

Friday, 29<sup>th</sup> November 2019

Communications and Engagement Team  
Planning and Development  
Development Division  
Department of Planning, Transport and Infrastructure  
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Dear Communications and Engagement Team

**RE: Response from Surveying & Spatial Sciences Institute - South Australia (SSSI-SA) Land Surveying Committee to draft Planning and Design Code for Phase Two councils (rural areas) and Phase Three councils (urban areas)**

The SSSI - SA as a representative body of Licensed Surveyors in South Australia has been actively involved with providing feedback to the planning reform process, from the public consultation undertaken by the expert panel, to the current implementation of the Planning Development and Infrastructure Act. As a member on the Ministers Development Industry Advisory Committee and key stakeholder in land development in South Australia the SSSI -SA appreciates the opportunity to provide feedback to the documents currently open for consultation. The response to these documents from the SSSI - SA Land Surveying Committee (the Committee) is provided below.

The Committee feels strongly that the Planning and Design Code (the Code) should provide Deemed to Satisfy pathway for all land divisions that:

- follow on from approval of built form land use
- create up to 5 Allotments in total as long as no new public roads are created and the resulting Allotments achieve any minimum site area and frontage width specified by the relevant zone or a relevant Technical and Numerical Variation Overlay (note definition of minor land division should be changed from “under 20 Allotments” to “up to 5 Allotments”)
- create a community strata scheme under the Community Titles Act. The boundaries created in such a division are based on the physical features of the built form.
- accommodate Housing Trust dwellings that are classified as Deemed to Satisfy

The Code should also identify the significant structural and spatial differences between normal Torrens ‘allotments’ and the various forms of Community ‘lots’ by providing separate definitions and assessment process for Community Divisions.

The following is offered in support of the proposed amendment to the Code.

### **Benefits of the Scheme**

The planning reform objectives include *“more choices for applicants where persons seeking to undertake development that ticks all the boxes will have the choice to engage accredited professionals in the public or private sectors, providing for faster and more responsive turnaround times on applications.”*

The Committee along with strong support from the community, developers and the government supported many of the recommendations put forward by the Expert Panel on Planning Reform including:

- *“the need for a significant increase in the proportion of development not requiring assessment or requiring only standard assessment”*
- *“there is a need for assessment processes to be substantially reformed.”*
- *“a system of professional accreditation, including regular training and auditing, should be established”*
- *“private certification should be expanded to include a wider range of standard assessment functions, subject to stricter auditing and oversight”*

The Committee believed that the Accredited Professionals Scheme implemented by the State Planning Commission would address many of these recommendations. It has only been since the Code has been released for consultation that it has become clear that the limitations of the Code imposed on Deemed to Satisfy Land Divisions will quash any improvements to the planning system for minor land divisions.

The intention of different assessment pathways in the planning system is to categorise developments with the general principle that *“as the impact of a development increases, so will the category and corresponding level of assessment. If a development is standard or expected in a particular area, has minimal impact and warrants a quantifiable (numeric) assessment, it will be at the low end of the assessment scale”*.

In the majority of cases minor residential land divisions would be expected in certain zones and indeed encouraged to meet the states demand for urban infill, they have a minimal impact and they can usually be assessed against quantifiable criteria. It is therefore surprising that the Code has restricted Deemed to Satisfy land divisions so severely to only include the creation of one additional allotment where the land use exists or has been approved and the driveways exist or have been approved.

The Code is intended to provide South Australians with planning policy that is consistent and clear, making the planning process quicker, simpler and more equitable.

The Committee is concerned with the increased cost and timeframes proposed under the Code that requires unnecessary assessment against the policies and rules applicable to Performance Assessed development for land divisions described above.

### **Accredited Professional – Surveyor**

The accredited professional scheme recognises the importance of professionals in the decision-making process and values their skills and experience. Therefore, Licensed Surveyors, accredited under the Scheme, should be granted decision-making authority to assess land division applications.

Licensed Surveyors maintain the highest level of integrity and ethical practice and are subject to regulation and audit under the *Survey Act 1992*. Licensed Surveyors interpret spatial and legal

aspects of land ownership, within the property and land administration system, and are experts in Cadastral law. They are the only professionals authorised to legally define boundaries and prepare land division plans to issue new titles.

Licensed Surveyors are experts in removing ambiguity and defining the most workable solution through the planning system to protect development from error and liability.

