

Contact: Mr Hannaford

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Mr John Stimson  
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Review  
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Dear Mr Stimson

**Re: Expert Panel – Planning System Implementation Review  
Submission from the Town of Gawler**

Firstly, I would like to take this opportunity to congratulate the Expert Panel, Minister for Planning and Planning and Land Use Services (PLUS) for undertaking this review so promptly, following the implementation of the Planning and Design Code (the 'Code').

Council's response focuses on opportunities to strengthen and enhance the new Planning System, some of which have been previously flagged via a submission (September 2022) to the Miscellaneous Technical Enhancement Code Amendment.

This submission provides a broader systemic view of the Code and the *Planning Development and Infrastructure Act 2016 (PDI Act)*. In providing feedback, Council acknowledges the support and advice provided by the Local Government Association. In addition, the Town of Gawler has developed a separate submission on infrastructure contributions developed jointly with the Cities of Salisbury, Playford and Onkaparinga and Light Regional Council, Barossa Council, Mount Barker District Council and Adelaide Plains Council (attached).

Given the extensive nature of this Expert Panel review, it is not proposed to answer all questions posed in the review. Rather, the submissions provided focus on issues of most relevance to Council.

The Expert Panel issued three (3) reports in October 2022, namely:

1. Discussion Paper – Planning and Design Code Reform Options
2. Discussion Paper Discussion Paper - Planning, Development and Infrastructure Act 2016 Reform Options
3. Discussion Paper – e-Planning System and the PlanSA website Reform Options

Council makes submissions on both Discussion Papers 1 and 2 as set out below.

## **1. Submission relating to the Discussion Paper – *Planning and Design Code Reform Options October 2022*:**

### Loss of local and innovative policy

The adoption of the Code to provide statewide zones with only technical and numeric variations has inevitably resulted in a loss of local policy and reduced opportunities for innovation in planning policy.

In particular, the Town of Gawler is dealing with complex issues in its rural zone which may be resolved through the application of planning policy regarding water reuse and recycling that could enhance the viability of rural land. Currently there is no Planning Policy that could assist in achieving an environmental outcomes for Council's Rural Zone.

### Support Good Design

Good design and placemaking must be a central and enforceable part of the Code. *Design Guidelines – Design Quality and Housing Choice* needs to be translated into Planning and Design Code so they can be used as part of the assessment process.

### **State and Local Heritage**

The Historic Area Statement for the Church Hill Area should be elevated. The Historic Area Overlay does not apply over Church Hill State Heritage Area, only the State Heritage Area Overlay. As such, there is no Historic Area Statement for the relevant authority to guide the assessment of planning applications.

Advice from Susan Close, Deputy Premier and Minister for Climate, Environment and Water is that the Department for Environment and Water will prioritise a Heritage Standard for the Church Hill, State Heritage Area. A clearer timeline for the progress of the Heritage Standard is a priority for Council.

Gawler has nine (9) Historic Area Overlays each with its own Historic Area Statement. These statements identify localities that comprise characteristics of recognisable attributes that contribute to the historic development of a locality.

In these areas representative buildings and buildings that display characteristics of representative buildings are subject to a demolition control test in the form of a Performance Outcome in the Historic Area Overlay. These buildings should not be demolished unless the front elevation of the building has been substantially altered and cannot be reasonably restored in a manner consistent with the building's original style and the structural integrity or the safe condition of the original building is beyond reasonable repair. As such demolition control can apply to both representative buildings and other buildings which have historic merit as per the Historic Area Statement.

The new Code enables the application of demolition controls to State Heritage Places, State Heritage Areas, Local Heritage Places and Historic Areas (but not Character Areas). The Commission proposes three (3) initiatives, namely:

1. Elevate Character Areas to Historic Areas.
2. Character Area Statement updates.
3. Tougher demolition controls in Character Areas.

In principle, Council supports each of these initiatives. Council does not have Character Areas, but as indicated above, does have a number of Heritage Area Overlays. Nonetheless, the principle of upgrading controls to better regulate demolition is supported as is the notion of upgrading the significance of heritage in the planning system and working closely with the community to map and recognise these values.

For this reason, Council also supports Character Area Statement updates.

On initiative 3 it is entirely logical and appropriate that any demolition process be only considered in light of the replacement use or development. It is noted the Panel support initiatives 1 and 2 but not 3 as this is the most significant change and should involve community engagement before being implemented. Council as part of this community consultation and based on previous community feedback strongly urges the Panel to support initiative 3 regarding greater regulation of demolition controls.

