

28 February 2020

Mr Michael Lennon
State Planning Commission

Sent by email to: DPTI.PlanningReformSubmissions@sa.gov.au

Dear Michael

South Australia's Planning and Design Code - Phase 3

The Planning Institute of Australia SA (PIA) thanks the State Planning Commission (the Commission) and the Department for Planning, Transport and Infrastructure (DPTI) for the opportunity to provide feedback on the *South Australia's Planning and Design Code - Phase Three* (the Code) within our State's new planning system under the *Planning, Development and Infrastructure Act 2016* (the PDI Act).

PIA acknowledges the scale of the state planning reforms and the ongoing engagement by DPTI during the reform process, with both PIA and the planning profession more broadly.

We also continue to acknowledge the tremendous efforts of DPTI staff to produce the Code.

The intent of this submission is to provide feedback developed through consultation with our members on Phase 3 regarding how the Code can be enhanced.

Whilst we acknowledge the need to provide the development industry with some certainty around delivering the Code within a reasonable timeframe, PIA is of the view that the first generation of the Code must be of standard that planners across the state feel confident using.

PIA commends the recent recommendation by the Commission to Minister Knoll, and the Minister's subsequent decision to remove the timeframes for delivery of the new planning system from the PDI Act.

Timing of delivery has been a recent focus of our ongoing dialogue with the Commission and DPTI, as well as through the Planning Institute's submission on the Code - Phase 2.

1. E-Planning and Consultation

PIA understands that the creation of Australia's biggest and most sophisticated ePlanning system is a monumental task and that the creation of the software, including the detailed validation process, is lengthy and complex. We applaud DPTI for undertaking this significant project that will have a lasting legacy in South Australia.

We do however need to express our concern over the inability to be able to review the proposed planning policy in the context of the ePlanning solution, which has made commenting on the Code challenging, not only for the planning profession, but more so for the community.

It is our understanding that DPTI are preparing a range of resources for practitioners to ensure they are skilled and business-ready for ePlanning. We strongly encourage DPTI to communicate clearly and as early as possible with regards to these resources.

Further, and most significantly, PIA strongly advocates that the Commission delivers a subsequent round of formal consultation on the updated Code (that ideally incorporates updates from Phase 2 and 3 consultations) and loaded into the ePlanning system, before the Code goes live.

It is our view that this would make a significant step in improving confidence within the sector, reducing misinterpretation and assist in identifying significant issues raised by stakeholders.

2. Local Planning Policy

Whilst PIA is supportive of the aim to bring consistency to planning policy across the state, there is a valid concern that the Code has lost more local policy content than originally envisaged by the planning sector. This local policy has often been developed over many years with effective consultation with the community, and at significant expense.

A solution to being able to bring in more local policy nuances, in our view, hinges around the intelligent application of sub-zones and a strong design policy focus around neighbourhood character.

PIA is concerned that unless the first generation of the Code contains more detail around local variations that the intent of the Code will be slowly undermined by incremental additions and be open to a lack of consistent interpretation by those using the Code.

In order to address some of the shortfalls in translation, DPTI could include more detail with the performance objectives within each zone to give the Code more rigour. Another opportunity is to require applicants provide a contextual analysis with their development application to demonstrate consideration of the neighbourhood context. This can result in more site responsive design outcomes.

3. Design

Many of our members are concerned that the original vision of the Code has been diluted and consequently the proposed policy contains little design innovation in this first iteration.

We also know that what constitutes good design can vary between Council areas depending on the 'desired character' and experience of planning staff.

There is significant concern that there is insufficient design policy content in the code to guide planners' assessments and in their decision making.

PIA supports the separation of design policy into urban and rural areas as assessment of design performance is vastly different within these two distinct landscapes, unfortunately the policies within these two categories are not dissimilar. As such we recommend that DPTI review of the content of both these general policies in order to better address the distinction.

We also recommend that the Commission consider the introduction of a best practice urban design policy under the General Development Policies heading in the next iteration of the Code.

a) Local Design Review

PIA is aware of the Local Design Review Scheme currently being prepared by the Office for Design and Architecture South Australia (ODASA). We have been engaged early in the drafting process, prior to any formal consultation, and have developed an understanding of how the process might work. We acknowledge the consultative approach taken by ODASA to prepare the draft Scheme in collaboration with industry bodies and councils to inform the draft Scheme.

We strongly support a Local Design Review Scheme for South Australia. This is a fantastic initiative that will support high-quality design and innovation, enable early access to design expertise and provide an opportunity for the professional development of local government planners in the field of design quality.

We understand this Scheme will be given effect in the Code and we support inclusion of a provision to do so.

