

DIT:Planning Reform Submissions

From: Vanessa Thamm [REDACTED] >
Sent: Friday, 18 December 2020 11:49 AM
To: DIT:Planning Reform Submissions
Subject: Australian Institute of Architects - Response to Amended P&D Code
Attachments: Australian Institute of Architects P&D Code response - FINAL.pdf
Categories: Kate, Leah

Thank you for the opportunity to respond to the amended P&D Code. The Institute remains supportive of the intent of the planning reform process and commends the Government for undertaking additional consultation prior to implementation of Phase 3 of the Code. Important and supported amendments have been made in response to the consultation received prior to the current consultation process, namely:

- Amendments to the online planning system which address errors and inconsistencies in the previous version. We note that further amendment will be required once the Code is fully implemented, to correct errors identified through use.
- The integrated approach undertaken to develop the 'Raising the bar on Residential Infill in the Planning and Design Code' and the investment in research to provide an evidence base for decisions.
- Review of demolition controls for heritage listed places, with reframing of the economic considerations and removal of dilapidation resulting from wilful neglect as a valid reason for demolition.
- Inclusion of Contributory Items under the revised terminology of Representative Buildings. Development of consistent criteria and process for the assessment and inclusion of additional Representative Buildings needs to be undertaken to enable this aspect of the Code to operate effectively into the future.
- The Introduction of neighbourhood zones and sub-zones into the Code to address characteristics important to a specific area. While this adds complexity to the system, it enables the transfer of valued aspects of existing development plans.

The Institute urges Government and the Commission to continue to invest the time and resources required to develop the planning system so that it truly delivers the objectives of the PDI Act and a robust future for development of South Australia.

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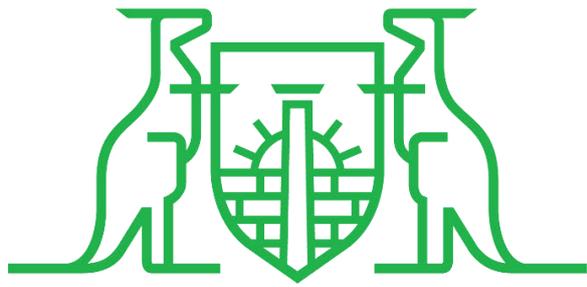
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We respectfully acknowledge the Traditional Custodians of the lands on which we work and pay respect to their Elders past, present and emerging.





Australian Institute of Architects

Planning and Design Code – Response to Amended Code

Preamble

The Australian Institute of Architects SA Chapter has prepared this response to the amended Planning and Design Code documents released for consultation in November 2020. The Institute commends the Commission for this additional consultation period and the opportunity it provides to review amendment made in relation to previous consultation and to engage with the online planning system prior to Phase 3 of implementation of the Code.

We note that the Institute has reviewed the documents in relation to policy, intent and operability has not undertaken to review the factual correctness of the Code and associated documents or undertaken detailed scenario testing.

The Institute's review is also focused on the aspects of the planning system that are of direct relevance to the architectural profession, namely design quality, design practice and process, heritage and character, integrated planning and the operability of the planning system.

Overview of engagement outcomes

Prior to providing detailed feedback on these topics, it is worth recapping the Institute's involvement in the reforms of South Australia's planning system over the last decade. This will provide some context to our overall response.

Since 2012, the Institute has been committed to the State Government's reform of the planning system. We have been heavily involved in many of the key forums that led to the *Planning, Development and Infrastructure Act 2016*, and have been providing ongoing feedback as the Act has been translated into a new planning system.

Throughout our engagement our feedback has been consistent, that:

1. good design is a **process** as well as an outcome
2. good design requires early design led engagement and agreement
3. good design requires assessment by design professionals with a University Bachelor Level or greater design qualification. This means Architects, Urban Designers and Landscape Architects reviewing projects relevant to their qualification. In the same regard complex projects need to be executed by design professionals
4. good design must be monitored by appropriately qualified design professionals post approval to ensure intended outcomes are delivered.

The table below provides a timeline summary of the Institute's engagement, recommendations made and view on the degree to which the recommendations have made it through to final planning policy documents pertinent to the issue of good design practices, processes and outcomes. We have

had numerous other engagements regarding the planning systems on other matters, but they have not been included in this table.

