25th January 2023

Attention: Expert Panel
GPO Box 1815
Adelaide SA 5001

Dear Planning and Land Use Services

Planning System Implement Review Submission Response - PDI Act, Regulations and Code

Thank you for the opportunity to provide comment regarding the Planning System Implement Review Submission Response.

The Review covers an extensive range of relevant subjects and Council has limited its contribution to what we believe are priority in terms of improving the functionality and efficiency of the planning system. This will in turn improve planning outcomes for the South Australian Community. Council's experience with the planning system under the Planning, Development and Infrastructure Act 2016 (the Act), over the past 18 months has revealed processes that are not necessarily aligned with, nor delivering, good planning outcomes, especially outcomes that are beyond visual character.

A summary of the issues identified are as follows:

- The funding of infrastructure to provide a degree of certainty and confidence with progressing Code Amendments.
- Ensuring we have a workable system which provides adequate infrastructure provision where there is multiple ownership.
- Barriers to creating an environment that facilitates development.
- A strategic vacuum was identified when the non-complying system was replaced with restricted development. Making it difficult for Council to prevent inappropriate development.
- There is a need to provide for improvements to the Code to achieve sustainable environmental management within our regions. Building resilience in our built forms and communities against the impacts of climate change. Ensuring that development is responsive to these considerations.
- Unreasonable assessment timeframes and processes which could lead to poor planning outcomes and impacts to the wellbeing of assessment staff

- Need for improvements to the Urban Tree Off Set Scheme.
- Disconnect in the Planning and Design Code relating to Section 83A Notification 'notification of site contamination of underground water'.

1. Infrastructure Schemes overly complex

As raised by the Expert Panel, infrastructure schemes as they are currently configured in the Act are overly complex, difficult to prepare and difficult to operate. Therefore, they do not provide a practical and reasonable foundation for infrastructure agreements. Such complexity does not promote a movement away from the current use of deeds. The deeds themselves are not ideal when it comes to non-residential rezoning.

Current infrastructure funding methods not an ideal process

Infrastructure Deeds

The current use of infrastructure deeds, while functional, can be problematic if not all landowners are prepared to sign a deed. If so, a Code Amendment would not be able to proceed, preventing strategic and economic growth for the state. Historically, where small numbers of landowners have refused to sign a deed, it has left isolated pockets of land rezoned as Deferred Urban. A patchwork of Deferred Urban Zones presents an impediment to orderly development and incomplete or inefficient infrastructure provision.

Isolated Deferred Urban Zones can also lead to inefficiencies whereby future rezoning work is double handled. As urban development progresses around these pockets of land the deferred urban landowners can see the benefits of rezoning causing them to seek a Code Amendment on a patchwork basis.

The cost of drafting deeds and infrastructure agreements is borne by landowners and can be onerous to those who cannot afford these costs, in particular small land holders, therefore this can be an impediment to the efficient and effective functioning of infrastructure deeds. Even if a landowner is aware that these are small costs comparative to the benefit of rezoning it is the upfront cost associated which is a barrier.

Contributions toward infrastructure are more equally applied to landowners in areas rezoned as residential. Contributions required by developers to develop a parent allotment are recouped from a relatively large number of homeowners once the land is divided and new allotments are sold. In industrial areas, especially where large allotments are sought, developers of existing allotments have no opportunities to recoup contributions where the land is not divided.

Rezoning to employment and commercial land may not necessarily result in the same significant increase of the value of land as residential Additionally, it is more likely that whole allotments may be needed to accommodate infrastructure required. Therefore, there is no direct benefit to landowners subject to non-residential zoning and little or no opportunity for these landowners to recoup costs.

Separate Rates

A widely accepted solution is the application of separate rates under the Local Government Act; however, this will be resource intensive for councils to manage and can be expensive to implement.

Council does not have the resources to target specific landowners for separate rates on the scale often required for rezoning. Separate rates can only be applied generally for an area, and this results in landowners paying additional rates where there is no benefit to them.

Such schemes also place undue burden on future purchasers who may not have the understanding or knowledge of the Scheme. As the developer is the one to benefit from the construction and sale of land, it is appropriate that any cost associated with infrastructure delivery is borne by the developer

Separate rates also risk rejection by Council elected bodies. Additional rate costs are not palatable to business and industry who are in many instances already paying higher rates and are likely to react negatively against this.

