 2 of 2020 - Planning Reform**

**September 2020**

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## Executive Summary

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

The LGA believes that the implementation of the new planning system and the adoption of the Planning and Design Code will only be successful through a close partnership and collaboration between the State Government and its agencies, and local government.

Local government also recognise that with any new system, there will be teething issues and a period of adjustment for all users, including councils, the community and industry. Errors will be identified within the Code and the eplanning system may not always work as anticipated, but councils will use their best endeavours to support and implement the system.

Should councils inherit a planning system that has not been thoroughly tested, it becomes a reputation and liability risk for our sector. Local government should not be held responsible for system failures or delays if the State Government's new system is not fit for purpose.

The LGA reaffirms the sector's position that councils will be able to deliver a high-quality development assessment service when:

- the errors and omissions raised during consultation on Phases 2 and 3 of the Code have been addressed, or where identified post implementation are addressed as a matter of priority;
- the Code has been fully incorporated within the eplanning system;
- ongoing support, training and information is provided to all councils;
- there is ongoing communication with all levels of council; and
- community and industry have a well-informed understanding of the Code and eplanning lodgement system.

## Introduction

The LGA welcomes the opportunity to provide a submission to the Legislative Review Committee on Petition No. 2 of 2020 - Planning Reform.

The LGA is a membership association representing South Australia's 68 councils. The LGA's mission is to provide leadership support, representation and advocacy on behalf of South Australian councils, for the benefit of the community. Thirty-three of our member councils have been part of the Phase 2 implementation of the Planning and Design Code and thirty-five councils are part of the Phase 3 implementation process.

From the beginning of the planning reform process, the LGA has proactively participated at every opportunity to provide comment, feedback and advice to inform development of the new planning system.

**Appendix 1** lists the submissions made by the LGA in relation to the *Planning, Development and Infrastructure Act 2016* (PDI Act) and associated regulations as well as submissions on the Planning and Design Code. The LGA has based its participation and responses having regard to South Australia's Expert Panel (The Panel) on Planning Reform report '*The Planning System We Want*', the Panel's Vision '*to ensure that South Australia has an effective, efficient and enabling planning system*' and the five Guiding Principles established by the Panel against which the reforms could be assessed against, these being:

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

The LGA took a similar approach when the LGA Board endorsed 13 Planning Reform Objectives.

**Appendix 2** provides a summary of the relationship between the Expert Panel's Guiding Principles and the LGA Planning Reform Objectives and the LGA's current view as to whether the Goal or Guiding Principles of the Expert Panel are being successfully achieved in the development of the Code.

The LGA acknowledges the enormity of the task being undertaken by the South Australian Government, the State Planning Commission (SPC) and the Attorney General Department (formerly the Department of Planning, Transport and Infrastructure (DPTI)) (the Department) in driving this significant reform of the State's planning system through the introduction of the PDI Act, the Planning and Design Code, and an online planning lodgement and assessment system.

The LGA also acknowledges the support provided to both the LGA and local government by the SPC and the Department through briefing sessions held with the LGA and councils, regular check-ins by Council Liaison Officers to councils, visits by members of the SPC to councils and the development of training material.

Phase 2 of the Planning and Design Code commenced on 31 July 2020. The Committee would appreciate that many of the regional councils (which were part of Phase 2) are small organisations responsible for many activities, often over a large land area, and are also constrained by their financial and human resources.

In the past two years these councils have faced numerous challenges, including:

1. Ongoing drought - which has impacted many communities both financially and socially;
2. A short consultation process on Phase 2 of the Planning and Design Code - only 8 weeks and in a format which was difficult to understand;
3. Bushfires – particularly in the Adelaide Hills and on Kangaroo Island, many councils supported these areas with resources during and after the bushfires. It is also acknowledged that the State Planning Commission recommended that Kangaroo Island be moved to Phase 3 in recognition of the impact of the bushfire on the Kangaroo Island community; and
4. COVID-19 – many councils have redirected resources during the period of emergency to ensure that their communities were kept safe.