<i>Engagement</i>	<i>Role</i>	<i>Recommendations</i>	<i>Outcome</i>
2012-2014			
Expert Panel on Planning Reform	Invited by the Panel Chair to participate as a major industry contributor	<ol style="list-style-type: none"> 1. <i>Engage and Agree</i> –agree planning and design policy early along with Principles of Good Design 2. <i>Design and propose</i> – design, review and lodge proposals in line with agreed policy using design qualified professionals 3. <i>Approve</i> – approval processes incorporate design assessment by appropriately qualified professionals 	<ul style="list-style-type: none"> • Design embedded in the Objects of the Act and then referenced throughout via policy documents, Principles of Good Design and concept of a Planning and Design Code • Design review incorporated as a process • Elected members replaced by qualified professionals <p>Much of the detailed feedback provided by the Institute made its way into the Act</p>
2015			
Planning Minister invitation to contribute to drafting of Act	Direct invitation from Minister Rau to the Institute to provide input	<ol style="list-style-type: none"> 1. <i>Delivering Good Design</i> - Develop better tools to deliver good design and processes to go with them, including review and assessment by design professionals 2. <i>Accounting for Good Design</i> - employ design professionals relevant to the proposal being assessed in all levels of government 3. <i>Representing Design in the System</i> – Master plans, precinct plans and the like go through a robust design-led consultation process 	<ul style="list-style-type: none"> • Design embedded in the Objects of the Act and then referenced throughout via policy documents, Principles of Good Design, and concepts of Design Standards and a Planning and Design Code • Design review now incorporated as a process • Concept of accredited professional included in the Act • Community engagement charter included <p>Much of the detailed feedback provided by the Institute has made its way into the Act</p>
2018			
Draft State Planning Policy Review	Targeted request to provide feedback as part of overall consultation.	<p>This commentary relates to Policy 2 – Design Quality</p> <ol style="list-style-type: none"> 1. Objective - Good design is a process as well as an outcome and this needs to be incorporated 	<p>This is a bullet-by-bullet summary</p> <ol style="list-style-type: none"> 1. Recommendation not adopted – this is a significant omission

		<ol style="list-style-type: none"> 2. Design advice should be sought early, using design review and appropriately qualified professionals 3. A culture of good design should be promoted in the system 4. Clear triggers are required for performance based design assessment 5. Design compliance should be audited post approval 	<ol style="list-style-type: none"> 2. Adopted in part - appropriately qualified professionals not included which is a significant omission 3. Adopted 4. Incorporated but not meeting the intent of the recommendation 5. Recommendation not adopted – a significant omission to ensuring quality intent is realised. Design does not stop at planning consent <p>Some of the feedback has made it into the final policy document, however key recommendations raised regarding design as a process and recognising that design requires professional assessment have been omitted</p>
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While initial recommendations have been incorporated into the outcomes leading up to the implementation of the *Planning, Development and Infrastructure Act 2016*, since then we contend that the processes leading to the development and assessment of good design have not been sufficiently incorporated into documents and instruments supporting the Act, of which the Planning and Design Code is a critical one.

In this regard we believe that intent of Section 12 Objects of Act (2) (d) - *promote high standards for the built environment through an emphasis on design quality in policies, **processes and practices** (our emphasis), including by providing for policies and principles that support or promote universal design for the benefit of people with differing needs and capabilities* – is not being fully realised.

Similarly Section 57 – Principles (1) (b) *rules should be based on clear performance outcomes, may include deemed to satisfy requirements (including requirements that can be met in a variety of ways), and should seek to **apply excellence in design practices and techniques** (our emphasis);* is not being fully realised.

Incorporation of Design Practices, Processes and Techniques in the Planning and Design Code

Given that the Planning and Design Code is a fundamental document we strongly recommend that more emphasis be placed on design practices, processes and techniques. We reiterate that design is as much a process as an outcome (or a verb as much as a noun), and while the code provides much guidance on outcomes it is lacking regarding process and practices.

The application of excellence in design practices, processes and techniques involves engaging suitably qualified design professionals at each step of the design and assessment process. While Section 66 of the Act does not specifically require the application of excellence in design practices,

processes and techniques, Section 57 applies to all instruments, therefore excellence in design practices, processes and techniques should be evident in the code.

In addition, the State Planning Policy on Design Quality states under **Principles for Statutory Instruments** that *“The Planning and Design Code should identify areas where Design Review can support quality design outcomes and provide context for the future character of related neighbourhoods.”* It is not apparent in our review of the code how this principle is incorporated.

A non-exhaustive list of examples to address the above in the code include clear directions on:

1. The types of development that require design based assessment and review
2. Which performance outcomes require design assessment and review. An example of this is *Part 4 - General Development Policies – Design - Assessment Provisions (AP)*. Many of the performance outcomes do not have associated deemed to satisfy criteria which is understandable given many of these are relatively complex concepts that interrelate with other criteria. Many of these should be assessed by appropriately qualified design professionals.
3. Compliance with the approved design - a design compliance review at building rules consent and final building rules certification by an architect to ensure that the design intent of the planning approval has been delivered.

