



23 January 2023

John Stimson
Chair
Expert Panel Review of the Planning System

By email: DTI.PlanningReview@sa.gov.au

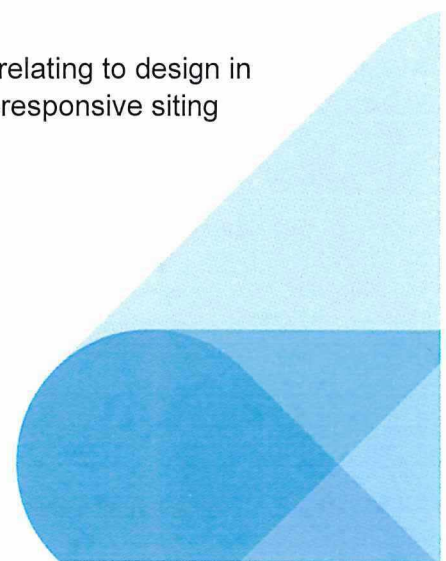
Dear Mr Stimson

Submission on the Expert Panel's Review of the Planning System

Thank you for the opportunity to lodge a submission on the review of the planning system. Council is encouraged by this comprehensive review as, whilst there are many sound and innovative elements in the system, there are also several problems, as yet unresolved. Council has also contributed to the Local Government Association's submission and supports its conclusions.

A detailed response is attached, but, in summary, outstanding concerns affecting Alexandrina Council's staff and community are as follows:

1. Difficulties working with and navigating the ePlanning system, particularly for occasional users in the community.
2. Difficulties managing certain elements of development assessment, particularly variations and staged consents.
3. Fees do not adequately reflect the time and resources required to ensure sound planning outcomes.
4. A number of problems with the application of Overlays, particularly the Limited Dwelling Overlay.
5. Timeframes are unrealistic particularly as they relate to requests for further information and "deemed consents"
6. The public notification is not achieving its goals. There needs to be more discretion for staff in notifying, and whilst there is wider notification in the community, there are fewer appeal rights. This is misleading the community.
7. A general vagueness of policy in the Code, and lack of policy relating to design in rural areas, boundary realignments in rural areas and climate-responsive siting and design.





8. Lack of policy relating to climate change mitigation including application of the Urban Tree Canopy Overlay and other passive design solutions that are not covered at the Building assessment stage.
9. Serious concerns regarding Private Proponent-led Code Amendments, including their adverse impact on orderly strategic planning, limited opportunity for review/verification of content, and their unpredictable impact on staff resources.

On a positive note, Council commends the intention of the Planning Commission to provide more support for Councils preparing/amending Character and Historic Area Overlays, and the upgrading of Character Areas to Historic Areas.

Should you wish to discuss Council's submission further, please do not hesitate to contact Kylie Weymouth, Acting Manager Strategic Development on 8555 7298 or email kylie.weymouth@alexandrina.sa.gov.au.

Yours sincerely

A handwritten signature in blue ink, which appears to be "Keith Parkes", is written over a horizontal blue line.

Keith Parkes
Mayor, Alexandrina Council

DEVELOPMENT ASSESSMENT

1.	Difficulties working with and navigating the ePlanning system	
	Document management	Much communication with clients is by email but emails cannot be uploaded into the portal. Instead emails have to be saved as a PDF and then uploaded. This creates an unnecessary administrative workload.
	Complexity navigating the system	Whilst planning practitioners and associated admin staff using the system every day have become familiar with the complexities and mechanics of the portal, this is not the case for members of the public seeking to lodge an occasional development application. For the lay person the system is daunting and invariably leads to lengthy discussions with staff guiding clients through the process.
	Variations and staged consents	The system makes managing variations to applications and staged consents very difficult and confusing.
	Verification process	The verification necessary at the start of the process, before any fees are paid, is very onerous and demanding, and is in effect a quasi-planning assessment. Some applications remain awaiting mandatory documentation with no way of moving them on or cancelling them.