During this challenging period development activity has been maintained and in some areas an increase in activity is being seen, this increase is due in part to the Federal Government's *Home Builder* program and other regional grant programs.

Amidst all these challenges, regional councils have been asked to implement a significant new planning system, including a new eplanning system and state-wide Planning and Design Code.

On 18 August 2020, the State Government announced revised timing for the implementation of the new planning and development system – across large regional towns and metropolitan areas. The LGA understands that the Minister intends to announce a more definite date sometime in the future, however, has indicated it will not be before Christmas 2020.

## LGA Response to Questions

### The impact of the Planning, Development and Infrastructure Act 2016

Communities 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 some members of the community.

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

#### Assessment Panels

Councils are responsible for the operations, costs and liabilities of Council and Regional Assessment Panels (CAPs and 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*

*(1) 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.*

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

#### Recommendation

a) Amend Section 83 and 84 of the *Planning, Development and Infrastructure Act 2016* to include:

### **Protection of members**

(1) 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.

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

## **Timeframes and the time within which decision must be made (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, that 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.

Further, 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 will 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.

### **Recommendation**

- 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) 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 from this section all performance assessed development and restricted development.

## 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 neighborhood, for example of telecommunications towers.

The Planning and Design 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.

### *Recommendation*

- a) Review 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.

## Accreditation scheme

Concerns remain in relation to private accredited individuals acting as the relevant authority. Appropriate regulation of private certifiers in the current system has not occurred. Feedback received from councils by the LGA indicates that a number of councils have experienced an unacceptable number of instances where developments had been certified under the existing Residential Code in areas where the Code does not apply, or the development did not satisfy the criteria. Examples have also been provided of private certifiers exercising considerable discretion in the judgement of a 'minor' departure from the criteria.

It is likely that communities will continue to perceive councils as responsible for planning decisions, and as such councils will continue to hold significant interest in all local development outcomes. Yet councils have no formal responsibility nor resources to oversee privately assessed applications and may be legally vulnerable if they do so.

### *Recommendation*

- a) Private accredited professionals to be effectively regulated by the State Government 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.

## Increased costs to councils and fees and charges under the PDI Act

Various aspects of the new planning system will result in increased costs to councils, specifically:

- Increased cost of Assessment Panels as a result of additional meetings (Panel member fees + staff time + council resources);
- Additional system costs as a result of the eplanning portal (eplanning levy);
- Additional staff resources to assist applicants to lodge applications electronically;
- Additional resources to achieve mandated timeframes, compliance, public education of the new system, implementation of the building policies; and

- Professional accreditation and ongoing training.

To date there is not clear understanding of where cost savings can and will be achieved as there has been no regulatory impact assessment undertaken that considers the costs to councils. The LGA believes that it is unacceptable for all ratepayers to continue to subsidise 70-80% of the costs of undertaking statutory planning and building assessment functions.

The LGA has not at this time undertaken a detailed analysis of the recently introduced fees and charges under the PDI Act, however it will be seeking information from councils as to the impact of the new fees and charges schedule as the Planning and Design Code is implemented.

The LGA understands that the State Government has committed to a review of fees and charges in June 2021, following 12 months of the system operating to see if the assumptions that underpin the funding model require any adjustment. Given that the full implementation of the Planning and Design Code will not occur until Phase 3 is implemented later in 2020, any review of fees and charges should be undertaken following the full implementation of the system as this will provide a complete understanding of the operation of the system in both a metropolitan and regional context.

### **Recommendation**

- a) The State Government to undertake a review of statutory fees and charges set under the PDI Act, 12 months after the full implementation of the Planning and Design Code to ensure that the fee structure adequately reflects the costs to councils of administering the requirements of the Act.

### **Eplanning System and eplanning levy**

The LGA and local government sector supports an eplanning system which, if implemented effectively, will deliver efficiencies not only for local government but also State Government and the business sector.