Finally, all of the recommendations from the Expert Panel suggest local government fund and deliver significant further analysis of its heritage stock, planning controls and heritage objectives. In our view, the mechanism for this is likely through a local heritage strategy to provide a comprehensive response. Whilst this approach would be generally supported there is benefit in exploring how the State Government can partner with local government to co-fund what is often a significant financial commitment, noting that heritage is both a local and State asset.

## **Response to Questions Posed**

### Heritage Policy

*Question 3: What are your views on introducing a development assessment pathway to only allow demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved?*

Response: Town of Gawler supports demolition being well regulated to ensure the preservation of heritage and maintain the character of the area. The replacement use or development is critical in the eyes of the community to respect and maintain local streetscapes and significant heritage areas. This must be in the context of what currently exists i.e. prior to demolition to ensure the works are not simply speculative and destroy building fabric that contributes to the heritage value of an area.

### Tree Policy

There is significant community interest in the tree canopy cover targets in the 30 Year Plan for Greater Adelaide. In particular, council areas have targets to achieve by 2045 based on the current tree canopy cover. To increase and indeed maintain this cover it will be important that private land and particularly urban infill areas maintain and foster urban trees. Gawler's tree canopy cover is 15%. Council's recently adopted Climate Emergency Action Plan supports the expansion of tree canopy cover from 15% to 30% by 2045. This target, if achieved will be the largest increase in tree canopy cover in metropolitan Adelaide.

Planning policy to require deep root zones within infill development was a major improvement in the Code. However, the introduction of an Offset Fund for the planting of trees may reduce the opportunity to plant and grow trees in new developments.

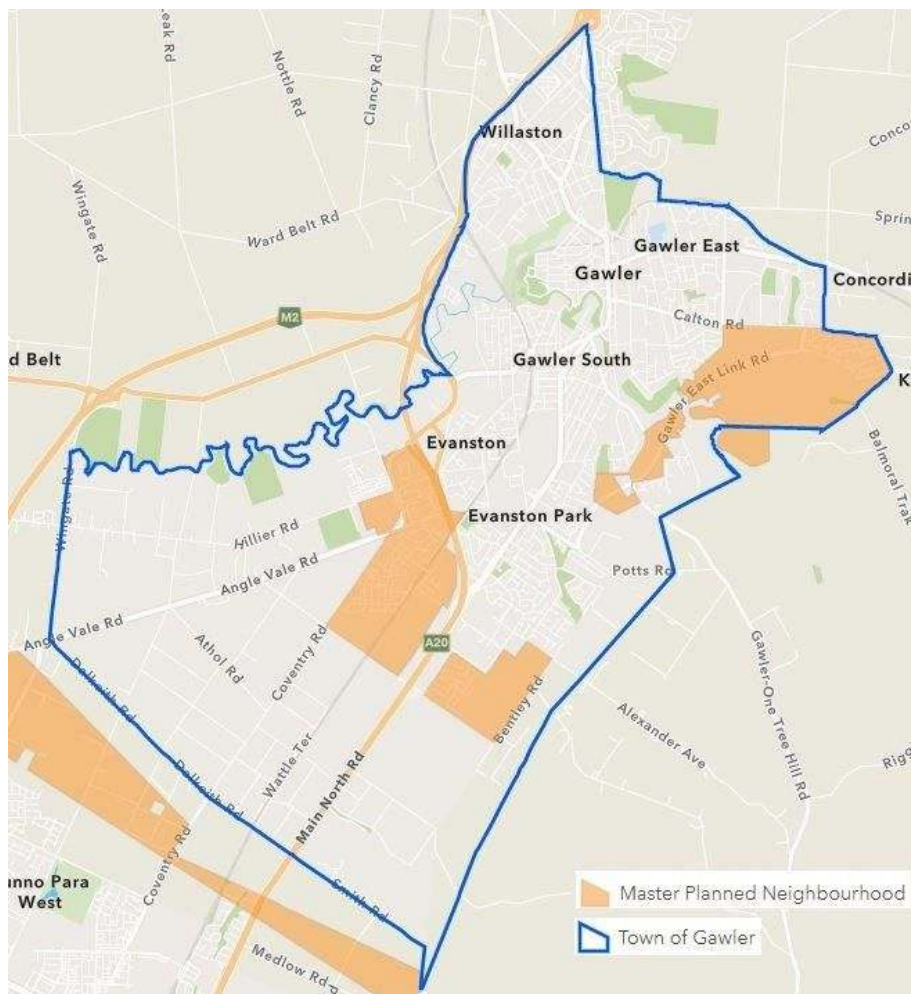
The Tree Offsetting policy is likely to result in:

- Reduced opportunities to improve local amenity, reduce temperature and provide shade.
- Increased emphasis placed on tree planting on Council or public land where opportunities are not necessarily available.
- Developers may prefer to pay the offset amount (\$300 per tree) rather than place a tree on site where it has an opportunity to grow in a deep root zone.

