

LGA Submission - Planning and Design Code - Phase 3

Submission

February 2020

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About the Local Government Association of South Australia

The Local Government Association of South Australia (LGA) is the voice of local government in South Australia representing all 68 councils across the state and the and the Anangu Pitjantjatjara Yankunytjatjara. The LGA is recognised in the *Local Government Act 1999* (SA) and is a constituent member of the Australian Local Government Association. The mission of the LGA is to provide leadership, support, representation and advocacy on behalf of South Australian councils, for the benefit of the community.

Scope of submission

This submission forms the LGA's response to the draft Planning and Design Code (Urban) (the draft Code), released for public consultation on 1 October 2019 (Phase 3), and should be read in conjunction with the LGA's submission on Phase 2 of the draft Planning and Design Code.¹

The State Planning Commission in its Update Report released on 23 December 2019 acknowledged that there are “*key opportunities to improve the draft Code, including a range of technical and policy amendments.*” This acknowledgement is appreciated, however the LGA and many councils have not had sufficient opportunity to review both the draft Code and the Update Report and consider its implications during the consultation period. As such, the December 2019 Update Report has not been considered in this submission.

More recently, the Minister for Planning has announced the Government's intension to defer the release and implementation of the final Planning and Design Code beyond the original date of 1 July 2020. The LGA supports this sensible adjustment, as it acknowledges the vital role of the Code in shaping South Australia's future, and the importance of getting this once in a generation reform opportunity right. The LGA strongly recommends the State Government use this additional time to engage closely with councils and collaborate to ensure the final Code contains best practice, practical, locally responsive planning policy, and that the ePlanning system can be implemented simply and efficiently with minimum disruption to councils, planning authorities, and applicants.

The LGA and councils are eager to work with the State Government to ensure that South Australians have a fit for purpose planning system that reflects community values and takes the State forward.

The LGA's response to the draft Code contained within this submission is divided into strategic matters concerning the draft Code as a whole and its overarching role in the new planning system (refer Section 2), and policy matters relating to specific policies within the draft Code and their potential impacts upon councils and their communities (refer Section 3).

¹ https://www.lga.sa.gov.au/webdata/resources/files/ECM_693936_v10_Draft%20Planning%20and%20Design%20Code-Phase%202%20Consultation%20LGA%20Submission_FINAL.pdf

Recommendations

Recommendations to the Minister for Planning, State Planning Commission, and Department for Planning, Transport and Infrastructure on improvements to the draft Code are summarised below.

Strategic recommendations

1. The Planning and Design Code and its supporting policy tools such as Design Standards and Practice Directions be fit for purpose and free from substantial errors and omissions in time for implementation.
2. To address the many issues that may not be finalised prior to the implementation of Phase 2 and 3 of the Planning and Design Code, the State Planning Commission provide a budget provision and plan for the development of the second generation of the Planning and Design Code.
3. The Department for Planning, Transport and Infrastructure (DPTI) and the State Planning Commission engage closely with councils to ensure essential local policy is included in the Code to facilitate positive development outcomes and avoid negative impacts on communities.
4. The Planning and Design Code be amended to avoid minor and low impact development being subject to unnecessarily burdensome assessment processes.
5. In consultation with local government, the State Government and State Planning Commission provide the following prior to Code and ePlanning implementation:
 - a. A comprehensive learning and development program including on-line and face to face training to be implemented with all councils and relevant authorities;
 - b. Timely access to the amended Code to allow councils to develop appropriate delegations and administrative arrangements and understand standard conditions;
 - c. Clarification of the public information that will be available on the planning portal to support applicants and interested community members navigate the new system;
 - d. Clarification of the arrangements for Code variations and changes both minor and significant;
 - e. A Business Continuity Plan for the ePlanning platform; and
 - f. Resolution of arrangements for payment of application fees, including for applicants unable to pay online.

Policy recommendations

1. The State Planning Commission clearly demonstrate consideration of councils' feedback by providing detailed issue and zone-based summaries of submissions on the draft Code, and identify for each a response/action/amendment to the next iteration of the Code consistent with the intent of the Community Engagement Charter.
2. The draft Code be amended to respect the characteristics and identities of different neighbourhoods, suburbs and precincts by ensuring that development policy considers existing and desired future context of place.

3. Where identified by local councils as necessary local variations (sub zones), Technical and Numerical Variations (TNVs), Structure Plans and Master Plans be established or re-instated within the Code.
4. Include stronger design policy within the Code to support *the 30 Year Plan for Greater Adelaide* targets to increase density and housing choice through high quality infill development within the established urban footprint.
5. The State Planning Commission in consultation with local government develop design standards for the public realm and infrastructure design to be available for use at the commencement of phase 3 of the Code.
6. Employ consistent language throughout the Code in reference to heritage and historic character, utilising the definitions in the draft Practice Guideline for clarity.
7. Transition all existing Heritage and Historic Conservation Zones and Contributory Items into the first generation of the Planning and Design Code.
8. Retain current local Development Plan policies which can effectively:
 - a. ensure that new development and alterations and additions to Heritage Places and buildings within what will be Historic Area Overlays is consistent with or complementary to the established significance or value of the Place or Area;
 - b. guide assessment of streetscape elements (e.g. fencing, garaging) that influence heritage interpretation and impact on established/emerging character; and
 - c. encourage adaptive reuse of heritage places through development concessions (e.g. car parking).
9. Implement development guidelines for development adjacent to State Heritage Places, Local Heritage Places and Historic Areas to ensure that development is complementary.
10. Reinstate the provision that *New buildings should not replicate historic buildings, but rather be complementary to existing historic buildings in terms of architectural form, scale and proportions, with simple and restrained detailing.*
11. Provide for appropriate assessment time and notification for demolition applications that require Local Heritage Impact Assessment or Historic Area Impact Assessment.
12. Apply consistent tests for the demolition of buildings of significance/value at all levels of heritage listing.
13. Clarify the requirements for Heritage Statements and ensure they incorporate sufficient detail to inform the development assessment process of relevant heritage issues.
14. That the Minister for Planning, in conjunction with local government undertakes a comprehensive review of the cumulative impacts of infill development in South Australia to inform evidence-based decision making about the capacity of identified infill areas to sustain further growth and development.
15. Prepare a new State Planning Policy for Infill Development under the Planning, Development and Infrastructure Act 2016.