This system has been built and delivered by the State Government and the State Planning Commission and they are ultimately responsible for its ongoing operation and success. The State Government should also be responsible for meeting the costs of the ongoing maintenance and enhancement to this system.

In 2018-2019 and 2019-2020 the local government sector contributed over \$1.1 million to the cost of the establishment of this system and this is to increase to around \$1.2 million annually in future years.

### **Recommendation**

- a) That the *Planning, Development and Infrastructure Act 2016* be amended by the deletion of Section 56(2) to (6).

### **Planning and Development Fund**

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

Further, open space and urban green space has been identified as an opportunity to build community disaster resilience to future climatic and other disaster events. The LGA in July 2020 made a submission to the Natural Resources Committee of the South Australian Parliament, Inquiry into urban green spaces , a copy of the LGA's submission is available at:

[https://www.lga.sa.gov.au/data/assets/pdf\\_file/0028/723772/LGA-SA-Submission-to-inquiry-into-urban-green-spaces.pdf](https://www.lga.sa.gov.au/data/assets/pdf_file/0028/723772/LGA-SA-Submission-to-inquiry-into-urban-green-spaces.pdf)

The current formula and fund are largely a legacy of greenfield development, which dominated the majority of urban growth when the system was conceived. A view is that it is outdated, particularly for medium and high-density development, which now accounts for up to 70% of all metropolitan development, as encouraged by the planning framework set down by the 30 Year Plan for Greater Adelaide.

The LGA has also raised local government sectors concern with the recent changes to the *Planning, Development and Infrastructure (General) Regulations 2017*, 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 and its members are concerned that this change would reduce the amount of funding available to help councils provide high quality open space at a time when parks and recreational areas are needed to support community health and wellbeing.

Additionally, councils are already paying an annual fee for the maintenance of the new eplanning system and the State Government is now receiving the \$177 lodgement fee for each development application now submitted. These changes appear to allow the State Government to access three separate funding streams to pay for the eplanning system.

### **Recommendation**

- a) In conjunction with local government, the State Government undertake a review of the Planning and Development Fund to investigate a financial model that is more equitable and appropriate for councils that are experiencing higher volumes of infill development, including multi storey development.
- b) The State Government to reconsider the variation to the PDI (General) regulations and enable the Planning and Development Fund to be used only for the purpose it was established for to "*support the purchase, planning and enhancement of public spaces throughout South Australia*".

### **Review of the PDI Act**

Users of the PDI Act have already begun to identify areas where the Act could be amended to improve clarity and readability and to address concerns with provisions contained or not included in the Act.

### **Recommendation**

- a) That following 12 months of the full operation of the PDI Act a comprehensive review process be undertaken.

## Specific concerns in relation to the governance and operation of the 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 State Planning Commission 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.

### **Recommendation**

- a) Section 18(3) of the *Planning, Development and Infrastructure Act 2016* be amended to enable the LGA to nominate a person with local government experience onto the State Planning Commission.

## Specific concerns in relation to the governance and operation of the State Commission Assessment Panel (SCAP)

The LGA considers the 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 that the CEO's report on planning applications cannot speak to planning related matters. Notwithstanding, there are only 15 days to provide the CEOs report to the SCAP.

Further the SCAP does not have the same requirements for meeting procedures or accreditation as Council Assessment Panels. 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 Council Assessment Panel members, and the same meeting requirements should apply in relation to transparent decision making.

### **Recommendation**

- a) That the State Commission Assessment Panel follow the same provisions that apply to panels established by councils (Section 83 of the *Planning, Development and Infrastructure Act 2017*) and the same procedures as a Council Assessment Panel (Part 3 of the *Planning, Development and Infrastructure (General) Regulations 2017*).