We look forward to undertaking a review of the draft Local Design Review Scheme and providing comments during the consultation period scheduled to begin in March 2020.

4. Transparency in Decision Making

A key opportunity of the new planning system that PIA has raised in previous submissions to the Commission and DPTI is the need to ensure greater transparency of written decision making by the Relevant Authority. Ensuring decision making is consistently and clearly articulated within the development assessment process is crucial for the validity of the profession.

PIA recommends the introduction of development assessment report templates for Deemed to Satisfy (DTS) and performance assessed pathways, which could form the foundation of the new system as it could be written in a way that supports the shift into more detailed performance assessment.

A key opportunity from the introduction of development assessment report templates is providing a mechanism for auditing as part of the obligations under the PDI Act. Should this be utilised, an audit of a Relevant Authority's decision making could reveal obvious areas requiring training and development through the review of written assessment.

PIA considers that assessment reports have proven to be the most accurate performance measure of both the effectiveness of the policy and transparent decision making. It is of critical importance that the new system enables performance measures from its inception and we are of the view that the creation of standard assessment report template is the simplest way to achieve this.

5. Strategic Planning

PIA is a strong advocate for continuous improvement of our strategic planning sector within the state.

There are significant opportunities within the new system for refocus on equipping the public service with the resources required to undertake comprehensive strategic planning in order to inform future planning policy.

There is a demonstrated need to ensure that statutory planners are equipped with technical strategic planning tools to inform their decision making.

We are concerned that State Planning Policy framework is not a singularly sufficient instrument to enable the evolution of the strategic planning sector within South Australia.

Whilst we understand that DPTI is focused on future strategic planning projects for local government areas, we believe that there is an opportunity for technical frameworks to be statutory instruments within the development assessment process. This would allow for strategic policy documents such as; a neighbourhood character study, urban design framework, structure plan or growth area strategy need to be used in the development assessment process.

One way of ensuring that this can be achieved is by the introduction of incorporated or background documents. PIA has raised this option in previous submissions and we are of the view that this option is worth exploring.

The Commission would have the ability to review and authorise any reference documents in a similar manner to the current development plan amendment process.

It is suggested that Relevant Authorities would undertake significant community engagement to ensure that any proposed reference documents are meaningful and provide legitimate strategic guidance.

Please see the attached Practice Note 13 (Incorporated and Background Documents), dated September 2018 as an illustration of how it is applied within the Victorian Planning Provisions.

https://www.planning.vic.gov.au/_data/assets/pdf_file/0030/96573/PPN13-Incorporated-and-Background-Documents.pdf

6. Additional Development Assessment Tools

a) Structure Plans

Many of the existing structure plans have not been translated into Phase 3 of the Code. PIA members have raised concerns that the reason for this is unclear.

b) Practice Directions and Practice Guidelines

The use of Practice Directions within the new system is a great outcome for the profession and provides clarity around often complicated planning matters and processes. We recognise that the suite of Practice Directions and Practice Guidelines will develop and grow over time.

As climate policy responses will become increasingly important particularly in the wake of recent extreme natural events, PIA recommends that the Commission and DPTI consider Practice Guidelines relating to building within bushfire and flood prone areas in the short term. This could include Practice Guidelines around temporary accommodation.

7. Response to Phase 3 Update Report

The release of the Phase Three (Urban Areas) Code Amendment - Update Report in December 2019 is a positive response by the Commission to the concerns raised through the consultation process to date.

PIA recognises that DPTI has acknowledged that they will amend irregularities as part of the transition process to the ePlanning solution, once consultation is closed. We urge the Commission and DPTI to ensure that all identified irregularities are amended in the Code prior to its finalisation and operation.

a) Overlays

Ensuring that the Overlays within the Code are consistent with the intent of the PDI Act is central to the new planning system functioning at its best potential.

PIA presents the following examples for consideration by the Commission:

Refinement of the **Airport Noise Overlay** is a positive outcome as its incorrect application could undermine the intent of streamlining the system for minor residential development.

PIA supports the **Local and State Heritage Places Overlay** including adjacent allotments and the recognition by DPTI to create a policy distinction between allotments containing a heritage place and adjacent allotments. It is our view however that this distinction needs to clearly set out the basis for assessment in order to minimise confusion due to the trigger from DTS to Performance Assessed. The character assessment of adjacent development can be very different on large rural allotments compared to the streetscape impacts in an urban area.

