

18 December 2020

Mr Michael Lennon
State Planning Commission

Sent by email to: DIT.planningreformsubmissions@sa.gov.au

Dear Michael,

South Australia's Planning and Design Code - Phase 3

1. Overview

South Australia's planning and design code exists so that the substantial economic, social and environmental value embodied in our state's planning strategies can be realised over time. It follows that each planning decision making process enable strategy implementation, be fair and cost effective.

This is the basis for PIA's support and advocacy for the following to be part of the reform package:

- the roll out of e-planning based on a one site / one inquiry model
- recognition of a key role for local planning policy to interpret how Statewide standards should be deployed to give local effect to state policy
- 'incorporated or reference documents' being used as a mechanism to give status to local strategy
- the incorporation of statutory design standards (and additional performance outcomes within the design overlay) prior to Phase 3 going live
- including some third party appeal rights to improve accountability for better planning decisions
- a review of 'the all other development' category to determine whether some uses should be identified as 'restricted' – especially where they hinder the achievement of a plans strategic outcomes
- key mapping improvements to SAPPA including a native vegetation overlay
- the preparation of a land use definition practice guide and a range of guidelines to improve the delivery of the code. Further attention should also be paid to deemed to satisfy interpretation and infill policy regarding tree offset schemes

2. Introduction and acknowledgement

PIA thanks the Commission for the opportunity to contribute and presents this submission as feedback from consultation across our professional membership.

The Planning Institute of Australia SA (PIA) appreciates the State Planning Commission (the Commission) and Planning and Land Use Services (PLUS) providing this opportunity to provide feedback on the second iteration of 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 the Commission and PLUS during the reform process, with both PIA and the planning profession more broadly.

We also continue to acknowledge the tremendous efforts of PLUS staff to produce the Code and to respond to the plethora of feedback, particularly in relation to the inclusion of additional local policy content. PIA looks forward to the opportunity to work with the Commission and PLUS on professional development and improving planning industry capacity to implement the reforms.

3. E-Planning System

PIA supports the roll out of e-planning based on a one site / one inquiry model.

PIA commends the significant efforts to upgrade the mapping system (SAPPA). The ability to access information regarding relevant planning controls in a simple and clean format is transformative for the industry and will go a long way to provide much needed clarity.

It is understood the e-planning system itself will be continually improved in order to more intuitively collate relevant assessment policy and will be refined to include multiple land uses on the one site within one on-line inquiry.

The creation of an e-planning system is a considerable achievement and one which brings us closer to a contemporary planning system that no other state jurisdiction has been able to achieve to date.

4. Local Planning Policy

PIA recognises a key role for local planning policy to interpret how Statewide standards should be deployed to give local effect to state policy.

Whilst PIA is supportive of the aim to bring consistency to planning policy across the State, there is a widespread concern amongst members that the structure of the Code will be unable to comprehensively deliver "local vision".

Fundamentally, planning strategies identify how the economic value of orderly land use and infrastructure planning can be optimised for an area. Development controls (including zones) are important means for ensuring that successive planning decisions achieve this value. Strategic planning is most successful where there is a 'line of sight' from state intentions through to the local delivery of place outcomes using development controls. This typically requires an understanding of how state objectives can be met in a local context. Jurisdictions around Australia have found local strategic planning statements are a vital component of the structure of the planning system.

Without local planning strategy, the Code operates in the abstract. It becomes difficult to tell whether successive decisions under the Code are accurate and cost effective in implementing regional strategy outcomes in a local place context.

We are not advocating for the re-introduction of desired character statements, as these are much narrower in scope than what is required to "tell the story" of how a local area will plan to grow and change in line with State Strategy. However, it is worth noting that the role of local government in policy development is currently not clear, moving into this new system and this is of great concern, given that several decades of invested policy content currently sits within the planning system.