## Specific concerns in relation to the implementation of the Planning and Design Code

The new Planning and Design Code (the Code) is the corner stone of the new planning system and will only be successful through a close partnership between the State Government and local government. The LGA Board of Directors has reaffirmed the sector's position identifying that councils will be able to deliver a high-quality development assessment services when:

- a) the errors and omissions raised during consultation on Phases 2 and 3 of the Code have been addressed;
- b) the Code has been fully incorporated within the eplanning system; and
- c) and a comprehensive learning and development program has been delivered to all councils.

The following key issues in relation to the Planning and Design Code have been identified by the LGA and local government sector and provided to the State planning Commission in submissions on Phase 2 and 3 of the Code.

### Errors and omissions

The State Planning Commission must work with local government to ensure that South Australia's planning system reflects best practice and that the Code and associated instruments deliver quality planning and design outcomes that improve the amenity, liveability and sustainability of communities.

Throughout multiple iterations of the Code councils have continued to identify errors, omissions and inconsistencies in the document that will create confusion for planning authorities and applicants and may lead to undesirable and unintended outcomes. It is understood that a number of councils have itemised these errors and omissions as part of their own submissions on the Code. The effectiveness of the Code will be significantly compromised where good policy has been included in the Code but is not called in through the procedural tables, and therefore cannot be applied to an assessment.

Design Standards have not been provided for consideration together with the draft Code. Since early in the reform process, these Design Standards have been flagged as an important component of bringing the new system into effect. Without them it is difficult to comment on matters such as infrastructure design and public realm. These are significant planning issues that are not completely addressed in the draft Code due to the inability to compare the draft Code to the Design Standards.

As the picture is still incomplete for Phase 3 councils, it is impossible for these councils to ascertain the true impact of the draft Code, how the outcomes it provides for may manifest in their streets, towns and suburbs, and how it may affect their communities, and their day to day and long term business operations.

### Policy loss

The State Government, in the early stages of development, communicated that the initial 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 draft 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 draft 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 the LGA understands that councils will have the opportunity to seek amendments to the Code in the future, including the inclusion of sub zones, it is disappointing that the State Planning Commission did not work more closely with councils during development of the Code to identify these local variations for inclusion in the draft 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.

## Design and character

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 activities<sup>1</sup>.
- 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 draft Code, which is the most practical and effective instrument available to realise the intent of the PDI Act.

### Local context

The 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.*"<sup>2</sup>

As the draft Code currently stands, these objectives will not be 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.

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<sup>1</sup> Reference sections with 5 and 3 principles, Section 59

<sup>2</sup> State Planning Policy 2 Design and Character, Objectives 2.8, 2.9 & 2.11

### *Design quality*

For the intent of the reform process to be met, a higher standard than currently proposed in the draft Code is required for design features for principal street facades and to encourage design quality and enable good design outcomes.

As well as reinstating the locally relevant design guidance contained in current Development Plans, the opportunity exists to strengthen design quality within the Code by consistently requiring a high standard of design elements and features within all types and scales of dwellings and within all Neighbourhood Zones either through consistent Neighbourhood Zone policy or across the board through the Design in Urban Areas module.

Also absent from the draft Code is policy to enable full consideration of the impact of development on the public realm. This includes Design Standards for public infrastructure, which while provided for in the PDI Act have not been addressed through the draft Code or Practice Directions.

### **Heritage and Historic Character**

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 have identified that highly effective heritage conservation policies exist in current Development Plans, and that these should be expanded rather than lost through the planning reform program.

Current Historic Conservation Zones (HCZ) and Contributory Items (CI) are highly valued by local communities and councils yet are excluded from adequate protections in the draft Code and in the new planning system more broadly.

The LGA undertook a review of the Expert Panel on Planning Reform's Report to the Minister for Planning, dated December 2019 on *Heritage and Character in the Planning and Design Code*. Given the very limited Terms of Reference provided to the Expert Panel, the Panel's inability to engage with the LGA, councils, heritage experts and communities in its deliberations, and noting that the Panel did not undertake a review of the actual policies proposed in the Draft Code, the LGA holds the view that the resulting report lacks the sound evidence base necessary for it to reach the conclusion that it is *supportive of the Commission's proposal not to separately include existing 'contributory items' in the new system*.

