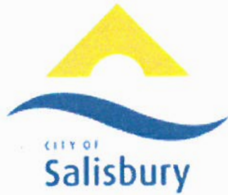

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31 January 2023

Mr John Stimson
Presiding Member Expert Panel
Planning System Implementation Review
DTI.PlanningReview@sa.gov.au

Dear Mr Stimson

City of Salisbury
Submission

The City of Salisbury has considered a number of matters relating to the implementation of the new planning system, and provides this submission in order to assist in understanding the issues that the City encounters. Council appreciates the opportunity to make this submission.

Planning and Design Code Reform options

Local Policy

The City of Salisbury requests additional policies (or Council's previous Development policy) in the Planning and Design Code (the Code) to recognises the considerations for local, neighbourhood, and regional level Places of Worship. Council has an increased demand for Places of Worship with an increasing population practicing non-Christian faiths. This is further evidenced with the preliminary Census data. A copy a submission made on this matter to the previous Minister for Planning is attached. An update to the submission is being prepared to include new Census data. Furthermore, Council suggests the consideration of additional zones for such facilities such as Rural and Rural Horticultural Zones, given the difficulty some community groups have accessing land.

In addition, Council has previously identified other local planning policies that applied to the St Kilda Township, Globe Derby Park Rural Living Area, and the Salisbury City Centre that were not adequately retained in the Planning and Design Code. These important policies recognise the existing character and land uses restrictions to support the orderly future development of these areas.

This loss of this important local policy and the difficulty for Council to have such policy reintroduced in the Code is a matter that Council considers requires further consideration.

Airport policy

The Code has inconsistent airport policy applying to Adelaide, Edinburgh and Parafield Airports. Unlike Adelaide Airport and the City of Adelaide area, Edinburgh and Parafield Airports are not recognised with finer grained building height contour mapping. A much-simplified defined area that triggers all assessments to require assessment applies to the Parafield Airport surrounds, and a differing height recognition applies to Edinburgh Airport. There is also a continued absence in the PD Code of a recognition of the Department of Defence as a Referral Body.

Infill Policy

Council supports the improved design policies for small scale infill within suburban areas, however the rate and nature of change for some communities, such as Ingle Farm, has resulted in some less than desirable development outcomes and further consideration should be given to:

- Strategic planning that considers the appropriate provision of infrastructure to support infill development within metropolitan Adelaide and targeting higher densities in specific locations such as centres, transport nodes and areas of public open space.
- Reviewing the policy in the Code for terrace dwellings within suburban areas as this form of development inherently results in poorer design outcome, due to relative intensity of the development.
- Ensuring road widths are adequate to facilitate the expected traffic volumes and on street parking, noting that car ownership remains relatively high.

Carparking Policy

Council experience has generally been that communities complain that new development brings with it increased traffic, congestion and insufficient car parking. This is supported with general observations that many of the new households have two vehicles. In the absence of any significant changes to car ownership and usage, Council recommends that on-site and on-street car parking requirements are not reduced and seeks a minimum of two car parks per dwelling.

Council has recently become aware that the car parking rates for educational establishments include student pick up/ set down may be either on the school site or can be catered for on the public realm within 300 metres of the school. The consequence is that this will result in increased reliance on public roads and exacerbated existing traffic congestion around schools. Council wishes to express concern with this policy position and strongly recommends that educational establishments should provide their pick / set down areas on their sites to reduce already congested roads that surround schools.

Policy improvement needed for non-residential uses in the General Neighbourhood Zone

It is the view of the Salisbury Council Assessment Panel that non-residential uses the General Neighbourhood Zone is vulnerable to interpretation due to a lack of precision thereby allowing land uses that not intended in the zone. Council supports this submission which was highlighted with a recent development application for a proposed retail fuel outlet that attracted significant community opposition. Furthermore, it is Council's view that the previous Development Plan policy provided more certainty and direction for community and for applicants. This certainty and direction should be considered for the Planning and Design Code.