What is needed / suggested: comprehensive review of Infrastructure Scheme process

Sustainable and reliable infrastructure schemes to fund infrastructure is critical to the development of the State's strategic growth areas. Growth areas require co-ordinated infrastructure delivery and rezoning. Especially where infrastructure is provided over long timeframes and by numerous service providers.

A key shortcoming of earlier infrastructure scheme trials was that councils were not able to be appointed as scheme coordinators. Given the resources and level of experience present within larger council's it is important that there is the ability for Council to act as a Scheme Coordinator given Council's inherent interest in the orderly development and provision of infrastructure within their boundary.

This system needs to be relatively user friendly in relation to its complexity, as well as providing a level of certainty so that Code Amendments can be approached with confidence. Preventing the risk of deferral or abandonment late in the process, after large amounts of time, money and resources have been expended on investigations and preparation. Infrastructure Schemes should be clear and straightforward in what they need to achieve.

This issue is critical to rezoning and State growth. However, it is a complex issue that will require changes to legislation (potentially including legislation outside of the PDI Act) and warrants a separate review to the Planning Review.

The suggested review should consider how infrastructure is funded and delivered. Including how Code Amendments are approached. Some key points for consideration are:

- Different infrastructure funding models including a whole of government approach.
- A universal infrastructure funding scheme across the State.

- Schemes should be integrated with Regional Plans so that Regional Plans become more focussed on delivery.

The review should examine existing and relatively successful models from both interstate and overseas. The Victorian Department of Environment, Land, Water and Planning, Planning Infrastructure Contributions Plan is one example which is well worth consideration.

2. Lack of process and policy to achieve strategic goals in strategically sensitive zones.

Under the Development Act, the primary mechanism to control inappropriate development was via the non-complying pathway. The Better Development Plan process had supporting policies identifying non-complying development as generally inappropriate. Development assessment of non-complying development was more rigorous than standard merit development. However, it allowed development which had sufficient merit to proceed, despite being listed as non-complying. Overall, the non-complying system functioned satisfactorily in deterring inappropriate forms of development, however allowing scope for development with sufficient merit.

The significant shortcoming with the former noncomplying system was the excessively wide application with long lists of non-complying development. This required additional rigor in nitial policy conception even though there were no fundamental reason why that type of development would significantly adversely impact the locality or zone.

Gaps in the current planning system

A substantial gap in the current planning system is that there are no rigorous pathways for types of development which undermine the intent of zoning.

Examples here are:

- Land division, dwellings, and non-horticultural/farming development such as transport in horticultural and farming zones.

- Development within the Deferred Urban Zone.

- Land division in residential areas that should be set aside for future densification. Reduction in allotment size ties up land that could otherwise be consolidated in order to develop high density residential development.

- In horticultural and farming zones, land division results in reducing size of allotments undermine the viability of sustainable farming and encourage rural living uses within these areas.

- Where dwellings are not farmhouses in primary production areas, interface issues occur where residents complain about dust from ploughing, spray drift and overnight

harvesting. This can have the effect of requiring buffers on new farming activities on adjoining allotments constraining or prejudicing primary production activities.

In these cases where primary production allotments are used for rural living, the large rural allotments are often used for unapproved uses such as truck parking or the storage of goods, often the storage of wrecked vehicles. In any case what should be productive farmland is locked up in with unproductive uses.

The non-complying system provided a matrix of policies to minimise strategically undesirable development which would accumulatively undermine the intent of zones. There is currently no legislative mechanism for Council to undertake this level of scrutiny.

What is needed / suggested: Meaningful consideration to assess impacts of accumulation of inappropriate development on intent of zones

It is proposed that where the accumulation of inappropriate development is likely to adversely impact on the desired outcomes of zones or overlays, strategic impacts must be considered in assessment and applicants must provide evidence that their development will not contribute to undermining the intent of the relevant zone or overlay. This should only be applied to zones that are sensitive to being strategically undermined by accumulative approvals.