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 draft Code intends 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 draft Code further have the potential to slow down the development assessment process and result in more refusals of development applications.

While Historic Area Statements appear to translate the important elements of Desired Character statements that described existing development within Historic Areas, they do not provide clear guidance as to the design elements new development should incorporate that are often contained in existing Principles of Development Control or Tables within Development Plans.

In addition to the above, 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 are in agreement 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.

### **Recommendation:**

- a) The transition all existing Heritage and Historic Conservation Zones and Contributory Items into the first generation of the Planning and Design Code.
- b) The retention of current local Development Plan policies which can effectively ensure that new development and alterations and additions to Heritage Places and buildings within what will be Historic Area Overlays is consistent with or complementary to the established significance or value of the Place or Area; guide assessment of streetscape elements (e.g. fencing, garaging) that influence heritage interpretation and impact on established/emerging character; and encourage adaptive reuse of heritage places through development concessions (e.g. car parking).
- c) Amend the *Planning, Development and Infrastructure Act 2016* by deleting s67(4) and (5) relating to the requirement for 51% of property owners to agree by a vote to the establishment of a heritage conservation zone.

### **Infill Development**

While the draft Code accommodates continued infill development in the metropolitan area, the design, impacts and management of infill development should be addressed more thoroughly in the draft Code, ideally with the guidance of a broader strategy. In the draft Code, infill development should be considered together with particular regard to policies addressing design, neighbourhood character, and local context (refer Design and Character discussion above).

Local government recognises the need to contain urban sprawl. However, the increased densities resulting from infill development have placed additional pressure on services and infrastructure manifesting in conflict and poor outcomes relating to traffic management, carparking, stormwater management, loss of trees, provision of open space, privacy, overshadowing and design quality.

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 actually have the service and infrastructure capacity to sustain further development, the level of investment that is required to build and sustain the capacity of infill areas, and how this investment is to be prioritised and

funded. These issues should be thoroughly considered and clearly articulated in a State Planning Policy on Infill Development.

### **Recommendation**

- a) In conjunction with local government, the State Government undertakes a comprehensive review of the cumulative impacts of infill development in South Australia to inform evidence-based decision making about the capacity of identified infill areas to sustain further growth and development.
- b) The State Government prepares a new State Planning Policy for Infill Development under the *Planning, Development and Infrastructure Act 2016*.

### **The consultation process for the Code**

The LGA has regularly expressed concern through the reform and implementation process, as heard from our members, about key aspects of the reform process including fragmented community and stakeholder engagement (particularly engagement with councils), lack of rigor and analysis in policy development, short and always changing timeframes, and the absence of a clear plan to achieve the adoption of the Planning and Design Code. The LGA and councils are eager to work with the State Government to ensure that South Australians have a fit for purpose planning system that reflects community values and takes the State forward.

The LGA firmly believes that the implementation of the new planning system and the adoption of the Planning and Design Code will only be successful through a close partnership and collaboration between the State Government and its agencies, and local government.

The successful implementation of the Planning and Design Code can be achieved by the State Planning Commission collaborating more closely with local government to ensure that South Australia's planning system reflects best practice and that the Planning and Design Code and associated instruments deliver quality planning and design outcomes that improve the amenity, liveability and sustainability of communities.

Post implementation of both Phase 2 and Phase 3 of the Planning and Design Code the LGA believes that ongoing support for councils, the community and industry is required to ensure that both the new Code and eplanning system are well understood. In addition, it is anticipated that errors and omissions will be identified over the coming months within the Code, which will need to be addressed.

The LGA is continuing to support its members in both Phase 2 and Phase 3 during the implementation period and has made many resources available to councils to supplement the information provided by the State Planning Commission and the Attorney General's Department..