Whilst we acknowledge the significant efforts of PLUS and the Commission to translate existing Development Plan policy into the new Code in a contemporary context, the dilution of local content remains an issue which our members wish to see resolved. This is largely due to the structure of a system which is extremely complicated and aims to marry in macro and micro policy intent.

PIA sees a clear role for a local planning strategy narrative to be recognised in the planning system to give more nuanced local effect to state policy.

It is our view that the Code could be adapted to introduce a local planning policy framework and which be applied in each local government area/region without losing or undermining the monumental efforts that have been undertaken to achieve a Planning & Design Code and e-Planning System.

There are many positive advances that the Commission and PLUS have introduced to create a modern planning framework for South Australia however, it is our view, having reviewed Version Two of the Phase 3 Code, that there is a missing link in the architecture of the system.

The basis for this is the lack of technical basis to support more generalised policy. The South Australian system will be the **only** planning system in the country that relies heavily on the effectiveness of policy wording in Zones, Overlays and General policy only. As there are minimal sub-zones proposed in Phase 3, our members remain concerned that the local content has not been realised in a manner which will equip planners with the essential tools they need to deliver desired outcomes.

In other States, this has resulted in post hoc reform to ensure that the “palette” of local planning tools is broad enough to achieve a locally relevant result. For instance, Victoria have adopted overlays to distinguish where retail or other uses are appropriate in industrial areas. In NSW, they have adopted Local Strategic Planning Statements (LSPS) for every council in order to provide a narrative on how district policy should play out in the local council context – and to provide guidance on how standard zones and other standard controls should be applied. The NSW planning system has also retained prohibitions across several key zones to retain commercial cores and maintain scarce employment land resources in some inner city areas. Local zone variations can also be approved to curate a specific outcome without affecting the integrity of a broadly standardised system. It is advisable to plan for this outcome upfront rather than finding that every council is seeking its own path around this issue.

5. Strategic Planning

PIA supports ‘incorporated or reference documents’ being used as a mechanism to give status to local strategy.

PIA is a strong advocate for continuous improvement and evolution of our strategic planning sector.

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 the 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 PLUS is focused and committed to the improvement of 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: neighbourhood character studies; urban design frameworks; structure plans or growth area strategies to be appropriately utilised in the development assessment process.

One way of ensuring that this can be achieved is by the introduction of ‘incorporated or reference’ documents which are contemplated in Section 66(5) of the Act. PIA has raised this option in many previous submissions and we are of the view that this option is worth seriously consideration and will address many of the concerns raised by the industry, without the need to drastically alter code policy in Version 2 of the Code. The inclusion of this mechanism could help bridge the gap in the absence of a local planning policy framework and would provide the much-needed technical basis for complex planning decisions.

The Commission would have the ability to review and authorise any incorporated documents in a similar manner to a Code Amendment process.

It is suggested that relevant authorities would be required to 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

This mechanism could be used to include detailed character assessments which could apply in both regional and urban areas, such as within the Character Overlay and the Character Preservation District Overlay. The inclusion of technical documents can help to inform the local intent and define the qualities of a locality or precinct beyond what standardised Zone or Overlay Policy can reasonably deliver.

We would welcome any opportunity to discuss this option with the Commission or PLUS, which could include advice from any of our various system experts within PIA.

6. Design

PIA supports the incorporation of statutory design standards (and additional performance outcomes within the design overlay) prior to Phase 3 going live.

Many of our members are concerned that the original vision of the planning reforms concerning design focus has been diluted and consequently the proposed policy contains minimal design innovation that would set the South Australian Planning System apart from Development Plans and other planning systems in Australia.

It is our view that the incorporation of design standards as envisaged within the PDI Act are necessary prior to Phase 3 going live. The practical reality is that all planners, both consultants and Council assessment staff, require the tools to ensure that policy intent can be achieved, in a manner which does not open the flood gates to appeals. Design standards will provide much needed certainty and can be written in a way which provides a benchmark for site responsive design solutions.