Examples of sensitive zones and overlays, not limited to, are:

- Zones and overlays for the purposes of farming, cropping and horticulture
- Deferred Urban Zones
- Zones and overlays to preserve open space or to preserve the environment.

It is not suggested to return to the non-complying system but simply that relevant authorities cannot grant planning consent to listed development unless applicants reasonably demonstrate that their development will not contribute to undermining the intent of the relevant zone or overlay. What this demonstration should be, should be defined in the Code with properly considered policies.

To address this, it is suggested that an additional Performance Outcomes and DTS/DPF be included within zones with higher sensitivities to identify forms of development which are generally not envisaged, similar to the list of envisaged development which is provided within every zone.

An example of this would be land division and cut and fill over 2m within the Hills Face Zone (previously listed as Restricted), more than 1 dwelling on an allotment within Rural Zone and a detached dwelling within the Employment Zone.

This approach would allow for policy direction of inappropriate forms for development, whilst also allowing for a merits-based assessment as an ‘all other code assessed’ form of development.

3. Resilient Development

There are no mandatory or even strong policies within the code to facilitate climate resilience and to minimise carbon footprint of development generally. Additionally, the Code does not provide for the effective preservation of remaining ecosystems nor support or facilitate growth and resilience in South Australia's relict natural environments.

Gaps in the current planning system

Given the current climate emergency there is an inadequacy in the Planning and Design Code to reduce environmental impacts of development from either single developments or cumulative developments. This lack of direction in the Code is contrary to Section 14 of the PDI Act '*Principles of good planning*'. In seeking to further the objects of the Act, regard should be given to the good planning principles and should be applied to planning policy.

The Objects, planning principles and general responsibilities in Division 1, Part 2 of the PDI Act is not ambiguous regarding good planning policy with relation to sustainability principles:

> *"(e) sustainability principles as follows:*
> *(i) cities and towns should be planned, designed and developed to be sustainable;*
> *(ii) particular effort should be focussed on achieving energy efficient urban environments that address the implications of climate change;*
> *(iii) policies and practices should promote sustainable resource use, reuse and renewal and minimise the impact of human activities on natural systems that support life and biodiversity;"*

Notwithstanding these requirements, the Planning and Design Code does not contain strong policies for facilitating the above responsibilities and has no mandatory requirements to ensure these responsibilities are satisfied in resulting development.

Within the Code there is a heavy reliance on land division to provide tree canopy through the Urban Tree Canopy Overlay which does not extend across all urban areas. Where the Overlay does apply it only provides open and ambiguous policy, as example:

> *" Tree planting provided on public streets and public open space to create a comfortable micro-Climate and improve the amenity of the neighbourhood"*

This example only requires the provision of trees without any consideration of the appropriateness of selected species in terms of the capacity of the canopy to reduce heat, climate, soils, maintenance, impacts to infrastructure, or toxicity to stormwater, etc.

Generally, policies related to trees focus on the visual benefits of trees without due consideration of appropriate planting strategies to address urban heat, erosion, minimise flood impacts, improve biodiversity, and reduce impacts from severe storm events.

There is little in the Code that requires built form to contribute to sustainability within urban landscapes such as increased road reserve widths and provision of a diversity of allotment sizes to accommodate effective landscaping as an example.

An example of the shortfalls in the Code is in Part 4 - General Development Policies Design in Urban Areas in the Code

D01 Desired Outcome (d) sustainable – *"by integrating sustainable techniques into the design and siting of development and landscaping to improve community health, urban heat, water management, environmental performance, biodiversity and local amenity and to minimise energy consumption"*.

Notwithstanding the Desired Outcome there are only three exclusively environmental policies that are linked to Deemed to Satisfy. One of these policies relates only to development of five or more building levels which is comparatively rare in most of South Australia. PO 14.1 is one of the two remaining, and it is far too ambiguous to employ in assessment of development applications:

> *"Development minimises detrimental micro-climatic impacts on adjacent land and buildings"*

A further example of this is that that the code does not provide any direction regarding the colours of roofs of new dwellings, despite the empirical evidence available linking dark coloured roofs to increased energy consumption and heat retention. Dark roofs of dwellings contribute significantly to the heat island effect within new subdivisions and infill areas which typically have higher levels of density.