Miscellaneous PD Code issues

The following issues are various matters that have been revealed in the assessment of development since the introduction of the Code that are considered to warrant further consideration:

- While the Code is accessible online, it is difficult for people to read and interpret who are not accredited professionals who use the system regularly. There should be further consideration to how the Code is presented to the general public.
- The interpretation of policy - pragmatic v tight interpretation of the Code is various. The Performance Outcomes are not well understood and often the Designated Performance Features have no relationship to the Performance Outcomes.
- There is a lack of policy guidance relating to managing overlooking from ground level areas at sloping sites.
- Two-storey development at rear hammerhead sites can have inherent detrimental impacts to surrounding back yards of neighbours. The Code does not provide adequate guidance for this form of development.
- Policy guidance is also required for emerging development trend of new housing types, including:
    - NDIS type supported housing arrangements. These forms of development have additional requirement for consideration such as supported accommodation and applicable parking rates.
    - Multi generation housing which is increasingly being sought by the community. There is no explicitly guidance by the Code or National Construction Code.
    - The previously defined 'multiple dwelling' to guide when occupancy of a detached dwelling exceeds what is reasonably expected for this form of dwelling.

Planning, Development and Infrastructure Act 2016 Reform Options

Council Assessment Panels

The Salisbury Council Assessment Panel has highlighted an issue on the role of the Elected Member of the Council Assessment Panel and has made a submission to the Expert Panel consider reviewing the Assessment Panel Members - Code of Conduct. Council supports this submission.

Furthermore, Council wishes to highlight the following specific matters for further consideration in this review:

- The name Council Assessment Panel has created considerable confusion. Given the distinct separate function of Panels to councils, the name of Panel should more accurately reflect this role, such as Independent Development Assessment Panel.
- The number of Elected Members on panels should be increased to account for improved local knowledge in the decision-making process. It is suggested that a minimum of two
- (2) Elected Members should be appointed to Panels. Furthermore, that the Presiding Member may also be an Elected Member.
- Clarify that in circumstances where a council makes a representation to Panel, and the Elected Member on the Panel declares a conflict at the council meeting on the matter before the Panel, they are not excluded from participating on the Panel.
- The new accreditation requirements for members on Panels has resulted in a reduced pool of eligible people that may be appointed for this role. Given this, the suitability of candidates should be based on defined skills or qualifications, not the accreditation requirements, to increase the pool of suitable candidates that may be appointed.
- It is important that decisions of Panels is transparent and to facilitate this process it is recommended that the prescribed meeting procedures in the regulations also include a clause to include a record of individual member voting.

Infrastructure Schemes

The current infrastructure schemes in the Act are unlikely to be used given the complexity and uncertainty of these schemes. The absence of workable infrastructure schemes for large and complex land developments affects land supply and hence economic growth. The Expert Panel is urged to undertake a comprehensive review of infrastructure schemes. The Victorian government has been identified as having a better infrastructure model and provides measures that could be adapted to South Australia. Staff from the City of Salisbury have collaborated with staff from other growth councils of the Greater Adelaide Region to prepare a response to the Expert Panel on Infrastructure Schemes. This submission is attached for the Expert Panel's consideration.

Public Notification

It is recommended that the Expert Panel consider notification for development on the boundary, when deemed necessary, to be made only to the affected adjoining neighbour. Furthermore, non-residential uses should not be excluded from notification in residential type zones.

Appeal Rights

The alternative appeal mechanisms provided in the discussion paper to expediate appeal process does appear to have some merit. Council supports the consideration of mechanisms to reintroduce third party appeals rights for development, particularly for development that is not reasonably expected within residential neighbourhoods.

Deemed Planning Consent

Considerable concern has been raised about the negative impacts the deemed consent option has introduced into the assessment of development. This, combined with very short assessment times for what can be quite complex matters, results in a greater likelihood of applications being refused, or substandard designs that do not meet the provisions but are just good enough being approved to avoid a deemed consent rather than working with applicants to achieve a design that can be supported to better deliver the intent of the policy. This is inconsistent with the objects of the Act to promote high standards for the built environment. It is a severe penalty that does not adequately consider the consequences for the community for development that is inappropriate. This approach does not provide a basis for collaborative relationships with applicants that in turn deliver more appropriate planning outcomes. Other jurisdictions such as Victoria, Western Australia and Tasmania have taken a more balanced approach, whereby a review is undertaken by the respective courts on the facts and the court makes a considered and independent determination on the application. This is considered to be a more equitable approach that will safeguard the community against potential poor development outcomes.

Deemed to Satisfy (Minor variations)

The Deemed to Satisfy (minor variations) s106(2) of the Act is creating legislative ambiguity. This provision is not working as intended. There needs to be greater guidance on what constitutes a minor variation to address the current inconsistent approach. This could be informed with clear parameters such as a minor variation may only be granted:

- by a council, or
- by private certifiers where the element does not have an impact beyond the site.