We support the inclusion of the **Design Overlay** for the purposes of determining when a large-scale development application will be referred to the South Australian Government Architect. However, we recommend the Commission and DPTI remove the provision that exempts this referral for a variation of a development application that has previously been referred to the Government Architect or been given development authorisation under the PDI Act. This provision enables design quality to be 'value managed' out of a development proposal previously referred to the Government Architect. This provision is at odds with high-quality design objectives in the PDI Act and works against the Planning and Design Code ability to support high-quality design outcomes.

PIA also supports improvements to the accuracy and content of **Overlay Maps**. Testing the spatial application of Overlays is essential to ensuring straight forward development proposals are provided the correct assessment pathway and do not get incorrectly caught up in performance assessment due to irrelevant Overlay provisions.

b) Technical and Numerical Variations

DPTI's early recognition of the irregularities and omissions within the Technical and Numerical Variations (TNVs) has been helpful. PIA supports the commitment from DPTI that this will be corrected prior to implementation of the Code.

Review of how the TNVs will be applied raises a concern around the effectiveness of the metrics, particularly due to a lack of policy basis for these figures. We understand there are difficulties translating desired character statements and specific local planning policies from current Development Plans to the Code. We recommend that each of the TNVs be reviewed to ensure there are desired outcome statements that reflect the local policy from development plans. This is important to ensure that development assessment planners have the policy support and justification to vary or defend a decision if necessary.

An example being where the prevailing local character is informed by streetscape rhythm, including the form of development and land division, is at odds to the

minimum lot size proposed by the Code. This is central to achieving our goal of sensitive urban consolidation that reinforces local character.

c) Deemed to Satisfy (DTS)

PIA also supports the additional clarity around DTS land divisions in order to accord with development approvals within a number of residential zones, however problems will arise with the extent of DTS land divisions able to be granted unless the land use definitions for residential development in the nature of detached dwellings, semi-detached dwellings and row dwellings are amended to remove reference to those forms of development requiring a site 'held exclusively with that dwelling'.

Case law authorities from the Supreme Court and the Environment, Resources and Development Court (most recently in *Paior & Anor v City of Marion & Ors (No 3) [2014] SAERDC 42*) have interpreted the phrase "site held exclusively" to mean that a detached dwelling, semi-detached dwelling or row dwelling must occupy its own, legally-existing allotment of land. This means that built form development applications for dwellings which are depicted as having their own site cannot be assessed as detached dwellings, semi-detached dwellings and row dwellings if their site does not also constitute an allotment of land.

In the interests of advancing the economic development of this State, we recommend that this issue be addressed in the final version of the Code.

We note that this issue has been addressed within Schedule 4 of the Development Regulations for ResCode Applications, through the provision of a complying development "pathway" for residential land divisions following the approval of a dwelling.

Our suggestion is that the definitions of detached dwelling, semi-detached dwelling and row dwelling in Part 7 of the Code be amended to refer to a 'site' rather than 'a site held exclusively with that dwelling' will enable the DTS provision to achieve its intent.

Further, this minor adjustment will ensure that the principle planning test of determining whether the site is appropriate for medium density infill is the focus for assessment, not lines on paper. Good design outcomes for built form should be the assessment priority, not the resulting formalisation of lines on paper.

d) Flood Mapping

We understand that DPTI are committed to including current and high-quality flood mapping data in the Code, once data is available to do so. We strongly support a consistent flood mapping exercise that generates current and the highest-quality data available to reduce the risk to life, land and property in the event of a flood.

One possibility involves DPTI providing technical guidance to all councils to assist with generating current and consistently high-quality flood data. Grant funding for this should be considered by the State Government, particularly in regional areas with vast landscapes and limited financial capacity to undertake a comprehensive analysis of flooding hazards.

The outcomes could be adopted into the Code through a single combined Code Amendment.

8. Professional Development

A positive outcome of the new system is that there is a tremendous opportunity for planners to upskill as we will all be learning a new system. We look forward to continuing our work with the Commission and DPTI to ensure and contribute to this upskilling and training to maximise understanding of the new performance based planning environment.

Summary

PIA continues to be an advocate for the planning reforms in South Australia as a way to move toward a contemporary approach to planning.

This submission acknowledges that the document that is currently on public consultation is in its first generation and there are significant opportunities to enhance the effectiveness of the Code particularly through increased local planning policy content, the introduction of statutory planning documents to assist assessment, the enhancement of design content and policy, and rigorous scenario testing by the industry and community in conjunction with the new ePlanning solution.

We look forward to the opportunity to test the system and are grateful for the opportunity to provide assistance to the Commission regarding business readiness for our many members.

Please feel free to contact the undersigned for further discussion and clarification on the content of this submission via sa@planning.org.au.

Yours sincerely



Elinor Walker

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