What is needed / suggestion: strategically designed policies to address environmental sustainability

The State is experiencing the impacts from climate change and ongoing development, coupled with pressures from a growing population, accentuates the extremes of these impacts. It is appropriate that sustainability and climate resilience is a core feature of a modern planning system.

There is a need for the Code to provide an effective mechanism for Councils to address urgent issues such as the removal of trees, both regulated and non-regulated trees to facilitate land division as well as the adequacy of open space contributions in new divisions. There is a need for the Code to provide an effective mechanism for Councils to address general but urgent issues such as radiant heat, loss of biodiversity, increased energy consumption, drought, and impacts from extreme weather events.

There is also a need that these environmental policies carry weight within development assessment. Policies within Development Plans and the Code were and are at such a high level that they are only applied ad hoc and have not cumulatively achieved any meaningful improvements to the environment.

The Code should contain strategically designed policies to address environmental sustainability, and these should be linked to science-based guidelines. There are indications that this is achievable within the current legislation. Examples are:

- stormwater/ water tank requirements in some Neighbourhood Zones where capacity requirements are based on calculations for entire areas.
- If a root protection zone is needed to protect a regulated or significant tree, a report is provided to provide conditions on how works should be carried out or ensure a trees capacity to tolerate a tree damaging activity.
- Practice Direction 14 gives guidance on what can be achieved regarding the risk of exposure to site contamination.
- Requirement for light coloured roofs of new dwellings or structures unless site coverage below a prescribed value is provided (e.g. 60%)

These examples indicate what is achievable within the current system and demonstrate the potential for development in this State to be environmentally sustainable, complementing Building Rules. Allowing us to achieve resilient development, reduce the effects of climate change on our cities and to facilitate resilient communities.

4. Section 125/Regulation 53 Timeframes, Timeframes in which to make a decision / Relationship with a digital system that was not delivered

Background

The current timeframes in which to make a decision (S125) are based on a digitised system. Prior to the Code a commitment was made to automatically perform the administrative activities related to processing development applications. The digital system was also intended to automatically provide a compilation of policies from the Code relevant to individual proposals and locations along with the generation of an assessment checklist based on applicable policies. This digitised system was meant to free up planning assessment officers to concentrate on assessing proposed developments.

The promised digitised system has not been delivered. As a result, the legislative timeframes do not reflect the time it takes to process a development assessment in a non-automated way. This is especially exasperated due to the large number of applications being ‘all other, Code assessed’ forms of development. The complexities of these applications are unknown and therefore an appropriate timeframe cannot be anticipated, and therefore the quickest possible timeframes are unlikely to achieve good planning outcomes.

A generated policy document via the Wizard prototype was intended to reduce superfluous cross-referencing of policies and to provide a succinct, relatively easily understood development guide to developers. This was meant to reduce the need for proponents to contact Councils in relation to minor pre-lodgement queries and reduce the need for applicants to contact councils for updates regarding applications. This was to free up

planning assessment officers to focus on development assessment to reduce assessment timeframes.

The policy document that has been provided is not in a succinct linear on-screen format as promised. The policy document contains information irrelevant to specific proposals, requires cross-referencing which many proponents and applicants find confusing. This cross-referencing requires more cross referencing than development plans as it requires cross-referencing between different sections of the Code, Overlays, the Act and Regulations as well as practice directions. Most lay people are unaware of other relevant sections of the Code, Act and Regulations nor Practice Directions which may have requirements relevant to their proposal.

It appears that current timeframes are based on the digital system conducting development assessment and it has not been considered that humans will conducting development assessment. Any digital system can only effectively deal with homogenous input and current timeframes reflect this as if every proposal is the same requiring exactly the same actions and resources for every application.

Impacts on timeframes due to the adoption of an alternative digital system

An unintended consequence of the adopted system is a mismatching of procedure with process which has put the burden of administration on planning assessment officers with the affect that much of the focus is on process and timeframes, the “clock” rather than development assessment.

Due to the adopted digital system not being designed for purpose, there are numerous inefficiencies in the digital system which have significant impacts on resourcing and therefore timeframes.

The most notable is:

- The Wizard does not provide a succinct, relatively easily understood development guide and a consequence is Council Staff are being contacted to translate the policy snapshots to applicants.

