

# Planning System Implementation Review

## Background

An expert panel was announced on 5 August 2022 to conduct this review. The panel will review key aspects of the planning system and identify opportunities to ensure planning decisions encourage a more liveable, competitive, affordable, and sustainable long-term growth strategy for Greater Adelaide and the regions.

The review includes a review of the **Planning, Development and Infrastructure Act 2016 – (PDIA or the Act)**.

This submission is concerned with the operation and difficulties with the EFPA. It also highlights the loss of a major project proposal as a result of the inadequate EFPA regulations / the interpretation thereof.

The EFPA is operative via Section 7 of the **Planning, Development and Infrastructure Act 2016 – (PDIA or the Act)**

## Introduction

Whilst the concepts behind the EFPA are supported – not using valuable agricultural land for residential development – there are difficulties with the way the PDIA Act is written, its interpretation and operation.

There was a review done in 2021 of the EFPA and the report commented as follows at section 3.3.2 on page 12

[https://plan.sa.gov.au/data/assets/pdf\\_file/0010/964909/EFPA\\_Review\\_2021\\_-\\_Outcomes\\_Report.pdf](https://plan.sa.gov.au/data/assets/pdf_file/0010/964909/EFPA_Review_2021_-_Outcomes_Report.pdf)

viz:

### **3.3.2. Legislative or Policy Issues**

*Certain submissions raised concern regarding the existing EFPA legislative framework such as:*

- *Section 7 of the Act being a ‘blunt tool’ which does not have flexibility to enable a site by site assessment of land division on its merits.*
- *The relevant ‘tests’ in Section 7 to enable meaningful variations to EFPA boundaries, do not enable a sub-regional or township level analysis of land supply and demand (but rather inappropriately involve an aggregation of land supply and demand for the whole of Greater Adelaide).*
- *The five year increments between EFPA Reviews do not enable flexibility to adapt to changing circumstances*
- *There is a lack of clarity as to what constitutes ‘residential development and/or what constitutes ‘primary production’ in terms of EFPA controls on land division.*

### *Commission’s Response*

*The Commission acknowledges the matters raised from submissions in relation to various concerns or queries regarding the current legislative framework and*

*expression of this framework in the Planning and Design Code and associated Practice Direction #1.*

*This Outcomes Report however only seeks to address matters within scope of the Review (being the consideration of EFPA boundary variations).*

From those comments it is clear that changes are required to the EFPA both as to the scope of such a review and so as to improve the process and to produce better outcomes for SA.

The Commission was constrained in its report and recommendations by the limitations of the Act and its strict and narrow interpretation.

This leads to poor and in some instance non sensical outcomes.

It is submitted that

- The Act needs to be changed
- The Interpretation and operation of the Act should be regulated so as to lead to better planning outcomes
- The EFPA areas should be changed to exclude land not viable for agriculture
- Provision should be made for major project proposals of merit to go forward

## The Act needs to be changed

The Act states

7. 3

(3)

*In making any decision under this section (following the establishment of the initial environment and food production areas under subsection (1)), the Commission must ensure that areas of rural, landscape, environmental or food production significance within Greater Adelaide are protected from urban encroachment and the Commission may only vary an environment and food production area if the Commission is satisfied—*

*that—*

(a)

- (i) an area or areas within Greater Adelaide outside environment and food production areas are unable to support the principle of urban renewal and consolidation of existing urban areas; and*
- (ii) adequate provision cannot be made within Greater Adelaide outside environment and food production areas to accommodate housing and employment growth over the longer term (being at least a 15 year period).*

This has been interpreted to mean that both some (i) **AND** (ii) 2 need to be satisfied and if there is say a surplus of supply in the northern part of the Greater Adelaide area but a deficit of supply in the southern part that they can be balanced out and if the net result is determined to be in balance or in surplus there is no need for any change.

It is submitted that this

- is against what was intended
- leads to poor planning outcomes.

Either the Act needs to be interpreted differently or, if bound by legislative interpretation, that the wording of the Act itself needs to be changed.

The background to the PDIA was to improve planning and the background documentation refers to regions and it makes no planning sense to aggregate demand and supply over vastly different areas in terms of sociodemographic characteristics, topography, land supply and demand by type – e.g. urban and rural living. At its very least reviews should be done by council area if not by communities within a council area.

Alternatively to make use of Section 5 of the PDIA and to divide the state into planning regions for the purpose of the PDIA. If that were done then another review should be done immediately thereafter with changes taking into account the particular characteristics of the individual regions.