16. The State Planning Commission work with local government to ensure that South Australia's planning system reflects best practice and that the Planning and Design Code and associated instruments deliver quality planning and design outcomes that improve the amenity, liveability and sustainability of communities.
17. Amend zone performance outcomes relating to site coverage to include a criterion that allows for landscaping and provision of trees.
18. Revise and clarify WSUD provisions to ensure they are practicable and will achieve the desired outcomes.
19. Reinstate a catch-all performance outcome for Hazard Risk Minimisation.
20. Incorporate the appropriate consideration of relevant flood mapping as part of development assessment in all flood prone areas, and reflect the increasing severity and frequency of these hazards associated with climate change.
21. Develop a heat hazard overlay that considers issues of scale, applicability, and design approaches, and the local and downwind benefits of cooling or mitigation approaches.
22. Include performance outcomes and DTS/DPF provisions as appropriate relating to avoiding high natural hazard risk.
23. Review the draft Code in consultation with local government and waste industry representatives to consider effective, efficient and safe waste management for medium to high density development areas.

1. Positives

The LGA commends the Minister for Planning and State Planning Commission for the decision to defer the introduction of the final Planning and Design Code beyond the original date of 1 July 2020. This sensible adjustment acknowledges the vital role of the Code in shaping South Australia's future, and the importance of getting this once in a generation reform opportunity right.

The LGA urges the State Government use this additional time to engage closely with councils and collaborate to ensure the Code contains best practice, practical, locally responsive planning policy; and that the ePlanning system can be implemented simply and efficiently with minimum disruption to councils, planning authorities, and applicants.

The Draft Code (Phase 3) includes the following positive elements that are supported by the LGA and are considered to be consistent with councils' aspirations for their environments and communities.

Design and character

The LGA supports the following aspects of the Draft Code relating to design and character, subject to the refinements suggested in Section 4 of this submission to ensure the following desired outcomes can be achieved:

- Policy guidance relating to Design Quality of building facades, particularly in quantifying Deemed to Satisfy (DTS) criteria relating to materiality, articulation, design interest and activation/surveillance.
- Flexibility in the ways interest and diversity within facades can be achieved to meet DTS criteria.
- Level of guidance in DTS criteria for bulk and scale of buildings, particularly around fine grain detail at street level, mixture of materials and durability of materials.
- Criteria for addressing overlooking and overshadowing (largely maintained as per the current South Australian Planning Policy Library (SAPPL)).
- Criteria associated with the provision of storage for waste for all forms of residential development (not just apartment buildings), reducing reliance on screening structures within the public realm.
- Parking provision for dwellings generally maintained to the currently accepted parking standards, and stronger policy for retention of on-street parking.
- Maximum garage widths for frontages, limiting of driveway widths, and minimum garage dimensions.
- Retention of some local variation and contextuality in relation to site areas and frontage widths through Technical and Local Variations.
- Demolition control remains in place for Historic Area, Local / State Heritage Place and Character Overlays.

It has been identified that the draft Code's applies what is currently apartment dwelling size policy to Battle-axe, Group and Residential Flat buildings that enables significantly smaller dwellings to be constructed on sites. It is not clear if this is an oversight or an intentional policy direction.

Climate and resilience

The acknowledgement of climate change, sustainable movement, Water Sensitive Urban Design (WSUD) and urban greening as relevant planning considerations to be managed through development assessment is welcomed. Importantly, further refinement of these policies in the draft Code is required to ensure the desired outcomes can be achieved (refer Section 4 of this paper, below).

Sustainable movement

The draft Code contains good policies which promote compact urban form in new land divisions, the provision of walking and cycling paths, and access to public transport. In general, these policies are considered to be consistent with the intent of the relevant State Planning Policies and if implemented will contribute positively to reducing harmful emissions as well as having beneficial outcomes for air quality and community health and wellbeing.

Greening of development

The provision of canopy cover and vegetation within our urban environment is identified as a strategic priority within the 30 Year Plan for Greater Adelaide and State Planning Policy 5 (SPP5). Climate Change is a key concern of the community. Greening of development is perceived as a significant opportunity to address the change or loss of character within established suburbs.

