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File Ref: OC20/08740

21 August 2020

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Dear Sir/Madam

Adelaide Hills Council Submission on the draft Local Design Review Scheme

Adelaide Hills Council is grateful for the opportunity to provide feedback on the draft Local Design Review Scheme (the Scheme) released for community consultation by the Office for Design and Architecture of South Australia (ODASA) in June 2020. In preparing this submission, a review of the Scheme was undertaken including consultation with Council Members and relevant staff.

AHC Context

The Adelaide Hills Council is not considered a growth Council, nonetheless it attracts a large amount of development investment inside the urban and township boundaries and also within our primary production areas. These areas can be characterised by undulating topography, tree lined streets and natural settings that are considered unique.

In these sensitive settings, it is considered that for prescribed classes of development, a design review process could play an important part in ensuring that good design outcomes are prioritised, local context is responded to appropriately and investment is streamlined.

The Planning and Design Code

A key element of the planning reform process is staged introduction of the Planning and Design Code (the Code) and a stated 'focus on design'. As Adelaide Hills Council has previously advised the State Planning Commission, the focus on design does not appear to have translated into detailed design policy within the Code. In this regard without the full gambit of policy tools developed it is hard to fully comprehend what advantages the design review process will deliver. For this reason it is considered somewhat premature to be releasing the scheme prior to the finalisation of the Code.

As mentioned Council has previously provided comment on the Planning and Design Code Discussion Papers and the draft Planning and Design Code with a number of consistent comments provided to the State on design issues including responding to local contextual considerations. While the proposed Local Design Review Scheme process represents an attempt to address the need to consider design issues and local context under the Code, based on the information presented to date (during Phase 3 consultation), it does not fully offset Council's concerns on the need for greater design detail and local contextual focus within the Code.

Notwithstanding, Council acknowledges that the intent of the Local Design Review Scheme to provide a consistent approach to design review is supported and the following comments in regard to the Scheme are provided for consideration.

The Scheme

The proposed Local Design Review Scheme will involve the establishment of a Design Review Panel, the need to appoint a Chair, arrange and host formal meetings, prepare both agendas and minutes and potentially run multiple meetings. All of this activity will come at a cost to Council. While there is reference to an applicable fee for design review in the Scheme, this fee has not yet been set. It is considered that it will be challenging to set the fee at a level that will incentivise proponents to opt in to the process, whilst also covering Council's costs in establishing and administering the Scheme. For this reason it is considered that the fee be allowed to be set by the relevant Council.

The Scheme outlines that the design review process will cease when a development application is lodged. This provides Council planners with no follow up design review input should plans/designs change as part of the development assessment process. The question therefore emerges: how should planners deal with the original/early advice once an amended version is presented to the CAP for a decision? This issue if unresolved is considered a significant weakness of the Scheme and it potentially challenges the notion that the Scheme would be effective in delivering good design outcomes, greater certainty and streamlined investment. For this reason it is considered that design review should be allowed to be accessed during the application process in some capacity. It is also considered that there is potential for design review to play a part in the CAP appeal process, particularly where a plan has been amended on account of appeal proceedings.

Clarity is sought on when the Independent Design Review Administrator is called upon in the absence of a Council established panel. In the instances where an Independent Design Review Administrator is available to provide design review, it is considered vital that a suitable pool of panel members be available that have the relevant experience to assess a proposal in the context of the Council area in which the application is proposed. In addition, it is considered that Council should have the option to lodge a complaint where the advice provided by an Independent Design Review Administrator contravenes the principles of Design Review. If this is adopted it is considered that the Scheme should identify who would be the entity to deal with such complaints.

It is considered that in addition to the above the following should be resolved prior to implementation of the Local Design Review Scheme:

- It is considered that the onerous requirements for reporting should be scaled back to reduce the administrative burden on Scheme administrators.
- Section 2.6 of the draft Scheme seeking that councils or 'designated entities' "must provide each panel member with a contractual agreement" is also considered onerous, with potential industrial law implications. The concern with such an approach is that this becomes a very formal arrangement with a whole range of additional governance requirements, including being aware that a panel member has the ability to challenge council on e.g. breach of contract, 'engagement' arrangements, etc. If the Scheme upholds this Section, then it is suggested that a template agreement be drafted for review by the LGA on behalf of the sector. The alternative approach to follow is that currently used for CAP Independent Members who are engaged using an Instrument of Appointment which requires them to adhere to the Minister's Code of Conduct for CAP members. This process is

less onerous but has the relevant formalities in relation to declaring conflicts of interest, abiding by requirements of professionalism and acting in an impartial and unbiased manner.

- The rationale for confidentiality required by Section 6.3 (Data Storage) of the Scheme is questioned, particularly when documents will be published as part of CAP agendas etc. Although the desired premise of keeping such data confidential is understood, we are just raising that this will not be the case when matters are reported to CAP. This therefore requires clarification.
- It is not clear if members of a Design Review Panel have to be accredited professionals in accordance with the Accredited Professionals Scheme as Council Assessment Panel members do. This therefore requires clarification.
- It is not fully understood what the role of Council Planners will be in the Design Review process. In particular, clarity is sought regarding the likely resource implications (above and in addition to the establishment and ongoing costs) for councils to participate in such a process. In addition, confirmation is sought regarding whether there is scope for this involvement to be offset through the fee charges. This will be an important factor to consider before Council considers establishing a Design Review Panel.

Pilot Program

If the above issues can be resolved and clarified and the Scheme improved, than the Adelaide Hills Council would be interested in being involved in a pilot program. This would be contingent on a regional Local Design Review Administrator being established between neighbouring Councils. It is considered that the advantage of a regional approach would be that costs and administrative duties can be shared between participating Councils.

Summary

The introduction of the Local Design Review Scheme is described as part of the focus on design in the new planning system, which is to be commended. However it is considered that the Shemes initiation should be delayed until such time as the Planning and Design Code is improved through the inclusion of stronger detailed design guidance and policy that better responds to local context.

If the aforementioned shortcomings in the Code, in addition to improvements to the Scheme that address the abovementioned issues can be overcome then the Adelaide Hills Council is interested in pursuing the establishment of a Local Design Review Panel as part of a pilot project.

If you have any queries regarding the above comments then please do not hesitate to contact Marc Salver, Director Development and Regulatory Services on [REDACTED]

Yours sincerely



Lachlan Miller
Acting Chief Executive Officer

cc: Stephen Smith - Local Government Association