  E.g. excludes site area, frontage, setbacks, building heights, length on boundary and the like, and there is accountability / transparency with clearly documented justification for any minor variations.

Assessment Timeframes

It is recommended that assessment timeframes for more complex development, not involving up to two (2) class 1 (dwellings) and class 10 outbuildings, should be 8 weeks as provided under the previous Act (from the current 4 weeks), as the current assessment timeframes are not adequate and do not facilitate the promotion of high standards for the built environment.

The verification process is onerous and does not adequately account for the assessment that is required for more complex developments. The Expert Panel is encouraged to consider training, education, and DAP system solutions, ahead of imposing penalties on a sector that is facing the same resourcing challenges as other sectors.

Practice Direction 14: Site Contamination

The practice direction for the assessment of site contamination in parallel with new development provides good guidance and has been an improvement to the planning system. The framework has however created some unnecessary red tape in the planning system that triggers site contamination processes in instances that do not appear warranted, as they do not appear to present a risk to the land use. It is recommended that Practice Direction 14 should be amended to include:

- That a commercial class 1 use (and similar) in association with an existing industry is not to be regarded as a more sensitive use.
- Explicitly include a warehouse, store, service trade premises, bulky goods, retail fuel outlet and similar common land uses from Part 7 of the Planning and Design Code in item 7 of Table 1: Land Use Sensitivity Hierarchy to provide greater certainty.
- An amendment to clause 5(d)(iii) to include all proposed uses referred to above, within Item 7 of Table 1: Land Use Sensitivity Hierarchy.
- The establishment of a Ground Water Prohibition area should be reviewed so that site contamination audit report that creates this overlay considers all the affected zones and identifies the range of suitable uses not requiring a referral for the entire ground water prohibition area. This would likely be more particularly applicable to employment type zones, rather than neighbourhood type zones. There otherwise should be a general exemption that applies for development applications that include item 5, 6 and 7 land uses in the Land Use Sensitivity Hierarchy.

E-Planning System and the PlanSA website

While the DAP has introduced some positive change, it has not yet delivered the efficiencies for the processing of development applications that were expected from the reform, notwithstanding the many enhancements that have made since its introduction. PlanSA has been provided an exhaustive list of issues and it is acknowledged that the department has generally sought to progress enhancements. Critical changes are however urgently required, as the Discussion Paper – ePlanning System and PlanSA website Reform Options has identified. It is considered essential that these are urgently prioritised as the current DAP limitations is significantly affecting the performance of the development assessment process. For example;

- The current DAP is too linear and does facilitate multi process actions across planning and building. Staff cannot easily update basic data, such as add addresses after verification or continue to assess an application when the application is on hold. This is resulting in double or triple handling of development applications. A relevant authority should be able to efficiently complete all aspects of an assessment at one point, regardless of status of the application and should be given administrative control to change data in the DAP as required. There is significant inefficiency in administrative functions being undertaken only by PlanSA.
- The current DAP is too complicated for simple development applications. The DAP should be streamlined for simpler development applications and should allow authorities to concurrently assess planning consent, building consent, and issue development approval.
- Assessment timeframes do not accurately capture when a request for information has been made – the system should accurately measure the assessment time.

- The system does not have a robust document management system, the current approach is convoluted and complicated. A contemporary document management system should be adopted for the DAP.
- Dashboards to monitor volumes of work are not working and cannot be readily relied upon. Dashboards should be provided to readily monitor and track development applications, without having to generate a PowerBI reports.
- New titles details are not being transferred or updated into the DAP in sufficient time to allow for the assessment of new development applications and this also often holds up the production of the Form 1 - section 7 certificate.

Given the critical role of the DAP in the system, it is recommended that the Expert Panel be requested to review the governance and resourcing that is necessary to sustain it. There appears to be an inherent limitation with the current governance model of PlanSA determining & progressing enhancements. While there have been many enhancements, acknowledging the efforts of the department to address what they can, there remain many more that are outstanding. As the current governance model requires all ideas to be funneled through PlanSA and prioritisation of enhancements need to fit within the available resources & understanding of the issues by the department, the most common problems are the focus, not innovation.