The draft Code provides improved policy support for addressing the provision of trees, landscaping and water sensitive urban design for development, specifically through:

- Provision for street trees within new master planned developments / areas
- Quantifying the provision of landscaped space for a minimum 15% - 25% of sites
- Requiring the accommodation of trees as part of development sites
- Increased provision for landscaping within group and residential flat building developments, particularly for common driveways and the public realm
- Quantification of the protection of street trees in the public realm
- Provision of rainwater and detention tanks consistently across the metropolitan area

Built form

The draft Code contains good policy with potential to make a significant contribution to the climate readiness of South Australia's built environments. Of particular note are the requirements to provide space for landscaping and vegetation at zone level and tree planting provisions contained within general development policies. Within the general Design policies are a number of provisions to support environmental performance including solar access, minimising energy consumption and green walls.

Water Sensitive Urban Design

The draft Code addresses the need for Water Sensitive Urban Design (WSUD) including positive policy measures like reduced site coverage, increased impervious areas, increased greening, enhanced microclimate and improved measures to manage the impacts associated with increased stormwater runoff, with targeted performance objectives. A deemed-to-satisfy pathway is offered for some, but not all, of the related policies.

Natural environment

There are a number of good policies that provide protection for biodiversity including native vegetation, wetlands and watercourses, and promote revegetation with locally indigenous species

2. Strategic concerns

The issues discussed here relate to the draft Code as a whole, the process by which it has been developed, and the pathway forward to implementation through the new ePlanning system. These concerns are strategic as they relate to the Code's ability to function effectively within the new planning system, and ultimately facilitate environments that positively impact communities. The LGA notes the following specific strategic concerns with the Draft Code:

- Errors and omissions in the current version of the draft Code that make the true impact of its implementation impossible to gauge.
- Loss of a large volume of planning policy developed over many years through research, consultation with communities, and response to local context, that is working efficiently within the current system to achieve good planning outcomes for councils, developers and communities.
- Aspects of the draft Code likely to result in development assessment being a greater time and cost burden for applicants and councils.
- The readiness of the draft Code, ePlanning platform and new system to be implemented efficiently and without negative impact on councils' business operations and ability to effectively manage development within their communities.

Each of these strategic concerns is described under the relevant headings below.

Errors and omissions

The State Planning Commission must work with local government to ensure that South Australia's planning system reflects best practice and that the Planning and Design Code and associated instruments deliver quality planning and design outcomes that improve the amenity, liveability and sustainability of communities.

Throughout multiple iterations of the Code up to and including the current draft, councils have continued to identify errors, omissions and inconsistencies in the document that will create confusion for planning authorities and applicants and may lead to undesirable and unintended outcomes. It is understood that a number of councils will be itemising these errors and omissions as part of their own submissions on the draft Code. The effectiveness of the Code will be significantly compromised where good policy has been included in the Code but is not called in through the procedural tables, and therefore cannot be applied to an assessment.

Design Standards have not been provided for consideration together with the draft Code. Since early in the reform process, these Design Standards have been flagged as an important component of bringing the new system into effect. Without them it is difficult to comment on matters such as infrastructure design and public realm. These are significant planning issues that are not completely addressed in the draft Code due to the inability to compare the draft Code to the Design Standards.

The full extent of public notification triggers, and accordingly determination of the assessing authority is another significant aspect of implementation that has been unavailable for consideration together with the draft Code.

A fees framework is also unavailable for consideration.

As the picture is incomplete, it is impossible for councils to ascertain the true impact of the draft Code, how the outcomes it provides for may manifest in their streets, towns and suburbs, and how it may affect their communities, and their day to day and long term business operations.

Policy loss

The State Government, in the early stages of development, communicated that the initial Planning and Design Code would be comprised of current Development Plan policies in the new Code format, in effect a “like for like” transition to precede future changes to policy content developed in consultation with councils.

The draft Code in its current form does not uphold that commitment. Policy intent, content and tools fundamental to councils’ ability to sustain and enhance the quality of suburbs and neighbourhoods from existing Development Plans, have not been replaced with substantive planning policy of a level of detail or rigour necessary to enable good development outcomes.

The draft Code omits local policy that has been developed by councils in consultation with their communities over considerable time and at considerable expense. The State based approach as adopted in the draft Code has seen the removal of both this local policy, and in many instances, Structure Plans and Master Plans specifically developed for local and unique areas. Inclusion of these local area plans was supported by the Expert Panel in its original recommendations for Planning Reform (specifically Reform 9).

The loss of local policy has very real impacts for development outcomes. The LGA has been advised of the following examples of where the draft Code has removed policy and/or replaced local with generic policy in a way that creates real risks for councils and communities:

- A contaminated site being converted to a Mineral Extraction Zone with generic policies that do not consider the site contamination, creating risk to health and environment, and potentially unexpected time, cost, expense to applicants to deal with site’s issues and obtain environmental clearances etc.
- Monarto Zoo becoming part of a generic Community Facilities Zone, and losing all policy tailored to the zoo’s operations and future development.
- Loss of purpose-developed Concept Plans for Monarto, Wirrina Cove, Hindmarsh Marina, Glenelg Frontage and Patawolonga, containing tailored policy to address site specific issues negotiated with communities and councils over time.
- The inclusion of a Concept Plan for the Mount Barker Growth Area, but exclusion of accompanying explanatory policy that is necessary to bring the Concept Plan into effect as envisaged by the strategic planning undertaken for the site (for example the requirement for developers to fund the illustrated ring road).

- A strategic site with interface issues and the subject of a partially completed developer funded Development Plan Amendment (DPA), which under the draft Code can accommodate building heights of three to six storeys compared to the one to two negotiated following community engagement on the DPA.
- Application of generic zone minimum allotment sizes to areas not connected to mains water or sewerage, risking approval of dwellings that cannot be serviced and creating confusion for the applicant.

