

16 December 2022



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

Adelaide
12/154 Fullarton Rd
Rose Park, SA 5067
08 8333 7999
urps.com.au

DTI.PlanningReview@sa.gov.au

Dear John,

Submission to the Planning System Implementation Review

URPS appreciates the opportunity to contribute to the Planning System Implementation Review. The Expert Panel should be commended for the preparation of the discussion papers and associated public engagement process.

URPS considers that by enlarge that the Planning, Development and Infrastructure legislation, the Planning and Design Code (the Code), and its digital platform have resulted in significant benefits. Within the context of continued improvement, we encourage the State to continue to resource the evolution and refinement of the legislation, the Code and its digital platform.

This submission is focused on the following Expert Panel questions / lines of enquiry which are some of the key areas that URPS has significant experience in, namely:

- *Planning, Development & Infrastructure Act 2016 (PDI Act)* - Infrastructure Schemes; and
- Character and Heritage Policy.

Infrastructure Schemes

Background

Uncertainty associated with infrastructure provision is delaying rezoning projects. For instance, we have experienced a local government authority refusing to support a 'Proposal to Initiate a Code Amendment' for a residential rezoning that incorporates significant community benefit (e.g. new school) because the authority was concerned about its cost implications/contributions associated with potential infrastructure upgrades.

We have had other experiences where local government authorities refuse to accept utilising the basic infrastructure agreement pathway as currently defined by the PDI Act.

The unwillingness to enter into basic infrastructure schemes results in landowners/developers negotiating conventional road, stormwater and/or social infrastructure deeds and associated land management agreements with local government and, to a lesser extent, state government. This becomes problematic when there are different standards and practices applied by varying governments. Differences relate to the extent of investigations required, timing of investigations, progression of deeds (e.g. pre or post public consultation of the Code Amendment) and varying clauses within an agreement. We accept that some level of variation may be appropriate, but not to the level we are experiencing.

These examples are not a criticism of local government. We appreciate the resources constraints and differing views across local governments. However, these examples highlight the challenges facing the planning/development professions/industry and governments. The existing framework is inefficient.

Questions posed by the Expert Panel are quoted below in bold and italics with comments made thereafter.

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

Infrastructure schemes are a voluntary process. In our experience, local governments refuse to adopt the basic infrastructure scheme pathway for the following reasons:

- a) Lack of control of the infrastructure outcome. That is, the process is transferred to an independent Scheme Coordinator.
- b) Lack of control of the budget requirements to contribute to funding infrastructure where there is an existing shortfall in the provision of such infrastructure.
- c) The basic infrastructure schemes do not permit local governments to request contributions for social/community infrastructure. The basic infrastructure schemes are limited to roads/bridges, stormwater, electricity/gas, water and communications.¹

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

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

¹ Refer to sections 162 (1) and 163 (2) of the PDI Act

The response to these questions have been combined given there may be overlaps:

Strategic / Governance Coordination

- a) A whole of government approach that provides a single point of contact to improve the coordination of infrastructure provision, and provides funding that includes private sector infrastructure providers such as SA Water and SAPN is required. A lead government agency should be appointed to lead and drive the coordination.
- b) Local government to be encouraged/supported to allocate resources to plan and budget for infrastructure upgrades where they:
 - Have a clear responsibility to address an existing shortfall of infrastructure provisions: and
 - Accommodate identified growth areas/infill areas.
- c) State and local governments to agree on a limited set of fit-for-purpose design standards/appropriate benchmarks for physical and social infrastructure provisions and standards².

PDI Act

- d) Consider amending the Act to incorporate a committee that is chaired by the Scheme Coordinator and incorporates representatives of local government, the developer/s, and state government. This may address some of local government's concerns regarding "lack of control" of the assets they are likely to inherit.