A recent example of where excellence in design practices and techniques has been successfully applied is the development of policies on residential infill development. The initial material presented was developed from a largely planning perspective and in our view was not a well resolved response to a complex series of matters. It was clear from the most recent round of consultation in September that a design led process with architectural expertise had subsequently been followed. The outcome was a greatly improved, clearly presented series of propositions that were easy to understand and support, backed up by evidence. The commission is to be commended for taking a design-led approach to what is a complex matter.

We would welcome further discussion with the commission in this regard to ensure that best practice examples like this become the norm.

Further general comments regarding the Planning and Design Code

The documentation available for consultation largely replicates the former Development Plans in intent and does not address core objectives and policy within the Act.

Of the amendments made in response to previous consultation, the Institute is supportive of the following:

- Amendments to the online planning system which address errors and inconsistencies in the previous version. We note that further amendment will be required once the Code is fully implemented, to correct errors identified through use.
- The integrated approach undertaken to develop the ‘Raising the bar on Residential Infill in the Planning and Design Code’ and the investment in research to provide an evidence base for decisions (refer previous section).
- Review of demolition controls for heritage listed places, with reframing of the economic considerations and removal of dilapidation resulting from wilful neglect as a valid reason for demolition.

- Inclusion of Contributory Items under the revised terminology of Representative Buildings. Development of consistent criteria and process for the assessment and inclusion of additional Representative Buildings needs to be undertaken to enable this aspect of the Code to operate effectively into the future.
- The Introduction of neighbourhood zones and sub-zones into the Code to address characteristics important to a specific area. This enables the transfer of valued aspects of existing development plans, but we note that it adds to the complexity of the system.

The Institute has ongoing concerns regarding the following aspects of the planning system:

- **Translation of Policy to the Code** – The Institute notes that there is a disconnect between the aspirations expressed in the PDI Act and State Planning Policies as compared with the Planning and Design Code, which is the primary instrument for achieving these objectives. The Code appears to be largely a reprise of the former Development Plans and will therefore have limited ability to achieve improved outcomes within the regulatory context.
- **Design Quality** – Design is a practice and improved quality will be achieved through assessment that considers process as well as principles. This is recognised in the Objects of the PDI Act and in Section 57 (b), which states that *'rules should... seek to apply excellence in design practices and techniques'*

The Institute articulated its concerns regarding design quality in the previous section of this submission. They have also been discussed in a number of the Institute's earlier submissions.

The amendments released for consultation have not addressed these concerns. It remains the Institute's position that:

- the Code does not adequately address design quality, addressing design principles but not design process.
- Design quality criteria in the Code are primarily Desired Outcomes (DOs) and therefore descriptive and require interpretation. Given the complexity of the Code and the multiple layers of criteria that apply in the assessment of an application, a high level of skill is required in assessment against DOs. To improve design quality in Deemed to Satisfy assessment more prescriptive criteria are required to define design features, materials and elements suitable for a specific location, particularly where existing character has been identified as important. Otherwise design quality needs to be considered by suitably qualified design professionals in a design review or other agreed performance assessment process.
- the other instruments proposed to improve design quality are not finalised or have not been commenced
- registered architects are the only suitably qualified professionals who should be involved in the assessment of design quality¹, which needs to be considered from a practice perspective and not just through the application of principles.
- there are no defined triggers for design quality assessment in the Code at the current time as required by the Act. This will result in inconsistency in referrals and increase the risk of applications that require referral for design review being approved under the Deemed to Satisfy pathway.
- the proposed Local Design Review Scheme will not be consistently accessible, with the decision to provide local design review at the discretion of each Council
- resourcing to support delivery of design quality remains unresolved

The Institute notes that the outcome achieved in the 'Raising the bar on Residential Infill in the planning and Design Code' document was significantly improved through input from an architect, resulting in improved clarity and graphics that communicated the intent more effectively. The result is more nuanced and demonstrates the desired objectives through well resolved examples rather than theoretical ideograms that do would not have translated effectively to constructed outcomes.