Section 69 of the PDI Act provides for the preparation of formal design standards. Planning Rules which all applications for planning consent must be assessed against, include the Code and the Design Standards. It is clear that the intent of Act in accordance with Section 3 and Section 102(1)(a) is that design standards have the same status as the Code and should be in effect at the same time as the Code goes live.

It is also recommended that the Commission consider including additional Performance Outcomes within the Design Overlay as the Overlay contains only one singular standard that

would seem an insufficient basis for the creation of a separate Overlay. It is also suggested that the procedural matters be amended to remove the exemption for variations to avoid referral to ODASA. Often variation applications can alter or remove key architectural features which have been hard fought and arrived at with careful consideration from design experts. Retaining this exemption would seem counter-productive.

7. Third Party Appeal Rights

PIA supports some third party appeal rights to improve accountability for better planning decisions.

Now that the full extent of restricted developments and, therefore, the full extent of development applications where representors will enjoy appeal rights can be determined, PIA anticipates that there may be significant community concern regarding what will effectively be a reduction in third party appeal rights.

Whilst PIA appreciates that the intent of the PDI Act through the requirement for the Community Engagement Charter, which is intended to better facilitate and encourage greater public participation in the 'front end' of the planning system - policy development and amendment, we anticipate that the community may, until the new planning system is familiar to them, object to what could be perceived as a sudden and significant reduction in appeal rights.

In order to address this concern, we propose that representor appeal rights be extended to performance assessed developments that require public notification. This can be achieved through amendment to section 202 of the Planning, Development and Infrastructure Act 2020 to include this appeal right in the Act; or, more immediately, it could be introduced through regulations made under section 202(1)(h) of the Act and an amendment to regulation 126 of the *Planning, Development and Infrastructure (General) Regulations 2017* as follows:

Regulation 126. An additional subregulation as follows:

(X) If the decision is made in respect of a performance assessed development which has been publicly notified pursuant to subsections 107(3) and (4) of the Act, notice of the decision must be provided to representors whose representations comply with regulation 50 of the regulations within 5 business days of the date of the decision.

New regulations pursuant to section 202(1)(h) of the Act:

For the purposes of subsection 202(1)(h) of the Act, an appeal by a person who has received notice of a decision under regulation 126(X) of the regulations must be commenced within 15 business days of the date of the decision made on the development application.

For the purposes of sub regulation (1) above, the Court must notify the applicant for the development authorisation of the appeal and the applicant will be a party to the appeal.

PIA considers the above to achieve an appropriate balance between community expectations and the objective to increase certainty in decisions made under the Act for applicants, noting the nature of Performance Assessed development applications that will be subject to public notification and what PIA anticipates will be a reduction in development applications requiring public notification when compared to Category 2 and 3 development applications under Development Plans and the Development Act 1993.

8. Land Use Definitions

PIA supports a review of 'the all other development' category to determine whether some uses should be identified as 'restricted' – especially where they hinder the achievement of a plans strategic outcomes.

PIA recognises that there have been considerable efforts to refine and modernise a number of common land uses. The modernisation of several of the classes of development will help to resolve and reduce appeals including unnecessary debate around incorrect descriptions of development. PIA specifically supports the inclusion of a Tourist Accommodation definition and an upgraded Industry definition. It would be helpful also if function centres were given a formal definition also, as this term is often referenced in the Code.

In saying this, we understand that the inclusion of additional land use definitions into the Code will be an ongoing process however, we have some significant concern, given the statutory planning implications, that many of the proposed Zones do not include a sufficient extent of land uses within many of the performance assessment tables.

This in our view could create a problem for both applicants and planning assessment staff as the 'all other development' category is extremely broad in many cases and therefore does not detail relevant policy considerations for undefined uses, which is part of the intent that underpins the e-planning system.