Licensed Surveyors assess land divisions as a core part of their profession. People seeking to divide land will usually seek the advice of a Licensed Surveyor and have the land division application process managed and lodged by a Licensed Surveyor. Licensed Surveyors will assess the intentions of the developer against the relevant Development Plan, legislative requirements and physical/economical constraints to provide advice on what is feasible and compliant. Through this process Licensed Surveyors have already been responsible for the assessment of land divisions under the current Development Act against development plans.

Looking at statistics from the SA Planning Portal from 2018 as an indication of the ability of Licensed Surveyors to make these assessments. There were 2721 residential land division applications lodged in 2018, of these 38 were refused by councils and of the 38 refusals 5 were later overturned and approved by the ERD court. Licensed Surveyors would have been responsible for assessing the vast majority of the 2721 applications before lodging applications and only 1.2% were refused.

SA Planning Portal figures also show that 70 to 80 companies have lodged land division development applications each year for the past 4 years. In this time there has only been one “Planning” company that has lodged land division applications, that is Masterplan with only 6 lodged in total. There are also a few small building design companies that lodge a small number of applications each year in support of built form applications.

For a development involving the division of land an Accredited Professional-Surveyor may only act as the Relevant Authority for **planning consent** for Deemed to Satisfy land divisions. The development also needs to be assessed for **land division consent** which would most likely be undertaken by the council for the area. During the council’s assessment the proposed division can be assessed against design standards which is the opportunity for the council to assess and impose conditions relating to engineering matters such as driveway cross overs, stormwater and retaining walls.

Requiring approval of driveway crossovers prior to planning assessment is not an improvement to the planning system and is likely to cause unnecessary delays in processing deemed to satisfy land divisions. It should be noted that under the new development assessment time frames, Deemed to Satisfy Planning Consent will have up to 5 days for assessment and Land Division Consent will have up to 60 for assessment.

In the current form of the Planning and Design Code minor land divisions are categorised as under 20 Allotments. It is recommended that minor land divisions should be categorised as the creation of up to 5 Allotments with no new public roads created. This will also align better with the majority of performance assessed notification exclusions which generally have limitations of “four or more additional dwellings or allotments”.

## Community Divisions

It is important to note that development applications for Community Divisions have consistently provided problems since the Community Titles (CT) Act was introduced. The intent of the CT Act has not always been understood by applicants and development assessment officers, resulting sometimes in delays and less than optimum outcomes.

Many of the problems in assessment of Community Divisions under the Development Act have stemmed from uncertainties in the regulations, leading to tendencies to assess Community Divisions along lines intended for normal land divisions ('Torrens Divisions'). There are, of course many common aspects to the assessments of Community and Torrens Divisions, and there is no intent to alter those aspects.

There are significant structural and spatial differences between normal Torrens 'allotments' and the various forms of Community 'lots'. These differences need to be taken into account in development assessment. The lack of distinction between 'allotments' and 'lots' has often led to confusion for those promoting and assessing Community Divisions.

The Code should provide the mechanism for unique assessment of Community Divisions and should take into account the significant structural and spatial differences between normal Torrens 'allotments' and the various forms of Community 'lots'.

Many of the existing land division provisions of Development Plans under the Development Act are not well suited to the assessment of Community Divisions. Examples include:

- prescriptive allotment frontages and areas
- sharing of common property for various purposes, including access, open space and community facilities
- rights of support for common walls and other easements that are covered in Section 24 of the CT Act

To be effective, the Code provisions should reflect the ultimate land use. The land use for group dwellings (without a frontage to a public road) should be clearly spelt out in concept. The assessment of boundary locations, lot sizes/areas and disposition of community land should then follow as a natural consequence of the approval of the land use concept. In many cases, the approval of a Community Division should be Deemed to Satisfy, following on from approval of land use.

However, not all community divisions require approved land use concepts, if the developer intends to sell the lots as vacant land they would generally not require a concept plan. Lots in a community division that front a public road should be assessed in the same way as Torrens Title. Simple community divisions, similar to battle axe allotments, should not require concept plans and approval of Community Division should be Deemed to Satisfy.

Thank you and we look forward to the continuing conversation to contribute to the successful implementation of South Australia's new planning system.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Nietschke', with a long horizontal flourish extending to the right.

Michael Nietschke  
Chair, SSSI-SA Land Surveying Committee