- The cross referencing that is required within the Code and between the Code, Act, Regulations and Practice Directions is unnecessarily convoluted and has increased the administrivia for planning practitioners and as above confuses applicants.

- There are no quality controls for documents uploaded into the Portal and no simple definitive guides for applicants as to what information and quality of information is appropriate to support their application. This results in, especially at verification, a significant double handling and communication.

Impacts of current timeframes – performance assessed

Whilst any planning system will have quantitative requirements such as time frames, these need to be developed with in-depth consideration of the qualitative nature of planning.

Whereas current timeframes are appropriate in relation to accepted development and deemed to satisfy, the current timeframes are not practical in the case of performance assessed applications especially complex applications.

For the low impact types of performance assessed forms of development, if an application is reasonably consistent with the Code, the application will proceed in a timely manner unless the focus of resources is required elsewhere. Where there are complications such as an excessively large residential outbuilding or a proposed cross-over that requires the removal of a street tree is generally going to require time to resolve issues.

In the case of more complex applications timeframes are not realistic and do not allow sufficient time to refer, consult (both or either with public or with experts), review, assess and report.

An example of this is the 10 days to request information, and 20 days to complete assessment for commercial and industrial type developments within Employment Zones where the development is not notified. Often such forms of development provide detailed traffic, stormwater, acoustic and planning reports, and the expectation to review and request information within 10 days is wholly unrealistic. Similarly, 10 days to request information for broadacre land divisions does not provide sufficient time to review detailed documents.

Given that the largest forms and most prominent forms of development also provide the most information, the risk of poor development outcomes is extreme.

There are numerous reasons why current timeframes are counterproductive in regard to performance assessed development, including:

- Timeframes do not allow sufficient and reasonable time to properly review information for an appropriate assessment to achieve quality development outcomes.

- In respect to complex applications the 10-day timeframe to request additional information is far too short to review documents and properly address what additional information is required.

- Current timeframes do not allow for issues that rely on third party consultation such as internal referrals or consultation with experts. There is not sufficient time to review documents, address issues or where proposals will create poor outcomes that are likely to impact on the community, negotiate improved outcomes with applicants.

  An example of this is there are no time allowances for internal referrals. Areas of the City of Playford are vulnerable to distinctly different types of flooding depending on topographical location and capacity of local infrastructure. Depending on the nature and location of development, storm water management plans often require a nuanced approach to the locality. Where low quality information has been provided

initially, appropriate solutions may require correspondence between engineers until issues are resolved.

The response to timeframes is to ask for generic information and this risks more correspondence asked of applicants than if the request had been specific in the first place. Whereas in many cases in the above example, it is this request for information that applicants become aware that stormwater management plans are needed. This is not ideal for planning assessment officers who are often relying on engineers or specialists for advice, it is not ideal for engineers or specialists as it impacts on their workloads and is not ideal for applicants generally.

- Timeframes appear to assume that sufficient resources are provided so that planning assessment officers can maintain focus on single applications at a time, so that when fees are paid, or information is provided, the application can be responded to immediately. Timeframes do not recognise that planning assessment officers are assessing multiple applications at various stages and undertaking a multitude of tasks each day.

- Applicants are not paying fees or providing information in an orderly manner. Timeframes assume that planning assessment officers can schedule and prioritise applications which is impossible when information is received at random times. This can be exasperated in growth areas where building companies lodge and pay fees for relatively large amounts of applications at a single time, effectively bottle necking available time for assessment.

- Current timeframes do not provide sufficient time to draft reports to assessment panels and this time resourcing this is a current gap in the system.

- Current timeframes appear to be premised on Assessment Panels meeting each week. Timeframes are not sufficient where available resources can only provide a single meeting a month.

- Overall, the prescribed timeframes and ‘clock’ of the Portal do not add value to development assessment as process becomes the primary focus of the system over good planning outcomes. Planning assessment officers are receiving a constant stream of notifications from the Planning Portal. Each of these competing for attention, bottle necking overnight and over weekends. At any given time, numerous clocks are counting down often with many simultaneously requiring high priority attention beyond what is physically possible to action. This is a result of arbitrary timeframes rather providing sufficient time for assessment. This pressure is not psychologically healthy for planning assessment officers.