The critical issue for Council is that the retention of trees should be given a higher priority for a range of liveability and environmental reasons over offset approaches.

In the Master Planned Neighbourhood zone, the tree canopy overlay does not apply and as such reduces opportunities to contribute to statewide targets. The lack of a tree canopy overlay in this zone undermines Council's intent to increase canopy cover as set out in the Climate Emergency Action Plan. As such the Tree Canopy Overlay should be provided to the Master Planned Neighbourhood zone.

### **Master Planned Neighbourhood Zone in Gawler where Tree Canopy Overlay does not apply**



## Development of State Planning Policy on Infill

Infill development can result in a loss of local character and impact on tree canopy, stormwater, and open space. In the Code, infill development should be considered together with policies addressing design, neighbourhood character, and local context.

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 have the service and infrastructure capacity to sustain further development, and whether that level of investment is funded. These issues should be thoroughly considered and clearly articulated in a State Planning Policy on Infill Development.

While the State Government has introduced design guidelines for infill housing there have still been examples in Gawler of poor outcomes, particularly in row housing developments.

A further point on infill development is also relevant. With land division and subsequent development of land, there are challenges with the application and scope of land management agreements (LMAs). The risk under the current system is where a single allotment is divided into say 5-10 lots under 'deemed to satisfy' (private certifier consent). With little infrastructure provided, such a land division can pose a range of issues within the new development as well as towards adjoining land. The assessment process doesn't fully address the impact of infrastructure in the planning process.

## Car Parking Policy

Car Parking Policy is required to have minimum dimensions for garages. Currently, some garages are too small for modern cars to enter or exit. As such, the internal dimensions need to reflect standard vehicles in a double garage.

There is a need for the car parking policy to be supporting the electric vehicle transition. It is envisaged that rapid charging (50 kW+) outlets will not be appropriate for most homes. However, car parking spaces for new housing and developments do need to be established in a way that supports the installation of EV charge outlets from 2 kW to 7kW or even 11 kW. This means including the appropriately rated power feed and circuit from the meter board. Wiring to the parking bay is required so that when an EV charge outlet is needed, it can be easily installed.

Car Parking in suburban streets can be difficult where road reserves are narrow and cars are parked on both sides of the street. This can result in larger cars and trucks not being able to access these areas. Consideration should be given to investigate how to balance car parking needs with the requirements for road networks, particularly in new estates.

## Car Parking Off-Set Schemes

The Discussion Paper highlights the development of an underground car park below Woolworths in Gawler. This was created off historic Murray Street and provided a centrally located park using a car parking fund created under the Development Act 1993.

The new PDI Act 2016 (Part 15) enables councils to establish Off Set Schemes and associated funds for purposes including the creation of car parking funds. However,

guidelines and assistance from PLUS to enable transitional arrangements between the two Acts would be desirable.

### Carbon Neutral Housing

The Council adopted Climate Emergency Action Plan (CEAP) in 2022. The CEAP seeks to enable communities to achieve net zero CO2 emissions by 2030. This includes housing and development.

However, there are few policy levers under the PDI Act or the Code which enable the development of more sustainable housing, infill development and growth areas. This Expert Panel review should investigate opportunities to mitigate the effects of Climate Change and develop net zero housing built outcomes. This can go beyond star ratings in the Building Code to include issues such as solar orientation and roof colour.

### **Response to Questions Posed**

#### Infill

*Question 19. Do you think the existing design guidelines for infill development are sufficient? Why or why not?*

Response: No. *Design Guidelines – Design Quality and Housing Choice* have been prepared by the Office for Design and Architecture and are supported. However, as they are only guidelines they need to be translated into the Code so that key elements of the design guidelines can be used as part of the assessment process.

#### Car Parking Off-Set Schemes

*Question 31. What are the implications of car parking fund being used for projects other than centrally located car parking in Activity Centres (such as a retail precinct)?*

Response: Funds collected for a specific purpose should be applied for that purpose as occurs throughout Australia. The fundamental role of a car parking fund is to enable adaptive building re-use (critical for heritage buildings), increase floor areas and more efficiently tackle parking delivery and management. Applying the funds to another project would undermine the credibility of the scheme and reduce the capacity to collect funds in the future.

## **2. Discussion Paper - *Planning, Development and Infrastructure Act 2016* Reform Options October 2022**

### **Public Notification**

Town of Gawler has expressed concern regarding reduced public notification rights. This has been facilitated by many more land uses being classified as “Deemed to Satisfy” and therefore not requiring notification. In addition, appeal rights of third parties have also been reduced, with only restricted development subject to third party appeal rights. The current South Australian system limits community rights of appeal beyond any other jurisdiction in Australia.