Furthermore, it is recommended that the DAP should offer full Application Programming Interface (API) Based Product Integration (open data) so that stakeholders can move towards business to business transactions. This will facilitate innovation as it will incentivise stakeholders to evolve their business processes and the learning can be shared across all stakeholders. Enabling all stakeholders to shape direction and priorities of the core DAP functionality, together with the full API based Product Integration the DAP could realise its full potential as a digital platform.

Customer Experience

The *E-Planning System and the PlanSA Website* discussion paper identifies early recommendations to improve this service which are generally supported.

The experience in relation to the Development Assessment Portal has been that many people do not understand how to use the system and often call council staff to explain and/or be walked through how to complete a task in the system. It is common for people to just email staff outside the DAP. Increased attention should be made to designing the DAP to the needs of different users such as one-off users and regular users such as builders. One off users should not have to register to access the DAP whereas regular users who might be required to register to use the DAP should have the benefit of pre-populated fields once in the system. Furthermore, processes involving staging of development, variations and CITB payments should be simplified.

The City of Salisbury wishes the Expert Panel well with its deliberations and report to the Minister for Planning.

Yours faithfully

John Harry
Chief Executive Officer

Attachment 1: Growth Councils collaborated response on Infrastructure Schemes

PLANNING SYSTEM IMPLEMENTATION REVIEW

Comments to the Expert Panel on Infrastructure Schemes

Planners from growth Councils of the Greater Adelaide region have collaborated on preparing this response to the Expert Panel regarding the need to establish workable infrastructure schemes for large and complex land developments. The collaborating councils include: Adelaide Plains Council, Town of Gawler, Light Regional Council, City of Onkaparinga, City of Playford, City of Salisbury, Mount Barker District Council and the Barossa Council. Each Council will be forwarding this response to the Expert Panel through its Council or executive.

The councils agree with the expert panel that as provided in the *Planning, Development and Infrastructure Act 2016* (the Act) the General and Basic infrastructure scheme would be overly complex and difficult to work with, if operable at all. Two quotes from the Expert Panel Discussion Paper are illuminating:

*"The provisions regarding general infrastructure schemes have **not yet** commenced and before they have commenced, the Commission must conduct an inquiry into the schemes in relation to the provision of essential infrastructure under Part 13 of the PDI Act, and a report on the outcome of the inquiry must be laid before both Houses of Parliament* (pg. 31)".

This is a very concerning delay in the provision of essential infrastructure, which in turn would be a drag on project implementation and overall economic development. Despite the Act being in place since 2016. The Discussion Paper also highlights the complexity of managing these infrastructure projects:

*"The legislative provisions surrounding infrastructure schemes under the PDI Act are **far more detailed and complex** than the legislative provisions in most other jurisdictions* (pg. 33)".

Councils have responded to this legislative and policy gap with local developer contributions schemes using Deeds and Infrastructure Agreements anchored to affected properties by Land Management Agreement/s to levy Separate Rates on properties once they reach a development trigger.

For example, the current approach to infrastructure provision in Gawler East Growth Area provides an example of a significant resourcing and administration challenge aimed at delivering outcomes that also affect State Government assets.

On 1 July 2017, Council introduced three Separate Rates across the Gawler East Growth Area totaling $19.6 million (M):

1. Transport Infrastructure (Link Road) Separate Rate - $8.2M
2. Community Infrastructure Separate Rate - $4.8M
3. Traffic Interventions Separate Rate - $6.6M.

In addition, Council contributed $5.4M to the development of infrastructure in Gawler East Growth Area bringing the total potential infrastructure spend to $25M.

These schemes in themselves are complex and require individual tailoring of legal advice and agreements. On occasion, these schemes involve a council maintaining matching agreements with several landowners concurrently across a nominated area. They involve extensive staff resources in their administration, including providing advice on interpretation (as needed), the development of proposals, gaining cooperation of landowners and levying of the separate rate.

Current arrangements are resource intensive, inefficient and given they are managed at a local level in most cases, likely to be inconsistent across the state.

Some councils have experienced negotiating and settling deeds involving infrastructure affecting state assets, such as the arterial road network, without the relevant state agency being a party to the Agreement.

Councils have also experienced challenges in circumstances where affected properties are sold and landowner responsibilities are not appropriately transferred as a part of the transaction.

An alternative solution to Land Management Agreements and Separate Rates is required to enable the development of the State's strategic growth areas. The solution needs to work for these areas because they require co-ordinated infrastructure delivery and rezonings where not all landowners are in agreeance and where the infrastructure provision may have a long horizon and several providers.