- **Design Review** - Section 121 (1) states that design review applies in relation to development classes specified in the Planning and Design Code. The Institute is concerned that it is unclear in the current draft Planning and Design Code which classes of development will be subject to review. We are seeking further engagement and clarification regarding this matter.
- **Consistency** – The Objects of the PDI Act state that the planning scheme is intended to '*be based on policies, processes and practices.....that provide consistency in interpretation and application*'. The Institute contends that this intention is not being met for the following reasons:
 - The Code improves consistency of planning policy but does not address consistency in process and practices.
 - Consistent application of the Code will be limited by Section 106(2) of the Act (see below) which requires judgement by individual assessment professionals without a consistent framework to inform decisions. Development of a clear set of criteria defining what constitutes a minor amendment and how to assess the cumulative impacts of multiple minor amendments are required.
 - The voluntary, opt-in system proposed for Local Design Review, with Councils not required to provide local design review. This will result in varied access for proponents and inconsistent design quality outcomes between jurisdictions.
 - Absence of consistent criteria for design quality assessment, with the current proposal being that each Council will develop their own criteria. A State-wide, consistent base set of criteria should be developed, with the option for Councils to add criteria in response to specific local conditions.
 - Absence of a consistent process for the preparation of Historic Area and Character Area Statements. (Further detail provided below.)
- **Resourcing** – The resourcing required for Implementation and management of the planning system is unclear with significant funding already diverted from the Planning and Development Fund to finalise the Code. Funding for finalisation, implementation, management and delivery of the Local Design Review Scheme has also not been articulated as well as resourcing to complete the Historic and Character Area statements to a consistent and acceptable standard. Finally, design guidelines proposed in the Act have not been prepared to date, and these will also require resourcing in addition to the Commission's operational budget.

In light of the debate regarding the cost of the planning reform process that is already occurring, the Institute considers that it is important that Government make a clear commitment to resourcing the delivery of the new planning system, with due allowance for finalisation , testing and amendment of the system following implementation in addition to the expected operational costs. Without this there is a significant risk that the system will not operate as intended resulting in suboptimal development outcomes for South Australia.

At a more detailed level the institute also has concerns regarding:

- The **inability to access mapping** that shows the planning policies that apply to an area which allows an overview of a location and an integrated understanding of how the zones, subzones and other planning controls interact – the Code allows access to information pertaining to a specific address only. This does not support an integrated planning approach based on wholistic understanding of the planning system as it relates to an area
- The **methodology for determining whether an application is Deemed to Satisfy or Performance Assessed**, with Section 106(2) of the Act permitting an application with ‘one or more’ minor amendments to the Code to be assessed under a Deemed to Satisfy pathway. There appears to be no definition of what constitutes a ‘minor amendment’ and no mechanism to assess the cumulative impact of multiple minor amendments applying to an application. It will be the responsibility of the planning assessment staff at each Council to determine these criteria, which will result in inconsistencies in assessment decisions across the State. It also provides opportunities for poor decisions similar to those made under the current system. This will not support key objectives of the planning system reform process – namely, consistent planning decisions across South Australia and improvement in design quality.
- The proposed **rebate for tree planting**, with the amount of \$300 significantly undervaluing the negative impact of having no tree on a site the real cost for tree planting, maintenance in the public realm and achieving tree canopy coverage targets for urban areas. The addition of the Urban Tree Canopy overlay is supported. However, the Institute believes that a more specific mechanism to ensure that public tree planting will occur in the areas where the offset is applied is required to effectively mitigate the urban heat effect in these areas. An integrated planning approach, that mandates that subdivision in locations with reactive soils and small allotments will be balanced by additional width of verges to support public tree planting would be one way to address this issue. The remaining concern with the offset scheme is that money within this fund may be diverted to alternative uses, as has occurred with the Planning and Development Fund.
- Preparation of **Character Area and Historic Area Statements** to date has resulted in varied quality and level of detail, with many of the Statements too generic to enable informed and consistent assessment. Description of ‘historic’ built form attributes needs to be included to enable consistent interpretation of the attributes and limit opportunities for contesting decisions. The standard format for these Statement is supported. A consistent process for preparation and review of these Statements is required.
- **Historic Areas** should be renamed Local Heritage Areas to provide consistency with the terminology used in the State Heritage Act. In addition, historic significance is only one of the five tests of heritage value defined by the Burra Charter, so using the term Historic Areas does not reflect significance in relation to social, architectural and scientific and spiritual criteria, which are of equal importance.
- Lack of clarity regarding what is an **existing historic attribute** and what is a desirable attribute for future development in the same area. This is very unclear as currently written with the relevant authority totally responsible for determining their interpretation.

Conclusion

The Institute remains supportive of the intent of the planning reform process and commends the Government for undertaking additional consultation prior to implementation of Phase 3 of the Code.

Important and supported amendments have been made in response to the consultation received prior to the current consultation process, namely:

- Amendments to the online planning system which address errors and inconsistencies in the previous version. We note that further amendment will be required once the Code is fully implemented, to correct errors identified through use.
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The Institute urges Government and the Commission to continue to invest the time and resources required to develop the planning system so that it truly delivers the objectives of the PDI Act and a robust future for development of South Australia.

ⁱ Where an application primarily concerns landscape or urban realm development, inclusion of landscape architects and urban planners in the design review process is also recommended.