### **Recommendation**

- a) The State Planning Commission clearly demonstrate consideration of councils' feedback by providing detailed issue and zone-based summaries of submissions on the draft Code, and identify for each a response/action/amendment to the next iteration of the Code consistent with the intent of the Community Engagement Charter.
- b) Closer collaboration and engagement with councils at all levels on amended or new content of the Planning and Design Code.

## Appendix 1

<b>LGA Submissions on the Planning Reforms, Planning, Development and Infrastructure Act 2016 and associated Regulations and the Planning and Design Code and associated Discussion Papers</b>	
1.	Local Heritage and Character Position Paper – September 2016
2.	Submission on the Draft Community Engagement Charter and Draft Guide – December 2017
3.	Submission on Design Guidelines (Design Quality and Housing Choice) – July 2017
4.	Accredited Professional Scheme Discussion Paper – April 2018
5.	South Australia’s Planning and Design Code -How will it work? Technical Discussion Paper – July 2018
6.	State Planning Policies for South Australia – September 2018
7.	Environment Resources and Development Committee – Inquiry into Heritage -September 2018
8.	Accredited Professionals draft Regulations, Assessment Pathways Technical Discussion Paper and Performance Indicator Technical Discussion Paper – October 2018
9.	Natural Resources and Environment Discussion paper and Integrated Movement Discussion paper – November 2018
10.	Productive Economy Policy Discussion Paper – February 2019
11.	Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 and Draft Practice Directions – March 2019
12.	Submission on the Planning and Design Code in the Outback (land not within a council area) – Phase 1 – March 2019
13.	Accredited Professionals Scheme – Code of Conduct – March 2019
14.	Heritage in Transition Practitioner Guide – September 2019
15.	Draft Planning and Design Code – Phase 2 Consultation – November 2019
16.	Council Inspection Policies – Draft Practice Direction – December 2019
17.	Planning and Design Code Phase 3 - February 2020
18.	Environment Resources and Development Committee of Parliament – April 2020
19.	Environment resources and Development Committee of Parliament – Implementation of Phase 2 of the Planning and design Code – July 2020
20.	Local Design Review Scheme for South Australia – August 2020

## Appendix 2

### Summary of the relationship between the Expert Panel's Guiding Principles and the LGA Planning Reform Objectives

Expert Panels Guiding Principles	LGA Planning Reform Objectives	LGA's Assessment of the Planning Reform Program and draft Planning and Design Code against the Guiding Principles
<p><b>Partnerships and Participation</b></p> <p>An easily understood planning system that establishes constructive engagement between users and decision-makers</p>	<p>Opportunities for public participation in the planning system are clear, with an emphasis on influencing outcomes at the strategic planning and policy development stages.</p> <p>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.</p>	<p>It is acknowledged that a Community Engagement Charter has been adopted which contains 5 Principles of Engagement. The Charter recognises that communities should be meaningfully involved in the decision making that affect them.</p> <p>The LGA is of the view that the engagement process on the draft Code did not enable constructive engagement with either local government or local communities and council members were not provided with the opportunity to be engaged and to influence the local policy content within the Code.</p> <p>The LGA and many Phase 2 councils expressed concern about the insufficient period of time provided to consider the substantial and complex draft Code and prepare a comprehensive, robust and professional response by the consultation early closing date of 29 November (a period of only 8 weeks).</p> <p>Local government seeks greater involvement in finalising the new planning system and for communities to be genuinely engaged in the development of the system and the relevant circumstances in the decision making that occur within it.</p>