2.	Fees	Changes to the fee system whereby Councils no longer receive a lodgement fee has led to a significant negative impact for Councils. In addition, fees coming to Council in no way reflect the resources required to assess an application in the planning portal.
-----------	-------------	---

3.	Overlays	
	Overlays and assessment pathways	In situations where a particular overlay only applies to part of a title (common in rural areas) a development application will trigger the calling up of all overlays applicable somewhere on the site even if the actual site of the development is not affected by the overlay. This has the potential to determine the incorrect assessment pathway.
	Limited Dwelling Overlay	This overlay had the intention of preventing dwellings being constructed in parts of Langhorne Creek and Currency Creek. The Performance Outcome however mentions only the avoidance of "undermining primary production". This rather blunt instrument does not acknowledge that, in the case of Langhorne Creek and Currency Creek there are numerous historic small allotments, not suitable for primary production, rendering the PO irrelevant. Recently a SCAP decision approved a Restricted dwelling application in the Limited Dwelling Overlay at Langhorne Creek as it (essentially) was not considered to offend the PO. This decision shows that the intent of the policy as it applies in Alexandrina is not being achieved, and also threatens long-standing policy in the "paper town" at Currency Creek.
	Flood Overlays	Needs to be more highly developed policy to address the possible impacts of flooding – building a certain height above identified flood levels may not be the best solution given local characteristics and impacts.

	Tree Canopy Overlay	Council proposes that the Tree Canopy Overlay apply to Alexandrina's townships. It is puzzling that it does not – issues of reducing heat and creating shade and habitat apply equally outside the metropolitan area. This overlay should also apply to the Master Planned Township and Neighbourhood suite of zones and should be relevant to non-residential zones such as industry and commercial zones where there are often swathes of barren land. It seems a big opportunity missed to not require urban greening on private land at the outset of a new development area or in areas with often large barren sites.
	Native Vegetation and Bushfire Risk Overlays	An effort should be made to resolve contradictory advice received from the Native Vegetation Council and the CFS. It is acknowledged that they have different agendas and seek different outcomes, but conflicting advice makes resolution of issues difficult for Council planners and applicants. Recommend that these referrals are sequenced or joined i.e. the CFS needs to determine what clearance is required first then a vegetation clearance report needs to be sought to determine the level of clearance etc. Without this sequence an applicant may believe no clearance is required but a CFS inspection determines that clearance is necessary.

4. Timeframes		
	Requests for further information	The 10 day period for requesting further information is quite unreasonable and results in poor outcomes. It works for the most basic structures only. It is inflexible and takes no account of resources available in the Development Assessment team. Council is not averse to timeframes applying but suggests that the 10 day period apply to Accepted Development and Deemed to Satisfy Development only and that more reasonable time frames apply to other categories, particularly those on public notification. Applications on public notification often require additional information and/or clarification arising from representations, the inability to do this leads to possible conflict, poor planning outcomes and potentially more refusals.
	Deemed Consents	This aspect of the system is one of the most perplexing. It creates unreasonable pressures on DA staff, creating the potential to result in less than rigorous assessment and poor planning outcomes. Its inflexibility does not consider and respond to changing and often challenging staff resources. At very least it should apply only to Accepted and Deemed to Satisfy categories of development.

5. Public notification		
	Lack of discretion	The opportunity for staff to deem a proposal minor and therefore not subject to notification is welcome. However, there is no opportunity for planning staff to decide that a particular proposal should be notified based on local knowledge that there may well be adverse impacts.
	Wider notification/fewer appeal rights	Whilst the extent of notification has been increased, and the notice on the subject site has given greater exposure to notifications, this has created a false sense of influence in the community as third party appeal rights have been significantly reduced.
	System has targeted domestic proposals	There appear to be many more domestic applications undergoing public notification than previously whilst more substantial proposals are not being notified. 80% of items decided by the Fleurieu Regional Assessment Panel are dwellings.

6.	Wastewater	The current system has not adequately addressed issues which arise with proposals in unsewered areas. The interface with Council's wastewater management system has not been adequately considered, and many Private Certifiers have little awareness of the implications of development on an unsewered site.
----	-------------------	--