Conventional Infrastructure Agreements

- e) Prepare an Infrastructure Agreement State Practice Direction that promotes a consistent approach to all parties when preparing conventional infrastructure agreements and land management agreements. The Practice Direction can:
 - Provide a charter/principles that provide the framework for infrastructure negotiations (refer to Attachment A as sample principles that could be further developed). The principles can build upon the principles within section 166 (2) of the PDI Act.

² Regarding social infrastructure, refer to the URPS – Rural City of Murray Bridge Community Infrastructure Model: Technical Review (August 2021)

- Provide access to an independent third-party arbitrator when there is an infrastructure disagreement between local government and a landowner/developer.
 - Provide clarity when certain investigations, costings and formal agreements need to be prepared (e.g. prior or after public consultation of the Code Amendment). We suggest detailed costings and agreements should be prepared post consultation to enable the implications of feedback from the community and government agencies to be considered.
 - Provide direction on a government reporting process that promotes transparency regarding when, how and where the landowner/developer contribution has been used.
- f) Provide direction for if social infrastructure should be addressed by developer contributions, or whether its funding should be based on existing and future local governments rates etc.³
- g) Where there is a proponent-led Code Amendment and a “swiss cheese” rezoning approach is the result, consider how previously agreed to infrastructure agreements/basic infrastructure schemes can be overlaid on “swiss cheese” sites.
- h) Review the *Local Government Act 1999* (Separate Rates / Service Charge) and if required, amend the Act to provide greater confidence/certainty to local governments that separate rates/service charges which can be applied and retained for required infrastructure. Some local governments are concerned with the potential lack of applicability and long-term use of these funding mechanisms.
- i) Consider opportunities for the Department of Treasury and Finance to cash flow significant infrastructure that becomes a state or local government asset.

Character and Heritage Policy

Background

The State Planning Commission has proposed a three-pronged approach to character and heritage reform:

1. Elevate Character Areas to Historic Areas via Code Amendments.
2. Update Character and Historic Area Statements where necessary.

³ Section 163 (2) limits basic infrastructure schemes to “basic infrastructure”. This definition excludes social/community infrastructure.

3. Only allow for demolition in Character Areas and Historic Areas once a replacement building has been approved.

The Expert Panel has provided preliminary support to prongs 1 and 2.

Questions posed by the Expert Panel are quoted below in bold and italics with comment made thereafter. However, prior to addressing the Expert panels questions, we make the following observations.

In simple terms, it is understood the planning provisions in the Code will result in the following:

- In Historic Areas, most if not all existing buildings will still exist in 100 years' time, together with some complementary infill development. Planning provisions will also be targeted at ensuring that new development is complementary to clearly established heritage values.
- In Character Areas, many of the existing buildings may have been replaced with buildings of equal or greater character value in 100 years' time. It follows that the focus of planning provisions is not on restricting demolition, and rather is on the form and character of replacement/new development that is complementary to clearly established character objectives.

It is understood that the extent of Historic Areas in the Code largely reflects the extent of former Historic (Conservation) Zones/Policy Areas under former Development Plans. It is also understood that the extent of Character Areas in the Code largely reflects the extent of former Character Policy Areas under former Development Plans.

Local governments have always had the ability to change the zoning/planning provisions that cover areas of character value if it is considered that they qualify as areas of heritage value.

What has been lacking is clear criteria for the creation of Historic Areas. The Development Plan Amendment Process/Code Amendment Process has also been expensive given the uncertainties involved.

Clear and rigorous criteria for the designation of Historic Areas is essential, as is the consideration of such Code Amendments by appropriately qualified heritage experts.

In relation to prong two (2) pertaining to character area statements, in the current system, what is and is not working, and are there gaps and/or deficiencies?

The Character Area and Historic Area Statements in the Code identify the most important and consistent elements of heritage or character value in the surrounding area. They are an expression of what exists. These Area Statements contain the key elements of the Desired Character Statements from former Development Plans.