What is needed / Review timeframes, improve Wizard

Timeframes are an important feature of any planning system however they should be designed to suit real world conditions to avoid unintended outcomes. Development assessment is not being conducted in an environment that supports quick assessment.

Current timelines are based on a digital system that was never delivered. Planning assessment officers are working in an environment of constrained resources due to the inappropriateness of current timeframes. The many obstacles to timely assessment are not recognised and provided for within the system. Many applicants do not support the timely assessment of their own applications by providing appropriate information.

The consideration of timelines should be given to work that is carried out without being compensated. lodgement fees are not received by councils for their services and there are no fees for verification which is a resource intensive task due to the ad hoc quality of incoming documentation.

- Timeframes should be reviewed with consideration that planning assessment officers are assessing multiple applications and are not dealing with single applications at a single time and the flow of information is erratic and touch points to an application cannot be planned. This review should be a scientific investigation as to what time is reasonable in the context of the different complexities of applications.

- Such a review should be extended to the appropriateness of the current digital system and whether it is supporting timely assessment. It should consider enhancements to automate as much as is possible so that the system supports development assessment in a timely manner. An example where an enhancement in the Portal has improved productivity is the generation of some letters especially the DNF which are pre-drafted and only require a quick review or edit. Other small improvements to the system would be helpful such as for example, automatic endorsement of plans rather than having to upload stamped plans and this could easily be achieved. Another improvement would be to minimise tabs in the portal and present applications in a linear fashion.

- The 10-day limit to request additional information should be extended to allow time for proper review and consideration of information.

- The Wizard should be upgraded with to provide an overview of application requirements. It should be readable to applicants providing Technical and Numeric Variations (TNVs), should identify where referrals and public notification are likely to be required and what documents will be required. This should also alert applicants that consideration needs to be given to issues that may impact the timing of their assessment such as location of access, regulated trees. This would allow applicants to sort out issues before they lodge. This document should also advise applicants the basic fees associated with their proposal.

Impacts of low-quality documentation/plans to timeframes

Current timeframes appear to assume that applicants have provided quality information in their application. Many applicants are not providing quality information so that planning assessment officers need to devote more time to revisit and double handle applications. This results in multiple requests and requires additional time to review and contact applicants.

- It is a common practice for lay people to hand draw plans not to scale, partial plans, provide overly basic information, provide product manuals or pamphlets in lieu of expert reports. Provide aerials as site plans and photograph plans and documents and upload these into the portal.

- In the case of some complex applications, some applicants are not willing to invest in planning consultants, drafted plans and or expert reports spending much time uploading poorly drafted plans and irrelevant documents in lieu of usable information.

- It is common for applicants to not supply basic information such as use of proposed sheds, supporting information for a change in land use, or information to support tree damaging activities. There is also commonly a reluctance of applicants not to provide information they need to pay for such as site levels, plans and reports suggesting that there is no comprehensive guide available to them as to what information is required.

- It is common to receive applications to remove regulated or significant trees either without any supporting information or only short notes such as 'leaves blocking gutters' or 'roots blocking pipes.'

What is needed / Simple mitigation to improve quality of documentation/plans

Currently the planning system relies broadly on a high level of public awareness in its processes, whereas the public generally have a low level of awareness of the system.

Whilst the bulk of issues with poor documentation is addressed at verification, the multi-handling of information impacts on resources dedicated to the assessment of applications after lodgement. In many cases poor documentation is an issue throughout assessment further impacting on resources dedicated to assessment.

- Ultimately efficient timeframes require a good standard of documentation. There is a need for mandatory quality standards of plans and information uploaded into the system. Requirements of standards and instruction and guidance of how to achieve these need to be clearly communicated to applicants within the lodgement screen in the Planning Portal without applicants having to rely on searching for information.

    - This should include precise readable scaled plans drafted using appropriate materials or software (e.g. in the case of hand drawn plans using rulers and fine line pens rather than free hand or use of thick texters).

- This would require an electronic checklist within the Planning Portal so that applicants can check off documents they have uploaded required documents of a prescribed standard.

- When completed the Portal would then alert relevant authorities that an application is ready to verify saving much time for planning assessment officers.