If it is sufficient under the PDI Act with Performance Assessed applications to notify near neighbours, it should follow that they can progress their concerns further should they be

dissatisfied with the outcome. Otherwise, why notify affected parties seeking their feedback?

Ultimately, the limitation of appeal rights as described above leads to fewer opportunities for the community to engage with the planning system and undermines social licence that the system should enjoy.

As such the Town of Gawler is concerned with the reduction in public notification and appeal rights. These issues could be addressed by the reintroduction of appeal rights for certain development categories such as commercial and intensive development.

### Accredited Professionals

Council planning and building officers agreed with the Panel's view of only allowing building certifiers to issue building consents and planning professionals to issue planning consents.

This approach ensures that people with accreditation in the relevant field can apply their professional skills and achieve desired design and performance outcomes.

It is further suggested that the Panel confirm across the local government sector whether the private accredited professionals model is increasing Council staff demands to address errors of assessment and classification.

### Infrastructure Schemes

The PDI Act provides the ability to deal with establishing infrastructure schemes – Basic and General. This is welcome given Gawler's central position as a growth area. However, there has been an inability to identify outcomes in the infrastructure area from the PDI Act. Two quotes from the 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).*

Such a process will inevitably cause a significant delay in delivering essential infrastructure. In turn, this would impede the project implementation and overall economic development. Given the PDI Act has been in place since 2016 a more streamlined process is needed. 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)".*

South Australian councils have responded to this legislative and policy gap with local developer contributions schemes using Deeds and Infrastructure Agreements to levy Separate Rates on properties once they reach a development trigger. These schemes in themselves are complex and require individual tailoring of legal advice and agreements.

An alternative solution is required to enable orderly development of the State's strategic growth areas, such as Gawler. The solution needs to work for these areas because they require coordinated infrastructure delivery and rezonings where not all landowners agree and where the infrastructure provision may have a long horizon and involve several providers.

The scale of infrastructure may be at a level (or several) below anything InfrastructureSA would be involved in. Nonetheless, agreements at the scale experienced in South Australia needs to bring a number of key agencies to the table covering education, health care, emergency services (amongst others) and the system in place does not enable this to readily occur.

The solution likely involves a **whole of government approach**, requiring all relevant parties to come together to discuss and ultimately agree to revised schemes for infrastructure requirements, delivery and funding. Regarding Code Amendments, it is important that infrastructure delivery be resolved *prior* to the commencement of a specific Code Amendment.

Given the need to expedite development in South Australia, a simpler system can be developed. In particular, the lack of clear infrastructure investment guidelines is delaying infrastructure projects from housing to employment lands and hence holding up both orderly and economic development.

It is noted that the State of Victoria has been operating a Developer Contributions Scheme since 2003. A draft submission from the eight Councils regarding the current Infrastructure Scheme and the PDI Act 2016 is **Attached**.

### Deemed Consents

The current system needs refinement as it is not conducive to good decision making. It takes planners offline and into the court system having to prepare affidavits to assess an application. Planners need to be able to negotiate with developers to achieve better outcomes. Some use the current system to push applications through that may not have been otherwise approved.

### **Response to Questions Posed**

#### Public Notifications and Appeals

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

Response: Large scale land divisions that would trigger a change of road function should trigger notification. Large scale shopping centres adjoining zone boundaries.

*Question 4. What, if any, difficulties have you experienced as a consequence of the pathways for appeal in the Code?*

Response: Joinder applications are the biggest issue. Beyond that, whilst not a direct issue for Council, the community has ongoing concerns as only applicants can appeal a decision, or a condition imposed. Representors do not have any right to appeal.



## Infrastructure Schemes

*Questions 12. Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?*

Response: A Developer Contributions Scheme has been operating in Victoria since 2003. The PDI Act 2016 could be amended to allow the operation of a similar scheme in South Australia.

The Town of Gawler would be pleased to participate in a focused working group to address the implementation of practical Infrastructure Contribution Schemes.

## Deemed Consent

*Question 15: Do you feel the deemed consent provisions under the PDI Act are effective?*

Response: Improvement is required to the system to ensure better design outcomes and decision making.

*Question 16: Are you supportive of any of the proposed alternative options to deemed consent provided in the Discussion Paper? If not, why not? If yes, which alternative (s) do you consider would be most effective?*

Response: A review of deemed consent timelines is supported. As the current system can take planners offline and into the court system having to prepare affidavits to assess an application. Planners need to be able to negotiate with developers to achieve better outcomes.

If you have any questions that require further clarification, please do not hesitate to contact Chris Hannaford – Senior Strategic Planner on [REDACTED] or via e-mail at [REDACTED]

Yours sincerely

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