While the LGA understands that councils will have the opportunity to seek amendments to the Code in the future, including the inclusion of sub zones, it is disappointing that the State Planning Commission did not work more closely with councils during development of the Code to identify these local variations for inclusion in the draft Code as part of the current consultation process. Councils now face a loss of local policy in the first instance, and through an amendment process (that is not yet well understood) will be required to renegotiate policy that has previously been publicly consulted on and received Ministerial approval.

Time and cost

One aim of the planning reform process has been to streamline development assessment, reducing unnecessary cost and time and providing clarity and certainty for applicants, planning authorities and communities.

As it stands, the draft Code contains barriers to more streamlined development assessment, as there are instances in which implementation of the draft Code would subject applications that are simple and straightforward under the current Development Plan to a more onerous assessment process, requiring public notification despite the low community impact. Examples include:

- No forms of development within the Mt Barker District Council will be deemed to satisfy or accepted due to the triggering of broadly applied Native Vegetation and Bushfire overlays.
- Similarly, the application of the Native Vegetation overlay across the whole Barossa Council area including townships means all development including minor development will require performance assessment, and the Character Overlay will have similar effect across large areas
- Development abutting another zone triggers public notification for any form development, notwithstanding minor nature or distance from zone boundary.

These types of unnecessary assessment processes result may in lengthier assessment periods and greater costs to applicants and councils.

It is understood that the State Government is proposing that these issues be addressed at lodgement (i.e. verification through the ePlanning system). This is considered an unsatisfactory outcome from process integrity and efficiency perspectives. The focus should be on getting the draft Code and the system right prior to implementation.

Implementation readiness

The LGA welcomes the State Government's decision to extend the date for introduction of the Code beyond July 1 2020. It is imperative that this additional time be used not only to ensure the content of the Code is finalised to the necessary standard, but to work closely with councils to enable a successful transition to implementation.

To date, the LGA has been concerned about the progress on the ePlanning solution and the engagement approach around how it will integrate with existing council systems. These concerns are exemplified by the current draft Code being on consultation without the ePlanning Portal, when the intent was for an integrated online system. A preferable process would have involved testing the draft Code as incorporated within the ePlanning system. This process would have enabled more thorough testing and increase opportunities to identify and address problems with implementing the Code in the form it will ultimately be applied. As it stands, a comprehensive learning and development program should be developed in consultation with local government which includes both on-line and face to face training to be implemented with all councils and relevant authorities prior to the introduction of the Code. The scope of the learning and development should not be limited to the ePlanning platform but also include Code interpretation. Policy training such as that rolled out for the Residential Code (2009 and 2012) that supports the reform aim of consistency across all assessment bodies.

Further actions required to support the Code's readiness for implementation include:

- Access for councils to the amended Phase 3 Code prior to its introduction to allow development of appropriate delegations and administrative arrangements and understanding of standard conditions.
- Clarification of what public information will be on the planning portal to support applicants and interested community members navigate the new system. Zone by zone fact sheets would be useful in communicating the new rules to communities.
- Clarification of the arrangements for Code variations and changes. The administrative process to avoid a full Code amendment (similar to section 29 process under the current system) is unclear. While a fact sheet has been provided on TNVs councils have received contradictory information. The LGA is aware that changing a TNV is not necessarily minor and can have significant implications for development outcomes. Notification requirements should be commensurate with the impact of the change.
- A Business Continuity Plan that confirms the State Government as the system owner, describes a clear and consistent system failure process that councils can participate in, and recognises that councils, as stakeholders in the system, have varying capacity and will at times require support (for example varying access to reliable internet across the state).
- Resolution of arrangements for payment of application fees, including for applicants unable to pay online.

Strategic recommendations

1. The Planning and Design Code and its supporting policy tools such as Design Standards and Practice Directions be fit for purpose and free from substantial errors and omissions in time for implementation.
2. To address the many issues that may not be finalised prior to the implementation of Phase 2 and 3 of the Planning and Design Code, the State Planning Commission provide a budget provision and plan for the development of the second generation of the Planning and Design Code.
3. The Department for Planning, Transport and Infrastructure (DPTI) and the State Planning Commission engage closely with councils to ensure essential local policy is included in the Code to facilitate positive development outcomes and avoid negative impacts on communities.

4. The Planning and Design Code be amended to avoid minor and low impact development being subject to unnecessarily burdensome assessment processes.
5. In consultation with local government, the State Government and State Planning Commission provide the following prior to Code and ePlanning implementation:
 - a. A comprehensive learning and development program including on-line and face to face training to be implemented with all councils and relevant authorities;
 - b. Timely access to the amended Code to allow councils to develop appropriate delegations and administrative arrangements and understand standard conditions;
 - c. Clarification of the public information that will be available on the planning portal to support applicants and interested community members navigate the new system;
 - d. Clarification of the arrangements for Code variations and changes both minor and significant;
 - e. A Business Continuity Plan for the ePlanning platform; and
 - f. Resolution of arrangements for payment of application fees, including for applicants unable to pay online.

3. Policy concerns

Councils have, in good faith, invested significant time and resources in detailed review and response to the draft Code. Throughout the reform process councils' contributions have not always been acknowledged or resolved. The primary policy recommendation of this submission is that:

1. The State Planning Commission clearly demonstrate consideration of councils' feedback by providing detailed issue and zone-based summaries of submissions on the draft Code and identify for each a response/action/amendment to the next iteration of the Code consistent with the intent of the Community Engagement Charter.