It appears that a significant portion of common classes of development will fall into this undefined category as the extent of 'restricted' classes of development, in many of the zones, is minimal. This issue is amplified as no land uses are prohibited.

It is recommended that each zone be reviewed to consider the unintended consequence of creating opportunities for inappropriate development as a result of the limited extent of restricted classes of development.

9. Mapping

PIA supports key mapping improvements to SAPPAs including a native vegetation overlay.

There are a number of mapping opportunities that could be introduced into SAPPA which would significantly help to guide development assessment decisions. One of the most useful upgrades would be to integrate data from Nature Maps and internal land management data from the Department of Environment and Water (DEW).

PIA strongly supports the inclusion of the Native Vegetation Overlay and its application would benefit from planners being able to access information regarding State and Federally listed flora and fauna species in particular. This would be a great outcome in consideration of the potential shift in *Environment Protection and Biodiversity Conservation Act 1999* obligations being managed and monitored by each individual State.

SAPPA is a great central resource and expanding the extent of land management data would enable planners to undertake thorough evidence-based decisions. It would also help planners to fully understand what environmental issues are likely to be relevant and flag potential sites of significance.

10. Additional Development Assessment Tools

PIA supports the preparation of a land use definition practice guide and a range of guidelines to improve the delivery of the code. Further attention should also be paid to deemed to satisfy interpretation and infill policy regarding tree offset schemes.

a) Practice Directions and Practice Guidelines

The use of Practice Directions within the new system is 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.

It is recommended that in order to help with the transition into the new planning system that PLUS take the opportunity to introduce a Land Use Definition Practice Guideline. Incorrect descriptions of development can result in issues with existing use rights, complication with variation applications and can lead to unnecessary and costly appeals.

The new system is a great opportunity to provide clarity on how land use definitions should be applied, which would hopefully result in less superfluous planning arguments.

PIA recommends the Commission consider introducing the following guidelines, which would support Code policy, as a matter of priority (but not limited to):

- Understanding Neighbourhood Character
- Writing Assessment Reports
- Writing Conditions and Grounds of Refusal
- Aboriginal Cultural Heritage and the Development Assessment Process
- Home Occupancy

b) Technical and Numerical Variations

We recognise that PLUS have undertaken significant effort to introduce additional TNVs into Version 2 and it appears most of which are directly translated from existing Development Plan policy. This being said, it remains a concern that the basis for these metrics are often unclear in a policy context due to the architecture of the Code.

There have been a number of improvements made to this version however, it is the view of many of our members that there is still insufficient policy support and justification to vary or defend a decision if necessary.

c) Deemed to Satisfy (DTS)

Another significant issue that many of our members have raised is that allowing variations for DTS forms of development creates uncertainty due to the difficulties with prescribing the nature of what constitutes a 'minor' amendment. It is our view that the term 'minor' is very difficult to effectively define in planning law terms.

It is recommended that the better approach is that development either falls within the prescribed DTS criteria or it does not and that wording is clear and precise so as to minimise varying interpretations. **This will require an amendment to Section 106(2) & (5) of the Act.**

d) Infill Policy – Tree Offset Scheme

PIA supports the inclusion of parameters for an offset for tree planting as part of DTS application on the basis that it is abundantly clear that the costs of footing construction are suitably demonstrated by the applicant as being unreasonable and that the planning sector is very clear on the definition of 'notable costs'. South Australia, and in particular Adelaide, has highly reactive soils that often require extensive footing costs ordinarily. It is recommended that any wording within the Code place the emphasis for demonstrating unreasonable cost implications by the applicant.

11. Professional Development

PIA looks forward to the opportunity to work with the Commission and PLUS on improving planning industry capacity to implement the reforms.

One of the many positive outcomes 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 PLUS to ensure considerable training efforts are undertaken to maximise understanding of the new performance-based planning environment.

12. 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.

We look forward to the opportunity to provide assistance to the Commission regarding the issues we have raised and support for 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



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