POLICY AND STRATEGY

7. Lack of Policy		
	Boundary realignments	This is a concern in rural areas where realignments have the potential for adverse outcomes for primary production and landscape quality. Excellent policy to guide proponents to the best outcomes was not carried over from Development Plans, current policy is simply too shallow to result in sound outcomes. Council is happy to provide this policy to the Expert Panel and/or PLUS for further consideration.
	Design in Rural Areas	There is currently very little guidance for design in rural areas and this is a critical issue in areas of high scenic quality. Existing policy focuses on minimising cut and fill, and "maintaining a pleasant rural character and amenity". This policy is vague and provides little sound guidance to proponents. Nowhere is "Character" articulated – this could be done in Character Statements, providing guidance to applicants. The need for non-reflective materials and finishes, substantial setbacks and siting below ridgelines applies only to large buildings but there is just as much potential for substantial dwellings to create a blot on the landscape. Nowhere does policy address local natural features such as topography, creek lines and existing vegetation, nor design elements such as shading, articulation and roof lines, but rather relies on blunt instruments such as substantial setbacks. Large setbacks are not always possible on, historically small allotments and take no account of local geographic features. Previously developed policy has not been carried over but Council is happy to provide this policy to the Expert Panel and/or PLUS for further consideration.
	Lack of local policy	A great deal of local policy was lost in the transition to the new system. A relatively easy solution to this would be the re-introduction of Concept Plans to address local issues of importance in specific locations/critical sites which cannot be adequately addressed by the application of state-wide policy.
	Climate responsiveness	There is a lack of policy addressing the siting and design of habitable buildings so as to minimise heating in summer and cooling in winter, and take advantage of local climatic conditions such as cooling breezes. Whilst this issue is addressed in the Building Code in a different way, it is arguably better addressed up front at the planning stage by way of policies dealing with siting, orientation of buildings and windows, articulation, shading, depth of covered verandahs on northern and western sides, fenestration and materials, remedies which may in the long run be less expensive than building rules solutions (ie triple glazed windows that have unfavourable orientation). See also comments about the application of the Urban Tree Canopy Overlay.
	Vagueness of policy	Throughout the Code policy lacks definition and provides little guidance. Examples are references to "small-scale" in the <i>Local Activity Centre Zone</i> , with no reference to what constitutes "small-scale", and references in rural zones to "pleasant rural character" with no descriptions of what constitutes that character.

8.	“Value-adding” and Tourist Accommodation in rural areas	There is a lack of clarity around “value-adding” enterprises and tourist accommodation in rural areas, due in part to the rapidly changing tourism and visitor offerings in the hills and Fleurieu Peninsula Language around these developments needs to be more rigorous as it is currently ambiguous and this leads to confusion and potentially poor planning outcomes
----	--	---

9.	Private Proponent Code Amendments	
	Resourcing	This is currently a serious issue for Council in terms of resourcing, and in terms of Council’s long-standing strategic approach to planning policy Private Proponents can lodge a Code Amendment with PlanSA at any time, and this action has immediate implications (unplanned) for Council staff who have to formulate an initial response This is time-consuming, with frequently short deadlines to meet Council meeting dates, and removes resources from other on-going planning policy work identified by Council as having priority
	Consultation	<ul style="list-style-type: none"> ▪ Concerns about the impartiality of a community consultation process run by a person with a commercial interest in the outcome ▪ Concerns that the community will be disengaged/apathetic regarding lodging submissions to a private proponent, who may be a local identity, rather than Council, with perceptions that as it is not being undertaken by Council, it is of no consequence ▪ Council has no opportunity to gauge the community’s view on a Code Amendment until the consultation period has closed This means that Council (elected to represent the community) does not have the benefit of the community’s view in forming its stance on the appropriateness of the Code Amendment
	Review/verification of content of documentation	There is very limited, if any, opportunity for Council staff to review and verify the content of a private code amendment A good example of this is the Retail Study forming part of the Lot 5 Hampden Way Strathalbyn Code Amendment, there has been no opportunity to have this independently verified
	Lack of grace period	Private Code Amendments can be lodged at any time This is despite the fact the Minister for Planning may have made a recent decision which contradicts the objective of the proposed Code Amendment, as in the case of the current Lot 50 Hampden Way, Strathalbyn Code Amendment
	Relationship to Council’s long-standing strategic planning process	<p>The long-standing process of strategic planning has been undermined by the ability of private proponents to undertake code amendments Under the previous Planning & Development Act 1990, Council, the Minister for Planning and private proponents (under very limited circumstances and with Council undertaking the amendment) had the ability to amend strategic planning policy For the most part Council was in control of the process and could determine, according to demand and available resources, which policy should be changed, and how and when it should be changed A good example is the re-zoning of Deferred Urban lands to a residential zone Under current arrangements a private proponent can step in at any time and seek to change the zoning regardless of whether or not the proposal meets any local strategic documents or whether Council considers the time is right A good example is the current proposal to rezone Deferred Urban land at Middleton</p> <p>A preferred approach is one more akin to the previous, where it is possible for private proponents to instigate a Code Amendment, but with Council’s agreement, and with Council undertaking the process</p>

10	Heritage and Character	
	Elevate Character Areas to Historic Overlays	Council supports this initiative to upgrade Character Areas to Historic Areas where there is adequate justification, and in fact is currently doing this for the township of Milang The development by the Department of guidelines for this work is very welcome It is worth noting

		that some Character Areas (though not in Alexandria) are not historic in nature, the distinctive character is due to other design, siting or streetscape elements
	Character Area Statements' upgrades	This initiative, and the support for Councils undertaking upgrades is strongly supported