Design and character

The importance of design to good planning outcomes has been emphasised throughout the reform process, including:

- The Expert Panel's proposed Reform 9 *Build design into the way we plan*, recommending protections for streetscape, townscape and landscape character to be embedded within the Planning Code, and the use of urban design approaches such as structure plans, Master Plans or Urban design frameworks at the local level.
- The PDI Act's specific reference to high quality design, including explicit direction that amongst other attributes design should respond to local setting, character and context, be adaptive and compatible with the public realm, be inclusive and accessible to people with differing needs and capabilities, and support active and healthy lifestyles and to cater for a range of cultural and social activities².

² Reference sections with 5 and 3 principles, Section 59

- State Planning Policy 2 Design Quality (SPP2) which aims to *elevate the design quality of South Australia's built environment and public realm, sets out Principles of Good Design and Principles of Universal Design.*

While the intent to enthusiastically promote good design is clear this is not fully realised in the draft Code, which is the most practical and effective instrument available to realise the intent of the PDI Act.

Local context

The SPP2 explicitly aims to “*recognise the unique character of areas by identifying the valued physical attributes in consultation with communities, and respect the characteristics and identities of different neighbourhoods, suburbs and precincts by ensuring development considers existing and desired future context of place.*”³

As the draft Code currently stands, these objectives will not be met. The reduction of the number of zones overall, and stripping away of well developed, locally responsive policy guidance, will result in standardised policy across many neighbourhoods and suburbs which fails to recognise and respect unique character.

Even at the broadest scale there is a lack of acknowledgement of difference – for example the Design policies and the Urban Areas and Rural Areas sections in General Zones are the same, and regional councils have noted that the policy content of zones is strong geared towards the metropolitan and suburban, failing to respond to the variety of environments that make up our State (including city centre, inner metropolitan, peri-urban, regional, rural).

Design quality

There is a duplication and inconsistency in the design features required within the Design in Urban Areas and zone level DTS criteria covering this issue. There should be a consistent approach and no duplication with coverage either across all zones or in the General module.

For the intent of the reform process to be met, a higher standard than currently proposed in the draft Code is required for design features for principal street facades and to encourage design quality and enable good design outcomes.

As well as reinstating the locally relevant design guidance contained in current Development Plans, the opportunity exists to strengthen design quality within the Code by consistently requiring a high standard of design elements and features within all types and scales of dwellings and within all Neighbourhood Zones either through consistent Neighbourhood Zone policy or across the board through the Design in Urban Areas module.

It is recommended that the Code manage overlooking through Technical and Numerical Variation so that consistency with current policy and community expectations amongst different councils can be retained, as a 1.7m height is currently in place within some Development Plans compared to 1.5m in the draft Code.

Also absent from the draft Code is policy to enable full consideration of the impact of development on the public realm. This includes Design Standards for public infrastructure, which while provided for in the PDI Act have not been addressed through the draft Code or Practice Directions.

³ State Planning Policy 2 Design and Character, Objectives 2.8, 2.9 & 2.11

Car parking

The potential for parking and its integration within development is a significant concern for communities who see this as impacting the amenity of their neighbourhoods in terms of the number of vehicles parked in streets, and the dominance of parking and driveways on streetscapes. In relating to car parking and garaging, the Draft Code should:

- Extend visitor parking requirements to group dwellings, residential flat buildings or hammerhead /battle-axe buildings comprising of less than three dwellings.
- Apply criteria relating to retention of on-street parking that does not apply to the Masterplanned Suburban Neighbourhood Zone.
- Apply maximum driveway width criteria to detached, semi-detached and row dwellings within the Masterplanned Suburban Neighbourhood Zone.
- Address through policy the use of garaging for storage within dwellings, and the appropriate provision of storage volume of goods and chattels for all dwellings.

Recommendations:

2. The draft Code be amended to respect the characteristics and identities of different neighbourhoods, suburbs and precincts by ensuring that development policy considers existing and desired future context of place.
3. Where identified by local councils as necessary local variations (sub zones), Technical and Numerical Variations (TNVs), Structure Plans and Master Plans be established or re-instated within the Code.
4. Include stronger design policy within the Code to support *the 30 Year Plan for Greater Adelaide* targets to increase density and housing choice through high quality infill development within the established urban footprint.
5. The State Planning Commission in consultation with local government develop design standards for the public realm and infrastructure design to be available for use at the commencement of phase 3 of the Code.

Heritage and historic character

Conservation of heritage and historic character through the planning system remains a vital concern for councils and communities around the state. From the earliest stages of planning reform, the LGA and councils have identified that highly effective heritage conservation policies exist in current Development Plans, and that these should be expanded rather than lost through the planning reform program.

The interface of development assessment and heritage is particularly significant in the context of State Government directions for urban development. Urban infill development is compatible with heritage conservation, and with good design offers opportunities for improving streetscapes and areas in ways that can benefit local heritage places and incentivise their restoration and use. Conversely, such development also has the potential to impact negatively on local heritage, and clear policies and frameworks for decision making are required where heritage conservation must be considered alongside other objectives in pursuit of infill targets.