<p><b>Integration and Coordination</b></p> <p>A planning system that enables an integrated approach to both high-level priorities and local policy and decision delivery.</p>	<p>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.</p> <p>Planning policies and processes are underpinned by triple bottom line thinking, which balances the State's economic, environmental and social interests.</p> <p>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.</p>	<p>The LGA acknowledges the development and adoption of the State Planning Policies. In its feedback on the Policies, the LGA highlighted several policy conflicts and queried about how these policies would translate to the Planning and Design Code.</p> <p>This included how the Principles of Good Design are to be measured and incorporated into the Planning and Design Code and the lack of recognition of Contributory Items within Local Heritage areas and the management of conflicts between urban infill and existing stormwater infrastructure.</p> <p>The Commission have been primarily responsible for the development of the draft Code. Councils were provided with the opportunity to identify important local policy content, however much of this local policy has not been translated into the draft Code.</p> <p>While local government supports greater policy consistency, the best planning decisions are made when policy is developed and applied in the context of the local area. There needed to be greater scope within the Code for sensible local policy content that will facilitate good planning outcomes.</p>
<p><b>Design and Place</b></p> <p>A planning system that supports the creation of places, townships and neighbourhoods that fit the needs of the</p>	<p>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.</p>	<p>Councils and the community have an expectation that the Planning and Design Code will significantly lift the bar in terms of the quality of design outcomes being achieved through the planning system.</p>

<p>people who live and work in them now and in the future.</p>		<p>Good design and placemaking must be a central objective of the Code and must be enforceable in the assessment process.</p> <p>The LGA was supportive of the <i>Design Guidelines- Design Quality and Housing Choice</i>, prepared by the Office for Design and Architecture and the Principles of Good Design included within the Guidelines.</p> <p>To be effective, these Guideline and Principles need to translate into the Planning and Design Code to enable them to form part of the assessment process.</p>
<p><b>Renewal and Resilience</b></p> <p>A planning system able to respond and adapt to current and future challenges through innovation and the implementation of sustainable practices.</p>	<p>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.</p>	<p>The LGA supports the 'digital by default' approach to new planning processes.</p> <p>The LGA and local government sector supports an eplanning system which, if implemented effectively, will deliver efficiencies not only for local government but also State Government and the business sector.</p> <p>This system has been built and delivered by the State Government and the State Planning Commission and they are ultimately responsible for its ongoing operation and success. The State Government should also be responsible for meeting the costs of the ongoing maintenance and enhancement to this system.</p>
<p><b>Performance and Professionalism</b></p> <p>A planning system that is consistent, transparent, navigable, efficient and</p>	<p>Policies and processes are clear and consistent, resulting in equity, fairness and certainty.</p>	<p>The LGA is of the view that consultation on the draft Code should have commenced when the online system was completed and operational to enable live testing and to provide practitioners and the</p>

<p>adaptable, that supports clear-decision making and encourages and facilitates investment.</p>	<p>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.</p> <p>The development assessment process is robust but is more efficient through the removal of red tape.</p>	<p>community with an understanding of the how the draft Code will operate in an online environment.</p> <p>Local Government maintains its support for an efficient planning system that avoids unnecessary red tape, however aspects of the new system introduce grey areas that risk the process of applying for development approval becoming more confusing, costly and time consuming. Greater certainty is needed for developers, councils and communities.</p>
	<p>The appeal and review process is timely and cost effective and compliance and procedural matters are principally resolved through a non-judicial process.</p>	<p>While a new planning system was intended to increase certainty, in considering how the Draft Code might apply in practice, councils have found policies difficult to interpret.</p> <p>This creates the risk that the Code will be interpreted differently at the individual development application assessment level, and through the Environment, Resources and Development Court should the Code be implemented in its current form.</p>
	<p>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</p>	<p>The LGA acknowledges that performance measures will be developed and put in place. The LGA in its submission on the Performance Indicators Discussion Paper, dated October 2018 expressed disappointment that the system is only proposed initially to capture basic development assessment data, when the opportunity exists to establish a system to capture a range of data to inform the development of future policy and drive the planning system based on strategic objectives.</p>
	<p>There is accountability in the planning policy amendment process through the introduction of</p>	<p>As above.</p>

	performance measures and transparency through the introduction of an online 'tracking' system	
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