

Planning Implementation System Review

Attention : Presiding Member John Stimson

Dear Mr Stimson

Response to Planning Implementation System Review

Thank you for the opportunity to provide a response to the review of reforms to the planning system implementation. The following comments have been collated from our subcommittee who represent agents primarily submitting land division applications through the Plan SA System. The items raised relate primarily to how this system is practicably working, noting some of the limitations appear to be due to underlying common law, legislative and other day to day concerns of the relevant authorities that potentially inhibit economic and timely progression of developments.

We are very appreciative of being consulted in this process and have focussed our response to this review on critical items that are currently affecting the day-to-day workings of this system. We look forward to future reviews, hoping this is an ongoing industry consultation process. We would like to continue to provide additional feedback on planning policy concerns that become apparent as the new legislation and Plan SA Portal evolves.

Verification of Land Division Applications

In the previous planning system, a land division application was lodged through the EDALA system, and a small group of trained Department staff would verify that the application met the requirements of the Act before distributing it to the various authorities to start the assessment process. In other words, a centralised system much like what has been achieved by the digitisation of the Planning and Design Code.

Unfortunately, the centralised approach has been abandoned for the verification process in the planning system and we now have each Council responsible for the verification of applications lodged in their Council area which results in 68 interpretations of the requirements of the Act. There are many examples of inconsistencies of this approach resulting in much difficulty providing information to the general public and developers as to how their application is going to progress.

The other challenge is that some Councils are mistakenly using the 5 day verification process to start of the assessment process and requesting significant design, supporting information and reports before they will verify an application thus extending the time it takes an application to progress through the verification process.

Our suggestion would be to return the verification process for land division applications to a centralised function undertaken by the Department.

Another clear example for the rational of a centralised system, is to ensure consistency and certainty in the application fees charged. To clearly show the inconsistencies currently being experienced, two Fee Advices for Planning and Land Division Consent have been attached. These fees are from 2 different Councils for large residential subdivisions and clearly show the difference in interpretations being applied. Such inconsistency in this process creates significant uncertainty in the development industry and is a common occurrence for the smaller land division applications also.

Reporting through the Plan SA Portal

Whilst the PlanSA online system is a mechanism for consolidation of planning applications and has advantages over the previous system, there are some circumstances where it is difficult to find important information and reports.

Three examples of where we believe changes to the system would benefit the users (as agents for the applicants) are:-

1. “For your Action” tab

We believe splitting the information into two tabs would be of significant benefit to manage the large number of applications many of the agents have in their system.

“For your Action – pre planning decision” – to include RFIs, post verification fee payments etc

“For your Action – post planning decision” – to include Development approval granted – contains Land division

2. Currently, as an agent for the applicant, there isn’t access to the required response date of a referral which is regularly reviewed.

This lack of reporting functionality requires a time-consuming work around as this information is available from the Public register as shown below.

Plan SA Agent Login – this screen does not show the referral due date

There is currently no action required from you.

Status detail	
Planning and Land Division consent	Assessment in progress ▼
Verification	✓ Completed 26 Sep 2022
Fee Payable	✓ Payment received 11 Nov 2022
Referrals	
Referral - SPC Planning Services	Requested 11 Nov 2022
Referral - SA Water	✓ Responded 21 Nov 2022
Development approval	Pending approval of all consents

Public Register – this screen shows the referral is due on the 9th of December

Planning and Land Division Consent
Under assessment

Date lodged 11 November 2022	Date verified 26 September 2022	Date submitted 09 September 2022
Decision authority Council – Copper Coast Council	Contact 08 8828 1200	
Decision Under assessment	Date TBA	

Referrals

Referred to	Status	Response
South Australian Water Corporation	Returned	No objection, with comments
SPC Planning Services	Due – 09 Dec 2022	TBA

3. The ability to review outstanding conditions preventing the issue of the Land Division Certificate.

Whilst this information is available as per the snapshot below, it is embedded 3 screens into the application.