The relevant provisions within the relevant Overlays interact with the Area Statements, providing the head powers for the consideration of specific design elements in new development such as:

- Wall heights
- Roof form and pitch, windows and doors, chimneys and verandahs
- Front and side boundary setbacks
- Fencing
- Land division
- Driveway widths and garages
- Landscaping.

Therefore, the current Area Statements and associated provisions of the Code appear to be adequate.

It is also noted that there are non-statutory “Character Area Overlay Design Advisory Guidelines” and “Historic Area Overlay Design Advisory Guidelines” that provide guidance in relation to contextual design, how to interpret the provisions to the Code and various diagrammatic examples of appropriate design responses. These could be expanded with more diagrams of appropriate development to assist applicants/designers (e.g. in relation to garaging).

Noting the Panel’s recommendations to the Minister on prongs one (1) and two (2) of the Commission’s proposal, are there additional approaches available for enhancing character areas?

Given the challenges associated with undertaking sensitive infill development in Character Areas, greater flexibility by local governments to the relocation of street trees (particularly those not well established) would assist proponents, rather than acting as an additional impediment to development.

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

What difficulties do you think this assessment pathway may pose? How could those difficulties be overcome?

Many local governments only needed to be convinced that the new building was of an equal or better design as the heritage building (Contributory Items and Local Heritage Places) for the building to be replaced under the former Development Plans.

The Code appropriately removed this as an assessment test - the appearance of a replacement building should be unrelated to the heritage value of an existing building.

This doesn't mean that the appearance of new buildings is not important. As stated previously, any application for new development must satisfy several clear tests in the Code. These tests include consistency/compatibility with nearby heritage buildings in terms of streetscapes, front /side boundary setbacks and architectural detailing (wall height, roof pitch/form, window and door openings, chimneys, verandas and materials).

There is also concern about enforcing an approval for demolition and a replacement dwelling. If they are separate approvals, the only way the replacement dwelling can be guaranteed is to create a Land Management Agreement over the site. This is a cumbersome and more expensive process. If the demolition and replacement is within a single application, the local government may be left to pursue enforcement action if the proponent demolishes but does not build the replacement dwelling. Again, cumbersome and expensive.

It is contended that focus is better directed to guidelines and assistance to applicants in the design process for new dwellings.

We wish the Expert Panel all the best its deliberations.

Yours sincerely



Grazio Maiorano
Director

ATTACHMENT A

	Principle Description
Fit for Purpose	The selected model will ensure sufficient funding is collected to ensure the infrastructure is constructed as required.
Equity	Infrastructure should be properly scoped and costed, with the apportioned contribution relative to the benefit. Where costs are attributed to the developers, they should be confined to the improvements necessitated by the development and not to fix legacy issues.
Evidence Based	Infrastructure should be properly scoped and costed to ensure contributions are focused on funding the actual infrastructure and do not become a 'tax' on new housing development.
Transparency	Funding mechanisms should be transparent to build investor confidence and public trust. Reporting requirements should be clear and regular e.g., how much money is collected and what it has been spent on.
Governance	There should be appropriate governance and oversight to ensure accountability of decision-making around the delivery of the infrastructure required.
Accountability	There should be clear objectives and measurable performance outcomes to ensure success can be measured and understood by all parties (i.e., delivery against clear and agreed criteria).
Scalability and Efficiency	The model adopted should be relative to the scale of the project to minimise administrative overheads and complexity where there is limited overall benefit. The model should be cost-effective. The infrastructure provided should be up to community standards and maintainable, without creating exorbitant upfront funding or ongoing costs.

Sources:

- W.A. Department of Planning, Lands and Heritage and Western Australian Planning Commission – State Planning Policy 3.6 – Infrastructure Contributions (April 2021);
- URPS, Rural City of Murray Bridge Infrastructure Frameworks: Funding Models for Infrastructure (April 2022);
- Australian Government - National Housing Finance and Investment Corporation, Developer Contributions: How should we pay for new local infrastructure (August 2021)