While it is understood that the draft Code intends to provide for flexibility of design response for development that impacts on heritage places, the loss of detailed development guidance currently contained in many Development Plans has the potential to result in more development proposals that fail to have appropriate regard to heritage significance and value. The policies as expressed in the draft Code further have the potential to slow down the development assessment process and result in more refusals of development applications.

It is recommended that more policies be included in the Code to reflect much of the useful development guidance that currently exists within many Development Plans for development impacting on Heritage Places and Historic Areas. For example, a Performance Outcome should be adapted from the provision in the South Australian Planning Policy Library (SAPPL) that states “*New buildings should not replicate historic buildings, but rather be complementary to existing historic buildings in terms of architectural form, scale and proportions, with simple and restrained detailing.*”

Under the draft Code applications for demolition of Local Heritage Places do not require public notification. This also means that councils must determine such applications within 4 weeks (assuming no referrals to State Government agencies are necessary). Given that those councils retaining heritage advisors typically only have this resource for one day per week or fortnight, four weeks is an inadequate timeframe to determine demolition applications that will be accompanied by detailed Local Heritage Impact Assessments. Applications for demolition within Historic Area Overlays receives similar treatment under the draft Code and raises similar concerns.

Current Historic Conservation Zones (HCZ) and Contributory Items (CI) are highly valued by local communities and councils yet are excluded from adequate protections in the draft Code and in the new planning system more broadly.

The LGA has reviewed the Expert Panel on Planning Reform’s Report to the Minister for Planning, dated December 2019 on *Heritage and Character in the Planning and Design Code*. Given the very limited Terms of Reference provided to the Expert Panel, the Panel’s inability to engage with the LGA, councils, heritage experts and communities in its deliberations, and noting that the Panel did not undertake a review of the actual policies proposed in the Draft Code, the LGA holds the view that the resulting report lacks the sound evidence base necessary for it to reach the conclusion that it is *supportive of the Commission’s proposal not to separately include existing ‘contributory items’ in the new system.*

While Historic Area Statements appear to translate the important elements of Desired Character statements that described existing development within Historic Areas, they do not provide clear guidance as to what design elements new development should incorporate that are often contained in existing Principles of Development Control or Tables within Development Plans.

Local government supports the need for improved clarity in the use of terminology to facilitate consistent interpretation and use of planning policies, including heritage policies and overlays. The LGA's position is that "heritage" and "character" are terms with distinct but intertwined meanings. Work commissioned by the LGA makes the following distinctions:

<p><u><i>Heritage</i></u></p> <p><i>Heritage has an established international frame of reference (ICOMOS / Burra Charter) and is about how a place represents history and evolution of an area and its people or activities that have taken place. Heritage and cultural significance is embodied in the fabric and setting of the place.</i></p>	<p><u><i>Character</i></u></p> <p><i>All areas have a character that can be analysed and described. Character is a value neutral concept that captures the interrelationship between built form, vegetation and topography in the public and private domains that distinguishes one place from another.</i></p> <p><i>The concept of character is broader than just architectural style or the era of development. It is also about recognising the distinctive characteristics or urban forms and their relationship to topography, vegetation and other natural features (i.e. the buildings and the spaces and features around them and how they relate to each other).</i></p>
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Recommendations:

6. Employ consistent language throughout the Code in reference to heritage and historic character, utilising the definitions in the draft Practice Guideline for clarity.
7. Transition all existing Heritage and Historic Conservation Zones and Contributory Items into the first generation of the Planning and Design Code.
8. Retain current local Development Plan policies which can effectively:
 - d. ensure that new development and alterations and additions to Heritage Places and buildings within what will be Historic Area Overlays is consistent with or complementary to the established significance or value of the Place or Area;
 - e. guide assessment of streetscape elements (e.g. fencing, garaging) that influence heritage interpretation and impact on established/emerging character; and
 - f. encourage adaptive reuse of heritage places through development concessions (e.g. car parking).
9. Implement development guidelines for development adjacent to State Heritage Places, Local Heritage Places and Historic Areas to ensure that development is complementary.
10. Reinstate the provision that *New buildings should not replicate historic buildings, but rather be complementary to existing historic buildings in terms of architectural form, scale and proportions, with simple and restrained detailing.*
11. Provide for appropriate assessment time and notification for demolition applications that require Local Heritage Impact Assessment or Historic Area Impact Assessment.

12. Apply consistent tests for the demolition of buildings of significance/value at all levels of heritage listing.
13. Clarify the requirements for Heritage Statements and ensure they incorporate sufficient detail to inform the development assessment process of relevant heritage issues.

Infill development

While the draft Code accommodates continued infill development in the metropolitan area, the design, impacts and management of infill development should be addressed more thoroughly in the draft Code, ideally with the guidance of a broader strategy. In the draft Code, infill development should be considered together with particular regard to policies addressing design, neighbourhood character, and local context (refer Design and Character discussion above).

Local government recognises the need to contain urban sprawl. However, the increased densities resulting from infill development have placed additional pressure on services and infrastructure manifesting in conflict and poor outcomes relating to traffic management, carparking, stormwater management, loss of trees, provision of open space, privacy, overshadowing and design quality.

While there is some recognition of these issues in the State Planning Policies that have been approved by the Minister for Planning under section 58 of the PDI Act, there is no holistic policy to guide the land use planning and funding settings specific to infill development in urban areas. This policy vacuum contributes to disjointed decision making within the planning system about the intensity of development permitted within an area, and the capacity of that area to accommodate high levels of infill development.