Land Division Certificate: 2335 - Stage Number 001

RESPOND CLEARANCE REQ'S

Summary **Clearance Requirements** Open Space Fee Advices Related Actions

Help for this section

Conditions - Land division (3) Consent Assessed by Copper Coast Council

Clearance requirement (not met)

The applicant/developer shall provide sewerage augmentation contributions in accordance with Council's Community Wastewater Management System (CWMS) Policy. Payment of such contribution shall be made prior to clearance of the survey plan in accordance with Section 138 of the Planning, Development and Infrastructure Act 2016 and shall be made in accordance with Council's policy in place at the time of payment. ✓ included in DNF

Clearance requirement (not met)

The applicant/developer shall provide all internal infrastructure associated with the development to connect the new allotments to the CWMS scheme prior to clearance of the survey plan in accordance with Section 138 of the Planning, Development and Infrastructure Act 2016. ✓ included in DNF

Clearance requirement (not met)

Each allotment is to be provided with an approved sewer connection to the CWMS scheme prior to clearance of the survey plan in accordance with Section 138 of the Planning, Development and Infrastructure Act 2016 for that particular stage. ✓ included in DNF

Conditions - Land division (2) - Referral Advice from South Australian Water Corporation

Clearance requirement (Met - 28 Oct 2022)

SA Water's water network is available for connection in this area. An investigation will need to be undertaken to determine infrastructure needs, appropriate fees and charges. ✓ included in DNF
The financial requirements of SA Water shall be met for the provision of water supply services.

Site Contamination Assessment

In reference to large development site projects, i.e. land divisions applying for numerous allotments requiring significant infrastructure and planning investigations, these developments typically run in excess of a 5-year lifespan. On sites with known contamination, Practice Direction 14 requires Site Contamination Audit Reports (SCAR) and the Preliminary Site Investigation (PSI) to have been completed within the previous 5 years.

Given the limitation of this timeframe, these reports under Practice Direction 14, are required to be updated at significant expense even though nothing has changed, and the development is progressing in accordance with the reports.

It is our suggestion a mechanism be introduced to enable the applicant to make a declaration there have been no changes to the site that have affected the requirements of the SCAR (or similar relevant document). This suggestion would alleviate time-consuming delays and very expensive reporting where no value is being added.

Infrastructure Conditioning as part of the Land Division process

Since the new Plan SA system has been introduced there has been a reluctance to condition agreed infrastructure upgrades as part of the planning decision process by councils. It would appear councils believe it is their only option to implement these conditions through costly external infrastructure agreements rather than the previous situation where these items were agreed and negotiated with the developer, then conditioned on the planning decision.

It would be our recommendation that legislation be introduced, should this be necessary, to enable a return to the more effective implementation of these mutually agreed conditions.

An example of this issue can be illustrated by both the developer and the relevant authority agreeing to install a small amount of kerbing along the frontage of the property to manage stormwater. Currently this agreed condition is being addressed by requiring a Land Management Agreement to enforce the contents of an infrastructure agreement, external and prior to the issuing of the planning decision.

Definition of an Allotment when referring pieces and contiguous land – inconsistent with Real Property Act

We wish to highlight discrepancies between the Real Property Act and the Planning Development and Infrastructure (General) Regulations. It is suggested the legislation be changed to reflect the definition of contiguous as provided by the Real Property Act. This discrepancy has resulted in Planning applications not being supported where the Real Property Act definition has been adopted but doesn't meet the criteria of the Planning Development and Infrastructure(General) regulations– the relevant clauses are copied and shown below.

In the **Real Property Act 1886, Section 223LA, subsections (3) and (4)** it reads;

(3) For the purposes of this Part, allotments will be taken to be contiguous if they abut one another at any point or if they are separated only by-

(a) a street, road, railway, thoroughfare or travelling stock route; or

(b) a reserve or other similar open space dedicated for public purposes.

(4) For the purposes of subsection (3) allotments will be taken to be separated by intervening land if a line projected at right angles from any point on the boundary of one of the allotments with the intervening land would intersect a boundary of the other allotment with the intervening land.

In the **Real Property Act, 1886, Part 19AB clause 3(b)**, it states that:

Allotments (including part allotments) will be taken to be contiguous if they abut one another at any point or if they are separated only by—

(a) a street, road, railway, thoroughfare or travelling stock route; or

(b) a reserve or other similar open space dedicated for public purposes

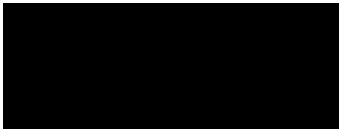
Planning Development and Infrastructure (General) Regulations, (PDI Regulations) 2017, Schedule 8 Clause 7 (4) states:

the land comprised in a plan of division must consist of a single allotment or an aggregation of contiguous allotments.

In addition, Schedule 8 Clause 7 (5) of the PDI Regulations further defines contiguous allotments as those that are separated only by a road or road reserve.

We appreciate your consideration of these comments and look forward to making a deputation to the panel on Monday the 28th of November at 1.30. This deputation will be attended by myself and Glenn Hordacre in person representing the Surveyors Board.

Yours faithfully



Mr Michael Liebelt
Chair
Surveyors Board SA
24/11/2022

CC: Surveyors Board SA
Mr Glenn Hordacre – Alexander Symonds