## Interpretation and Operation of the PDIA

### REGIONAL SUPPLY

Section 5 (1) of the Planning, Development and Infrastructure Act 2016 (PDIA) provides for

*The Governor may, by proclamation made on the recommendation of the Minister –*

*(a) divide the State into planning regions for the purposes of this Act (PDIA).*

Subsequent sections deal with details thereof – e.g.

*(4) The Minister must, in formulating a recommendation for the purposes of subsection (1) or (3)—*

*(a) seek to reflect communities of interest at a regional level; and*

*(b) take into account—*

*(i) the boundaries of the areas of councils and other relevant administrative boundaries that apply within the State; and*

*(ii) relevant economic, social and cultural factors; and*

*(iii) relevant environmental factors (including water catchment areas and biogeographical regions); and*

*(c) give attention to the need to achieve effective planning consistent with the objects of this Act, and the delivery of infrastructure, government services and other relevant services, at the regional level.*

*(5) The Minister must, before a proclamation is made under this section—*

*(a) seek the advice of the Commission; and*

*(b) give any council that will be directly affected notice of the proposed proclamation and give consideration to any submission made by such a council within a period (being at least 28 days) specified in the notice, and the Minister may consult in relation to a proposed proclamation with any other person or body as the Minister thinks fit.*

It is submitted that the Minister should make a recommendation to the Governor to enable changes to be made so that the EFPA can be reviewed by region / community.

Regions exhibit significantly different characteristics and the availability of land (and by type) varies greatly between region as does the demand by region (and by type).

There has been a significant change in internal migration in Australia to the regions.

The Fleurieu region has had the largest impact and now has an imbalance of demand and supply by land type.

As a result of Covid and its restrictions / concerns / improved working from home abilities / acceptance - there has been a significant increase in demand for rural living and decentralised living from the city of Adelaide – this has placed particular pressure on demand in coastal towns including Goolwa – Hindmarsh Island such that there is now a shortage of supply of rural living allotments. However because of the way the PDIA is written and interpreted there are unreasonable constraints on not being able to increase the number of rural living allotments.

Thus a review should be by Regional Area (or community) not by the Greater Adelaide area. Subsuming individual regional needs within those of the Greater Adelaide area leads to flawed planning outcomes.

This review should use up to date figures as there have been significant changes in recent months and the Fleurieu has been impacted significantly.

Alexandria Council wants further development but not at North Goolwa – taking that out there is and will be an increasing shortage of available supply in the Goolwa - Hindmarsh Island area unless the EFPA provisions are changed.

### **Review time frames**

At present the EFPA is reviewed once every 5 years – this should be done more often and / or specific areas reviewed on the request of the Council concerned.

### **Definition of non-residential development**

The Act refers to residential development – section 7 (18) - but fails to give guidance on what constitutes non residential development with the result that development is being curtailed in EFPA areas. This is not a good outcome and can be relatively easily cured by greater definition and guidelines.

## **Exclude land not viable for agriculture from the EFPA**

Land which is not viable for agriculture should not have been included in the EFPA in the first place and therefore should now be taken out of the EFPA.

Whilst one may have sympathy for the simplicity of defining a whole area as within the EFPA boundary that becomes a planning difficulty when locations within the overall area are not suitable for agriculture. More thought and closer granulation of areas / locations included should be made.

There should be the flexibility to enable a site by site assessment of land division on its merits.

On a review of the EFPA there should be the capability to remove locations from the EFPA where it can be demonstrated that these locations are not viable for agriculture.

All locations within the current EFPA are not viable for agriculture and thus there needs to be greater understanding shown of the attributes of various parcels of land so that which is worth preserving is preserved and that which is most suited for development is made available for development. There should be the flexibility to enable a site by site assessment of land division on its merits.

The current system of only dealing with “trivial” anomalies is not fit for purpose and also leaves open to interpretation the definition of trivial (compared with which area/s?) and is subjective without any legislative definition or regulatory guidance.

## Major Project Proposals of merit to go forward

In March 2020 a submission for a Major Project Proposal – Narnu East - was made to the then Minister for Planning (Stephan Knoll). He replied on 12 June 2020 to the effect that because the subject land was within the EFPA he was unable to proceed with it.

This is a most unfortunate position as

- The adjoining land - Narnu Waters – had major project status and it is inequitable that Narnu East should be denied that
- There is a shortage of rural living land in the area
- With the cancellation of the North Goolwa DPA there will be an absolute shortage of land supply in the area
- There is support for the proposal amongst member representatives in Parliament and councillors of Alexandrina Council

Meanwhile the local community and state are missing out on a development which would see initial economic benefits of in excess of \$100 million and ongoing of \$15 million per annum.

This is not a good outcome for the local community as well as being neither just nor equitable.

Mechanisms need to be in place to avoid these poor outcomes.

Submitted by

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