We strongly believe based on our combined experiences there must be a **whole of government** approach, requiring all relevant parties to come together to discuss and ultimately agree to revised schemes for infrastructure requirements, its delivery and funding. The Councils agree with the State Government's position that infrastructure delivery must be resolved prior to the commencement of a related Code Amendment. There would be a benefit in ensuring that for certain larger-scale undertakings, detailed Structure Planning precedes related infrastructure negotiations and Code Amendments.

Given the need to expedite development in South Australia a simpler system can be developed to ensure that there is a common understanding of required infrastructure contributions at the outset of each project requiring same. The Councils who have collaborated to develop this paper contend that a 'case by case' approach as currently utilised is delaying infrastructure projects from housing to employment lands and hence holding up both orderly and economic development.

Infrastructure Schemes should be clear and straightforward in what they need to achieve based on the following principles - **strategic, equitable, sustainable and best practice, adaptive, and economical**

Within the Discussion Paper – Planning, Development and Infrastructure Act 2016 Reform Options, we note the Jurisdictional Comparison and consider there is substantial merit in further exploring alternative legislative provisions noting there is support within this group for a similar approach taken by the Victorian Planning Authority. It is noted that the State of Victoria has been operating a Developer Contributions Scheme since 2003.

We have been asked to respond to the following questions on Infrastructure Schemes posed by the Expert Panel:

1. What do you see as barriers in establishing an infrastructure scheme under the PDI Act?

<u>Response</u>

- Acknowledging that one of the schemes is not operational, the schemes are overly complex with numerous decision-making points by different owners.
- Councils are concerned that most of the decision making, and control comes from the State Government when Local Government has the knowledge, links to the community and current and future ownership of most of the infrastructure.
- The schemes provide no guidance on where the upfront investments will come from.

- Separately, the schemes place considerable responsibility on the 'Scheme Coordinator' role, making this the subject of potential governance risk in conducting negotiations with more than one Landowner/ Developer.
- The Scheme Coordinator approach may lack the ability to involve key stakeholders, e.g. government agencies and/ or key utilities to ensure timely deliverables.

2. What improvements would you like to see to the infrastructure scheme provisions in the PDI Act?

Response

- It is considered the issues identified in question 1 plus the recommendations in questions 3 should be considered.
- In addition, councils would like the definitions of infrastructure to be reviewed to incorporate open space and recreational facilities.
- The Act should be amended to ensure Structure Planning of growth areas with infrastructure designs and costings occurs prior to the rezoning process.
- The Act needs to require that the State Government provides for an effective whole of government infrastructure co-ordination that aligns with Regional Plans, including funding mechanisms for infrastructure agencies. It is difficult for councils to engage with infrastructure providers (e.g. SA Water, SAPN/Electranet and the Department for Education) at the strategic planning and rezoning stages. Agencies need to be committed to providing services to facilitate and support development opportunities.

3. Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?

Response

A 'Whole of Government' approach (including Transport, Education, Health and Wellbeing, Emergency Services, Environment, Recreation and Sport, Local Government etc.) via an empowered authority would appear to be an effective alternative model to consider exploring. For instance, the Victorian system has been identified as having a better coordinated infrastructure model and provides an example of measures that could be adapted to South Australia such as:

- Predetermined contribution costs for various types of infrastructure, with the ability to alter the agreed cost when identified in a structure plan.
- A State infrastructure fund to pay for infrastructure prior to development proceeding and costs being recouped.
- A minimum requirement that 10% of land is allocated towards key infrastructure at the structure planning stage.

Anecdotal feedback suggests that the Victorian model has the benefits of all stakeholders, (including landowners, developers, communities, local authorities, State Departments/agencies, key utilities etc.) being aware of a contribution-based approach in contemplating rezoning and development opportunities.

Councils would be interested in exploring such a model with the State Government and other stakeholders, acknowledging that Councils would maintain an interest in continuing to manage key local infrastructure decisions and delivery management arrangements.

Any processes need to ensure key triggers for delivery of required outcomes. As Development Assessment is problematic as a trigger for infrastructure delivery and relying upon the Land Management Agreement/ Infrastructure Deed model can also be problematic, it is considered that creating another legislative device that can be attached to an affected Certificate of Title, similar to a LMA may be worth considering as an addition to the current tools.