Whilst this system would not be foolproof, a higher volume of applicants would likely comply overall reducing time double handling information. This would have additional benefits to assessment timeframes where:

- There are types of development where in all cases a report by a suitably qualified person will be required. Applicants should be made aware of this prior application verification and encouraged to contact the relevant Council for advice before getting too far in the process.

- There are types of development where in all cases proposals will require site management plans or a suite of supporting information. Applicants should be made aware of this prior application verification and encouraged to contact the relevant Council for advice before getting too far in the process.

Notwithstanding that currently in the verification process, the portal asks if mandatory plans are uploaded, there are no mandatory requirements for regulated trees or changes to land use generally. There should be mandatory documentation to support these applications.

Impacts due to deemed consent notice under Section 125 of the Act

The focus of process over purpose will inevitably lead to poor planning out comes and these present a further risk especially given that an applicant can issue a deemed consent notice under Section 125 of the Act.

Deemed consents are unconducive to quality controls in the planning system and promote a combative approach between applicants and Authorities to achieve an arbitrary timeline. Given that current timelines for larger and more complex forms of assessment do not reasonably allow enough time for development assessment, deemed consents create the highest level of risk on the most sensitive and complex forms of assessment.

The Regulations provide only 10 days for the authority to respond to a Deemed Consent Notice, which does not provide time for informed decision to be made, increasing likelihood that such a notice would be appealed as a default position.

In worst case scenarios as a matter of unforeseen chain of events, deemed consents have the potential to have disastrous consequences especially in relation to regulated and significant trees, hazard overlays, indigenous cultural sites, heritage sites and contaminated land. It is considered that deemed consents place an overweighted emphasis on achieving statutory timeframes as opposed to achieving positive planning outcomes for the wider community and the State.

What is needed / replace deemed consents with low-risk solutions

It is suggested that deemed consents be replaced with deemed refusals, as is available in other planning regimes. Such an approach would create added incentive for applicants and authorities to reach acceptable compromises, with an appeal remaining a viable option. An alternative to a deemed decision would be the ability for the applicant to request the application be escalated to the relevant Assessment Panel for a decision.

5. Section 197 Urban Tree Off Set Scheme & Urban Tree Canopy Overlay

The contribution in lieu of planting a tree under the Urban Tree Off Set Scheme is inadequate to enable councils to recover the cost of planning and maintaining the trees on public land. Council also notes that policy requiring homeowners to plant and maintain private trees as specified under Practice Direction 12 is inefficient and difficult for Council's to enforce. The tangible benefits of this policy are undermined by the difficulty in ensuring that tree planting occurs and is then maintained. Site coverage policy in many zones allows limited scope for establishment of these trees within backyard spaces.

What is needed / increase contributions based on values of trees

Contributions need to be increased for the system to be sustainable and this should be based on simple and tested systems such as the Burnley method of tree evaluation. This would allow councils to sustain tree plantings and to reflect the monetary value of the environmental degradation of the Adelaide region.

Further to this, it is suggested that Practice Direction 12 be amended so that in place of planting trees within backyards, payment be made into the Urban Tree offset fund of a Council. This would then allow for Council's to establish and maintain trees within public areas and public realm, increasing overall tree canopy as targeted by Practice Direction 12.

6. Section 83A and Groundwater Prohibition Areas

As per Part 9 EPA Referrals of the Planning and Design Code Section 83A Notification 'notification of site contamination of underground water' are reliant on information on Certificates of Title or on the EPA website. Given that Certificates of Title are not mandatory documents, this task is time consuming for the majority of applications unless there is suspicion that sites maybe subject to the Section 83A Notification. This information is contained within the SAPPA portal, however, is difficult to access and is easily overlooked as there is no linkage of this information between SAPPA and the assessment portal

What is needed / new overlays

These sites should be mapped as an Overlay and that land that is 'adjacent' to the sites that are also subject to the Section 83A Notification should also be mapped. This will assist in identifying the necessary referrals to EPA. The form of this overlay would be similar to that of the "Heritage Places' and 'Heritage adjacency' overlays, which identify specific sites, and the adjoining properties.

The Groundwater Prohibition Areas should also be considered as an Overlay.