A better understanding is needed of the cumulative impacts of the current policies that encourage infill development, whether the areas that are identified for further infill development actually have the service and infrastructure capacity to sustain further development, the level of investment that is required to build and sustain the capacity of infill areas, and how this investment is to be prioritised and funded. These issues should be thoroughly considered and clearly articulated in a State Planning Policy on Infill Development.

Recommendations:

14. That the Minister for Planning, in conjunction with local government undertakes a comprehensive review of the cumulative impacts of infill development in South Australia to inform evidence-based decision making about the capacity of identified infill areas to sustain further growth and development.
15. Prepare a new State Planning Policy for Infill Development under the Planning, Development and Infrastructure Act 2016.
16. The State Planning Commission work with local government to ensure that South Australia's planning system reflects best practice and that the Planning and Design Code and associated instruments deliver quality planning and design outcomes that improve the amenity, liveability and sustainability of communities.

Climate and resilience

As noted in Section 2 above, the LGA is strongly supportive of the draft Code policies addressing climate resilience, energy efficiency, WSUD and urban greening as relevant planning considerations to be managed through development assessment to the benefit of all South Australians. In addition to the policy discussion and suggestions below, the LGA underlines the importance of technical accuracy and implementation-readiness to ensure these policies are triggered where necessary in the development assessment process and can be applied and enforced to meet the desired outcomes.

Built form

To increase South Australia's resilience, future climate impacts need to be considered at design and development assessment stages. For example, landscaped areas need to consider the future climate to ensure they can continue to minimise heat absorption, maximise shade and enhance the appearance of land and streetscapes into the future.

In terms of built form, public space and WSUD, the current draft Code is limited by reference to the point in time of development approval rather than responding to the need for climate adaptability over time. To address this, all relevant Performance Outcomes could refer to achieving the related outcome over the life of the development considering projected climate impacts, for example landscaping/vegetation that is robust and landscaping areas that provide flexibility for different vegetation as the climate changes, stormwater systems must be able to manage future flows associated with projected increases in rainfall. This could be achieved with a similar approach used in the Infrastructure general section which refers to meeting on-going requirements for water or wastewater treatment. Compliance audits of approved plans may be an important role for government to ensure that landscaping/vegetation is delivered and maintained as a key means of achieving climate resilience.

State Planning Policy 5 on Climate Change (SPP5) seeks to *Facilitate climate-smart buildings to reduce our demand for water and energy*. Desired outcomes that refer to trees are only contained in one zone (Residential Neighbourhood Zone) and similar reference could be extended to a number of other residential zones.

There is scope for zone performance outcomes relating to site coverage to also include a criterion that allows for landscaping and provision of trees in addition to outlook, access to sunlight and ventilation.

WSUD

The draft Code contains good policy that addresses the need for WSUD measures to build resilience in our urban environments. While supportive in principle of these policies, a number of councils have voiced concerns around the effectiveness of these policies in practice. For example:

- Under the draft Code WSUD criteria does not apply to group dwellings and residential flat buildings (separate from hammerhead dwellings). It is not clear if this is intended, as there would be a policy gap for schemes comprising these dwelling forms and less than 5 dwellings.
- The WSUD requirements do not apply to dwellings that are 4 or more levels. This can potentially be covered by the provisions relating to 5 -19 dwellings, however, should proposals not incorporate 5 or more dwellings, then this is a gap in the policy coverage that should be resolved.

- The requirement to include large rainwater/detention tanks (up to 5,000L) may be difficult to accommodate within the smaller allotments and needs to be carefully considered and explicitly excluded from private open space areas.
- The WSUD provisions in the Draft Code do not appear to apply to commercial land uses.

Natural environments

There are very few references in the draft Code to the need to make our natural environment more resilient to the impacts of climate change. Only within the Coastal Overlay is there reference to changing climatic conditions and sea levels and the need to allow natural environments to migrate. There is no reference to biodiversity contribution or opportunities for carbon sequestration.

Protecting and enhancing areas of biodiversity is vital to build its resilience to climate change impacts. This is reflected in SPP5 which promotes the protection and enhancement of areas of biodiversity. The Native Vegetation Overlay policy does not include performance outcomes relating to enhancement as was the case in the SAPPL Natural Resources policy. The SAPPL contained ideal policy that should be reinstated here (Principle of Development Control 26 in the General Section - Natural Resources)

Development should retain existing areas of native vegetation and where possible contribute to revegetation using locally indigenous plant species.

The Code should include clear requirements to consider the cumulative impacts of any development on existing native vegetation and biodiversity assets, with consideration of climate change and with regard to all the activities associated with a development that may require additional clearance such as bushfire prevention. There is reference within the draft Code to cumulative impacts on wetlands within the RAMSAR overlay which provides a reference for such policy.

Carbon storage will be a key mechanism for South Australia to achieve the aim of net zero emissions by 2050. SPP5 refers to maximising opportunities for carbon storage and the Blue Carbon Strategy for South Australia identifies the need to integrate blue carbon into coastal decision making. Green and blue carbon should be referred to in relevant sections of the Code, and where appropriate, zones should reference the (green and blue) carbon storage values of environments consistent SPP5.

Natural hazards and risk mitigation

In the Guide to the Planning and Design Code, the natural hazards topic includes reference to climate change increasing the severity and frequency of hazards however this has not consistently been applied across all hazards within the draft Code. It is referred to for coastal risks (in the Coastal Areas Overlay) but not for flooding and bushfire. A consistent approach that requires consideration of future hazards for all hazard overlays would provide greater alignment with the Climate Change and Natural Hazard State Planning Policies.

