

John Stimson
Presiding Member, Planning System Implementation Review
Expert Panel, GPO Box 1815, Adelaide SA 5001

Dear Presiding Member and Expert Panel,

SUBMISSION ON PLANNING SYSTEM IMPLEMENTATION REVIEW

Thank you for the opportunity to provide feedback to the review.

I'm in a similar situation to others in terms of experience of the new planning system being short compared to experience under the Development Act 1993.

Nonetheless, based on experience as a private sector consultant and employee handling development applications, I am in a position to comment on certain features and issues.

The papers prepared by the Panel address salient issues, though by no means all of them, and include questions that assist in structuring comments.

Public Notifications and Appeals

1 *What type of applications are currently not notified that you think should be notified?*

It appears that the percentage of notified applications has significantly reduced. In the past, a justification given has been that engagement during the development of policy negates a need for public notification and feedback with development applications assessed. This pre-supposes clear development policy and also development that is envisaged and encouraged by the policy.

Apart from being somewhat naïve about when legitimately interested parties would prefer to opt to participate, this view presumes effective participation in policy as well as clear policy that is readily comprehended by the public.

The reality is very different. The Planning and Design Code is far from being an accessible document. As a result, it will be very challenging to achieve well-informed, effective engagement as the Code is reviewed and amendments are proposed.

Interstate comparisons suggest that SA offers less notification in relation to development applications, than some of the counterpart systems in other jurisdictions.

2 *What type of applications are currently notified that you think should not be notified?*

This may have been addressed already perhaps, but notifying retaining walls in the HFZ seems a little excessive without significant impacts external to the site.

3 *What, if any, difficulties have you experienced as a consequence of the notification requirements in the Code? Please advise the Panel of your*

experience and provide evidence to demonstrate how you were adversely affected.

None. However, this is based on a limited number of applications.

4 *What, if any, difficulties have you experienced as a consequence of the pathways for appeal in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.*

Review by Council Assessment Panel is not a good option for applicants. It is not an intensive, fresh review process with opportunity for mediation like the compulsory conference in the ERD court process. Hence it may be a dead-end – not an effective means of resolution of issues, but a potential ‘trap for mum and dad applicants’ as one Council officer put it. The suggestion was that experienced developers would skip it and try the ERD Court path instead. This correlates with my own experience.

The Council Assessment Panel review I experienced was perfunctory only. It is unlikely that Panel members had visited the site. The site is a considerable distance from both Adelaide (where most are based) and the (rural) Council office, but a site visit was pivotal to resolving some of the key issues relating to visual impact. With a fee of \$500 perhaps one could not expect more. However, a poorer appreciation of site context limits ability to explore effective solutions regardless of the qualifications and expertise of Council Assessment Panel members involved.

Once an appeal to Court was initiated (after Panel review), a compromise solution was quickly reached with Council staff, a fresh application was approved quickly, and the Appeal was withdrawn.

Lessons - Panel forum size and standard meeting procedure is too cumbersome.

A better alternative would be a review by one or only a very few more personnel, with adequate time allocated, and a better process entailing:

- site visit (not just review of documents);
- drill-down into the key issues and detail;
- explore and give effect to realistic and practical compromises; and
- give value for money.

Other comments - Objectivity can be diminished where the delegate and panel are in a close working relationship. (This may also be an issue where the State Planning Commission reviews a SAPC decision.)

5 *Is an alternative planning review mechanism required? If so, what might that mechanism be (i.e. merit or process driven) and what principles should be considered in establishing that process (i.e. cost)?*

I am aware of Victorian Planning Panels as a *policy review* option.

This appears a useful feature of the Victorian system though my knowledge of VPP work is limited to policy. Impressive reviews have been undertaken of local Scheme amendments, eg. seeking to incorporate sustainability provisions and heritage listings. The publication of findings in a substantive report and transparency of VPP is helpful in setting standards. The VPP review outcome is well timed and fully public to elevate expert evaluation and deter ‘political’ decisions on heritage matters.

My impression is that there are some significant differences in how Assessment Panels operate in different States, including for instance the roles of the Presiding Members. I'm unconvinced SA's CAPs deliver value for money, or are 'state of the art'. Therefore there may well be merit in closer examination of interstate options, including how Panel reviews operate in development assessment interstate.

Accredited Professionals

- 6 *Is there an expectation that only planning certifiers assess applications for planning consent and only building certifiers assess applications for building consent?*
- 7 *What would be the implications of only planning certifiers issuing planning consent?*
- 8 *Would there be any adverse effects to Building Accredited Professionals if they were no longer permitted to assess applications for planning consent?*

Public interest should be the test and clearly does not support using professionals in roles that extend outside the scope of their professional expertise.

Impact Assessed Development

9. *What are the implications of the determination of an Impact Assessed (Declared) Development being subject to a whole-of-Government process?*

No comment.

Infrastructure Schemes

10. *What do you see as barriers in establishing an infrastructure scheme under the PDI Act?*
11. *What improvements would you like to see to the infrastructure scheme provisions in the PDI Act?*
12. *Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?*

I have no direct SA experience with infrastructure schemes as set out in legislation, but an observation from interstate situations is that truly effective infrastructure delivery mechanisms are key to turning zoned land into delivered land supply, rather than remaining as 'on paper' land supply. This is something SA continues to find challenging.

