DTI:Planning Review

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To: DTI:Planning Review
Subject: Planning System Implementation Review - submission

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I am a retired planner with approx. 40 years experience in Victoria, Tasmania and South Australia. The past 20 years has been in South Australia and I currently serve on three Council assessment panels.

I am pleased to provide some high level comments on the planning system rather than specific policy issues which I expect to be raised in local government submissions.

The planning reforms largely delivered in terms of the e-planning platform but in my view in other respects the reforms either did not deliver as expected or have gone too far.

Missed opportunities

The missed opportunities for real reform started right at the start. Various 'theme' papers were released but unfortunately they were released spasmodically through the process and they didn't really tackle the real issues nor discuss policy options. Ideally the papers should have discussed shortcomings (gaps) with previous definitions, known issues with interpretation and application of legislation, and should have provided direction/inform new regulations, State Planning Policies, the Planning and Design Code or Practice Directions. Instead, the papers were high level documents containing concepts and thoughts rather than clear policies, with some being released late into the process when policy directions were already in place.

Councils also appeared to be on the defensive from early on. I believe this was due to concerns about timing, short response times, and a feeling of not being meaningfully engaged or listened to. While Councils seemed to accept the need for reform, at no time were they really encouraged to review their previous zoning arrangements and policies. From very early on they sensed they were going to lose all their local policies and defensively fought for their retention, even though some of those policies might have been redundant and might not have warranted retention, yet they had been religiously followed without ever questioning their origins and ongoing need.

in a number of cases we essentially have identical regulations from the 1993 system. As an example the regulations exempting certain activities from being development were essentially copied from the old regulations and simply renumbered without any significant review or modernisation to reflect current trends.

The reforms provided opportunity to implement a consistent approach to zoning of public facilities. To its credit the Commission implemented a consistent zoning to conservation parks by including them all within the Conservation Zone; however it failed to apply this innovation to other facilities such as sporting ovals. Consequently there remains a confusing and inconsistent approach across the State. As an example, in my former Council (The Barossa Council) a Council owned oval in one town is in the Established Neighbourhood Zone, in another town it is in the Recreation Zone, and in another town it is within the Township Zone. The reforms provided an opportunity to remove these inconsistencies by including them all within the Recreation Zone.

Other examples of missed opportunities to modernise policies relate to telecommunications facilities (e.g. 5G facilities), renewable and alternative energy facilities (e.g. domestic scale battery storage and wind generators), and advertising policies which don't reflect contemporary advertising forms.

Bringing back the local

It would have been foolish to expect previous local policies could be transitioned into the Planning and Design Code and to its credit the Commission did manage to transition many numeric and quantifiable policies such as minimum lot sizes and boundary setbacks. Unfortunately what was lost were previous local desired character statements, many of which were found at zone and policy area levels.

There will have been local policies that contained both qualitative and numeric provisions, supported by a desired character statement, being been replaced by a simple numeric policy within the Technical and Numeric Variations provisions. I believe that the system needs to provide for the reintroduction of local desired character statements. I don't have the answer, but perhaps through something like a "Municipal Strategic Statement" as found in Victorian planning schemes.

I will make a passing comment that I interpreted the previous Expert Panel's recommendation regarding a "Code" to be along the lines of the Victoria Planning Provisions and that each Council would still have a local document. I think it surprised many practitioners that no, there would no longer be any local plans…

Going too far?

Without a doubt, the previous system contained many unnecessary hurdles. A simple example was the various zones that applied the "all forms of development are non-complying" approach. Those zone structures saw many developments that any layperson would think reasonable, needing to follow a complicated and risky process - such as a café in parts of a wine region close to Adelaide.

The non-complying category of development itself was not the issue, rather the manner in which it was applied. The category was a real 'protection' against inappropriate development in the wrong location and while simplistic, was a deterrent. It is a well-known fact that many proponents simply walked away when told their proposal would be non complying.

The Commission and department staff always argued that the Restricted development category was not the equivalent of non-complying, but practitioners did expect there to be a robust approach to controlling those types of development that one would not reasonably expect in certain areas - e.g. a warehouse in a residential zone or transport/truck depot in a farming zone. It is reasonable to assume that the general public would expect these types of developments to be directed to certain zones and to be explicitly spoken against in other zones. In this context, the current dearth of Restricted developments across all zones goes too far and opens the door for anything to happen.

Keeping the system current

The previous Expert Panel expressed concern over the complex and burdensome process to update development policies via a Development Plan Amendments. The Expert Panel envisaged a system where minor changes could be made quickly and simply where necessary, while major rezonings would follow a more complex and extended process.

After deep involvement in the planning scheme amendment process in both Victoria and Tasmania I have always been concerned about the approach to amending policy in South Australia. An embedded view among practitioners and departmental staff seems to be that policy concerns need to be thrown into a 'bucket' and when the bucket is full they will commence an amendment process. That approach has resulted in complex, multi-issue Development Plan Amendments where objection to one issue held up introduction of other changes. An alternative is to have smaller single issue amendments, an approach which I believe the previous Expert Panel envisaged. Alas, early experience with the new system suggests that the Code Amendment process will remain complex and there will be hesitancy to undertake regular single issue Code Amendments.

A side issue in my opinion relates to the Code Amendment naming/identification approach. The new planning system sees an increased number of persons/organisations who can initiate code amendments and I respectfully suggest that the previous naming convention is no longer suitable. I suggest that Code Amendments should at least reflect the initiator. A possible naming system is:

<Initiator Code> / <Year> / <Number> OR <Initiator Code> / <Number>
The Initiator Code could align with the initiator – e.g.:
S: State Planning Commission, Chief Executive of the Department, Minister
A: An agency or instrumentality of the Crown
J: A joint planning board
C: Council
P: Proponent (A person who has an interest in the land - where the person is seeking to alter the way in which the Code affects that land (private proponent)
O: A scheme coordinator, provider of essential infrastructure (private proponent) etc
The first Code Amendment initiated by the Commission in 2023 would be something like S/2023/001 and the first Code Amendment initiated by a land owner would be P/2023/001 or similar etc. If it was considered useful to provide a subject matter it could be a sub-title – e.g. S/001 (Port Bonython)

I envisage the name/ID for the Code amendment would be allocated at the time the initiator is given the OK to run with it.

I raise this now because continuing with previous naming system will become a challenge in the future, especially as the name of a Code Amendment can only be used once! An example is recent "Miscellaneous Technical Enhancement Code Amendment" initiated by the Commission where the assigned title gives no indication of the initiator, but more importantly that there can never be another Code Amendment using this title even though it would be expected that the Commission will be undertaking routine technical enhancement amendments... Under a 'code' system this could have been called S/2022/00x (Miscellaneous Technical Enhancement Code Amendment) or similar.

Conclusion

I urge the Expert Panel to be bold and to put forward recommendations that might require legislative or structural changes to the Planning and Design Code - e.g. to reintroduce desired character statements.

I consent to this submission being made public and would appreciate the opportunity to discuss it in more detail with members of the Expert Panel.

Yours sincerely,

Paul Mickan
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