A previous iteration of the Code included a performance outcome relating to Hazard Risk Minimisation. This has been removed in the current draft Code, and it is understood the current approach is that these issues be managed through the hazard overlays. The removal of the hazard risk minimisation performance outcome means there is no longer a 'catch-all' that requires all natural hazard risks to personal and public safety and property to be considered, and the LGA recommends reinstating that catch - all policy.

Flood

Many of the policy requirements in the draft Code refer to storm or flood events and associated ARI/AEP events. Projected increases to heavy rainfall events will change the ARI/AEP events and associated flood levels. References to storm or flood events should provide a reference date and refer to the need to consider future flood hazard.

Concerns have been raised by councils with the limitations of the flood overlay within the draft Code. Specifically, not all available flood mapping is included in this overlay, with areas subject to flooding in the Cities of Mitcham, Unley, Prospect, Charles Sturt, Port Adelaide Enfield, Salisbury and much of Playford excluded from the map.

The LGA has heard from councils that the draft Code will put development at flood hazard risk due to the inability to use information external to the Code in assessment. It is understood that Stormwater Management Plans maps for 1 in 100 Year events that have been publicly consulted on may be included in the Code, though there is confusion over whether the mapping is required to be cadastral. Most councils are affected by flood hazard to some extent, and 17 have flood mapping in their current Development Plan. For councils that do not have mapping that meets the requirements of inclusion in the Code, development at flood risk will meet deemed to satisfy criteria, creating potential future risks.

Until all flood hazard mapping is updated to a consistent level, the Code must include a reference to hazard risk minimisation and the approach must also reflect the increasing severity and frequency of these hazards associated with climate change consistent with SPP5.

Heat

Heatwaves kill more people in Australia than any other natural hazard, and climate projections for longer, hotter and more frequent heatwaves mean the risks to human health and safety are increasing. The design, siting and construction of buildings and open space can contribute significantly to reducing heat loads in urban areas and the planning system has potential to mitigate heat-related risks.

Heat mapping has been undertaken across the Adelaide metropolitan area and it is understood that although the mapping is not seamless or completely consistent, it could be used to develop an approach to consider heatwave hazard as an overlay and associated policies. The development of a heat hazard overlay would likely need to consider issues of scale, applicability, design approaches and consider the local or downwind benefits of cooling or mitigation approaches.

The Land Division in Urban Areas and Land Division in Rural Areas general development policies sections include a desired outcome to avoid areas of high natural hazard risk, which is strongly supported. There are a number of policies that refer to landscaping and tree planting to minimise heat absorption and reflection that will contribute to mitigating urban heat island impacts and extreme heat hazards. There are however no Performance Outcomes or associated DTS/DPF provisions relating to avoiding high natural hazard risk.

Recommendations:

17. Amend zone performance outcomes relating to site coverage to include a criterion that allows for landscaping and provision of trees.
18. Revise and clarify WSUD provisions to ensure they are practicable and will achieve the desired outcomes.
19. Reinstate a catch-all performance outcome for Hazard Risk Minimisation.

20. Incorporate the appropriate consideration of relevant flood mapping as part of development assessment in all flood prone areas and reflect the increasing severity and frequency of these hazards associated with climate change.
21. Develop a heat hazard overlay that considers issues of scale, applicability, and design approaches, and the local and downwind benefits of cooling or mitigation approaches.
22. Include performance outcomes and DTS/DPF provisions as appropriate relating to avoiding high natural hazard risk.

Waste management

While the LGA commends the inclusion policies to require waste storage areas for all forms of residential development, the Draft Code has not adequately considered waste management for medium-high density development areas.

South Australia has long led the nation in kerbside diversion and resource recovery rates. Waste reduction and management is an integral feature of sustainable communities and will become an increasing issue for South Australians, particularly in areas with increasing densities. For the first time The Australian Infrastructure Audit⁴ has considered waste, noting that Australia is *one of the largest waste producers per capita, but our waste management is often poorly planned.*⁵

This is true in major cities across Australia, where urban density has increased, and the size of waste storage decreased and access for waste collection became increasingly challenging.

The Infrastructure Audit further notes that:

*Developers of multi-story residential and commercial buildings are reluctant to lose floor space in order to provide truck access to underground storage, so bins clutter roadsides on collection day and pose amenity and safety hazards.*⁶

In order to improve efficiencies and reduce the pressure on state and local government infrastructure, the draft Code must include more comprehensive waste management and collection considerations for medium to high density development areas that go beyond simple quantitative area requirements.⁷

Medium to high density areas require additional design assessment consideration for waste to ensure a coordinated and strategic approach that maximises efficient and effective waste management to reduce amenity and safety hazards on collection day and maximise resource recovery from waste.

Recommendation:

1. The draft Code be reviewed in consultation with local government and waste industry representatives to consider effective, efficient and safe waste management for medium to high density development areas.

⁴ Australian Government, Infrastructure Australia, *Australian Infrastructure Audit 2019: Transport, 5.144 Transporting, storing and making the most of our waste*, page 355 -362.

⁵ Ibid page 355.

⁶ Ibid page 359.

⁷ Government of South Australia, Department of Planning, Transport and Infrastructure, State Planning Commission, *Draft Planning and Design Code, Waste Storage 25.1.*



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