Summary table

Issue	Concerns	Recommendations
Infrastructure Schemes overly complex	Infrastructure Schemes too complex / not practical	Requires a separate review to Planning Review and should consider: • infrastructure funding models • infrastructure deliverance • integrated with Regional Plan to facilitate Code Amendments • a whole of government approach and • universal infrastructure funding scheme across the State. • Integration with Regional Plans • Regional Plans become focussed on delivery.
Current use of deeds problematic	Code amendments reliant on landowners signing deeds	
	Cost of drafting deeds to landowners not promoting community involvement	
	Deeds benefit residential development as is easier for developers to distribute and recoup costs. Deeds do not favour industrial and commercial development as cots are often not distributed.	
Separate rates	Cost to Councils	
	Equity issues landowners not benefiting from infrastructure subsidising owners that benefit from infrastructure	
	Additional rates politically sensitive	
Lack of process to achieve strategic goals in strategically sensitive zones	Section 14—Principles of good planning not achieved in the Code	New category of development should be created where the accumulation of inappropriate development must be considered in development assessment in zones and overlays that are sensitive to being undermined by inappropriate development.
	Code lacks strategic policies and a system for controlling types of development that cumulatively undermines the intent of zoning	
Resilient Development	In relation to environmental goals Section 14—Principles of good planning not achieved in the Code	Emphasis on strategically designed policies to address environmental sustainability and community wellbeing and these should be linked to science-based guidelines.
	Planning and Design Code does not contain strong policies for facilitating sustainability principles	
	Reliance on land division to achieve sustainability principles nonetheless on ambiguous policies	
	Reliance on building rules to achieve sustainability principles	

	Existing policies too high level	
Reg 53, Timeframes within which a decision must be made, inefficient	Timeframes based on a digitised system that was not developed. Resulting in double handling of information. Too confusing for applicants so turning to council staff adding pressures on resources	Review and correct timeframes for performance assessed development to achieve sensible quality outcomes. Review and enhance digital system.
	10-day timeframe to request additional information is far too short to review documents and properly address what additional information is required. Especially when 3rd party advice is required (e.g., advice from engineers) to inform what information is required	Portal should be enhanced to reduce manual administration Increase timeframes to request additional information Enhance Wizard.
	Complex applications not reflected in timeframes	
	Timeframes do not allow sufficient and reasonable time to properly review information for an appropriate assessment	
	Timeframes do not recognise that planning assessment officers are assessing multiple applications at various stages and undertaking a multitude of tasks each day	
	Timeframes do not recognise information is uploaded in an ad-hoc manner	
	Current timeframes do not provide sufficient time to draft reports to assessment panels	
	Timeframes premised on Assessment Panels meeting weekly.	
	Poor quality documentation being submitted / no quality	Dwelling construction industry demonstrate

Impacts of low-quality documentation/plans to timeframes	controls applied to documents	quicker timeframes due to providing high quality information as well as identifying where advice may be needed.
	no mandatory requirements for regulated trees or changes to land use generally	Require mandatory quality standards to documentation and provide an electronic guide and a checklist in the Portal. There should be mandatory documentation to support regulated trees or changes to land use.
Impacts due to deemed consent notice under Section 125 of the Act	Deemed consents are unconducive to quality controls in the planning system	Deemed consents should be dispensed with and replaced with an alternative.
	The Regulations provide only 10 days for the authority to respond to a Deemed Consent Notice	
Section 197 Urban Tree Off Set Scheme **Urban tree Canopy Overlay**	Urban Tree Off Set Scheme is inadequate to enable councils to recover the cost of planning and maintaining the trees on public land	Introduce contributions that reflect financial value of trees. Enable payment into a Council fund for tree canopy increases.
Section 83A and Groundwater Prohibition Areas	Relies on Certificates of Title to inform practitioner. Certificates of Title are not mandatory documents.	sites should be mapped as an Overlay and that land that is 'adjacent' to the sites that are also subject to the Section 83A Notification should also be mapped

The City of Playford looks forward to these matters being considered in your review.

If you have any enquiries, please contact Jamie Hanlon Urban Policy Planner [redacted]

Regards

Samantha Grieve
Acting Senior Manager – City & Corporate Planning