Heed advice from specialist experts who make it work interstate is my suggestion.

Local Heritage in the PDI Act

13. *What would be the implications of having the heritage process managed by heritage experts through the Heritage Places Act (rather than planners under the PDI Act)?*

Having experience managing a range of local heritage DPAs for Adelaide, Barossa, Burnside and Onkaparinga Councils, as well as heritage listings interstate, my view is that the implications are potentially net positive. Almost all heritage lists need maintenance. There are often gaps and sometimes a reasonable case can be made to de-list or add detail to improve efficacy of assessment. A DPA/Code Amendment is the wrong tool being designed to review and amend planning policy. As a result it is cumbersome and a poor use of resources when applied as a heritage listing process. A transfer of the local heritage listing / de-listing process to specialist legislation that also covers the State heritage, can and should deliver a more integrated, effective, expert-based approach. The current dis-connect between local and State heritage lists limits ability to transfer from one level to other. At present, there is no default efficient process available to re-direct failed recommendations for the Register of State Heritage to a local heritage designation if warranted. So one implication of the suggested 'heritage process managed by heritage experts through the Heritage Places Act' could be far more efficient sorting of potential items into local and State designations (or neither) without places falling through the gaps. There would be less net administrative cost due to elimination of undue duplication.

The role of local government in managing local heritage is essential and any arrangement for resourcing therefore would require local government's resources. A cleaner, less resource-hungry process that supports the way the community values heritage while elevating independent expert assessment, is a sound rationale for change. Agile, reputable and expert administration of listing processes without deterring reasonable conservation ambitions or incurring unreasonable delay should be the aim. This should also help free up resources to support owners adapt and conserve designated heritage properties.

The current heritage administration in SA is under-resourced. There are large disparities between Councils in terms of their efforts to conserve heritage through listings and offer conservation advice and related services to owners. Both need to be addressed as a high priority in my opinion.

In my view, the ERD Court is not the best place to review heritage listings, and the VPP review process in Victoria may well be a distinctly superior option that makes effective use of relevant expertise. A VPP-type review (independent, expert, transparent) could be emulated here potentially.

14. *What would be the implications of sections 67(4) and 67(5) of the PDI Act being commenced?*

The Panel's Paper presents a cogent case for repeal of these provisions.

Community engagement in accordance with the Charter is important and is likely to be a sufficient safeguard.

Deemed Consents

15. *Do you feel the deemed consent provisions under the PDI Act are effective?*
16. *Are you supportive of any of the proposed alternative options to deemed consent provided in this Discussion Paper? If not, why not? If yes, which alternative (s) do you consider would be most effective?*

I have no view on the Deemed Consent facilities that I can offer based on direct experience.

However, clearly it is no panacea for lack of timeliness and will not eliminate avoidable delay incurred while the clock is stopped.

I have observed 'practice' or 'cultural' deficiencies including poor communication between applicant and assessment staff or system, and over-reach in terms of content of RFI, that frustrate timeliness and efficiency.

A case in point is a RFI that simply attempted to instruct a significant amendment to the application. In essence, staff disagreed with the opinion of the consultant planner (even though the latter was based on a submitted report including a thorough assessment against the Code) and sought to push for a different outcome that the applicant did not support. This kind of practice subverts the intent of a time-limited assessment.

There is merit in considering a certification process to check and verify the information submitted with the application. This assumes information requirements are set out clearly enough with minimal scope for varied interpretation.

There may be a need for more training on good practice, but this may not be so effective if there is a culture of negotiating hard over and above due process.

Verification of development applications

17. *What are the primary reasons for the delay in verification of an application?*
18. *Should there be consequences on a relevant authority if it fails to verify an application within the prescribed timeframe?*
19. *Is there a particular type or class of application that seems to always take longer than the prescribed timeframe to verify?*
20. *What would or could assist in ensuring that verification occurs within the prescribed timeframe?*
21. *Would there be advantages in amending the scope of Schedule 8 of the PDI Regulations?*

Slowness to verify is possibly not as significant as time wasted subsequently, as discussed above.

The standard information required seems better tailored to urban versus rural contexts.

OTHER ISSUES

Enable a Real EFPA Review by amending Section 7 of PDI Act

The interplay of the planning legislation and the EFPA means the State Planning Commission is severely curtailed in responding to valid issues with the EFPA that have been raised, including by Councils.

Why have an independent Commission review the EFPA if it is not able to advise on nearly all of the policy issues and submissions presented to it, and merely produces a very small list of variations that address what are deemed minor anomalies? How unproductive!

The Commission should be able to advise on a fundamental conflict between the intent of legislation and the intent of Rural Living Zones.

Crown-sponsored Applications should be on the Portal

Some of these are applications for quite major developments that are complex and may be subject to re-design and variation. This means there are considerable potential advantages to all involved (applicant and its consultants, SAPC, referral agencies) in managing the documentation, including for any variations, using the good facilities of the portal.

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Kind regards

Jim Allen

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