

The Expert Panel would like your views on the **Planning, Development and Infrastructure Act 2016** reform options.

Public Notification and Appeal Rights

Under the *Planning, Development and Infrastructure Act 2016* (PDI Act), the notification and appeal rights of each development application are determined by the assessment pathway that the application follows. The assessment pathways are determined by the Code and [Practice Direction 3](#).

The current system provides for notification of development applications through the public register, the PlanSA portal and by requiring notified developments to have a sign on the land, which links to the PlanSA portal through a QR code.

Under the PDI Act, only Impact Assessed (Restricted) Development attracts third-party appeal rights. However, this was considered appropriate as the new planning system expects to have improved and increased consultation in setting and determining planning policy.

Whilst the PDI Act allows for the review of development decisions by a council assessment panel (CAP) in certain circumstances, the only other option for review or appeal is through the Court. The option to identify an alternative planning appeal and/or review pathway is an area that the Panel is interested in exploring.

The Panel recognises that rights of notification and appeal are matters of significant interest to the South Australian community. Submissions should be supported by evidence to demonstrate the specific issues you raise.

Accredited Professionals

Under the PDI Act, an accredited professional may act as the decision maker for certain types of development. Each class of accreditation decides the functions they can perform.

Currently, some building professionals can issue planning consents in limited circumstances.

The Panel is seeking feedback on whether this should be changed so that people need to be accredited in the

planning or building field to issue planning or building consents in line with their professional skills and qualifications.

Impact Assessed Development

Some forms of development are of such complexity and scale they need State Government oversight.

Under the *Development Act 1993*, an application considered by the Minister for Planning to be of major environmental, economic, or social importance could be declared by the Minister, and then subject to a whole-of-Government assessment and decision-making process.

The current process streamlines the decision making by removing the need for a Cabinet Submission prior to the Minister determining the application. That is, it is no longer a whole-of-Government process.

There is significant public interest in ensuring and maintaining transparency and accountability in public decision making. The Panel considers it appropriate to explore whether Impact Assessed Development decision making should be returned to a whole of Government process.

Infrastructure Schemes

Two (2) types of infrastructure schemes are prescribed in the PDI Act: Basic and General infrastructure schemes. The schemes are intended to add to existing arrangements for planning and delivery of infrastructure.

Prior to implementation of the PDI Act, a pilot program was run to test the infrastructure schemes model in a live industry setting. Since the completion of the pilot projects, no infrastructure schemes have been initiated under the PDI Act.

In the Panel's view, this is because of the complexity of infrastructure schemes. In the absence of reviewing the existing framework, infrastructure schemes in their current form may be too difficult to work with, resulting in them not being effectively utilised.

As there remains a need for an effective way to plan and deliver infrastructure over the long term, the Panel is interested to explore what barriers exist in establishing an infrastructure scheme, and what improvements could be made.

Local Heritage

This Paper only deals with character and heritage matters to the extent they are relevant to the PDI Act. Other character and heritage matters are explored in more detail in the Panel's Discussion Paper on the Code.

The Panel is seeking feedback on whether the local heritage listing process (and any later decisions made in relation to a local heritage place) should be dealt with by heritage experts and as such, be taken out of the PDI Act and included in the *Heritage Places Act 1993*.

Further, sections 67(4) and (5) of the PDI Act have not been 'turned on' and the Panel queries whether those sections out to be removed from the legislation. In the Panel's view, it is extremely unlikely that 51 per cent of relevant owners will agree to list their own allotment as a place of local heritage value, as it would result in tighter planning policy applying to their property. This would reduce a relevant owner's ability to develop or alter their property should they seek to do so in the future. The primary purpose of these policies is to protect and keep heritage places for future generations, and to preserve parts of South Australia's memory.

Deemed Consents

The PDI Act prescribes the timeframe in which a development application needs to be determined. If a decision-making body does not decide an application within the time prescribed, an applicant may give the decision-making body a deemed consent notice. Of the approximately 70,000 applications made since March 2021, only 31 applications have had a deemed consent notice issued.

The deemed consent rules increase the pressure on relevant authorities to undertake their assessment within the correct timeframe. The Panel has considered possible additional components to deemed consent provisions which include:

- Deemed approval – In some instances an applicant has received both planning and building consent for an application and the council has either delayed or refused to issue the final development approval. Such cases may involve the council refusing to accept the planning consent issued by a private accredited professional. Consideration could

be given to amending the PDI Act to allow an applicant, after a prescribed period, to apply for a deemed approval.

- Final development approval issued by an accredited professional – it is possible for a regulation to be made so an accredited professional can issue the final development approval.
- A further alternative is to maintain the ability for deemed consent but review the current assessment timeframes.

Verification of Development Applications

When a planning authority receives a development application it must determine the nature of the application; identify the elements for assessment and the category or development; and determine who will assess the application.

Available data indicates that 16% of applications are not verified within the required timeframe (5 business days). The Panel is interested in hearing about why decision-making bodies are not meeting these timeframes.

An option to encourage relevant authorities to verify documents quickly is to publish data on the PlanSA Portal. This data could show the number of applications verified within the correct timeframe by a relevant authority or alternatively, a ranking of relevant authorities by time taken to verify applications.

Another option is, if a relevant authority takes longer than the prescribed timeframe to verify an application, the additional time taken to verify the application could be deducted from the assessment timeframe.

How you can provide feedback

For more information on the Planning System Implementation Review, visit:

www.plan.sa.gov.au/planning_review

You can **email a submission** to the Panel at DTI.PlanningReview@sa.gov.au or **respond to the survey** on the Expert Panel's [YourSAy](#).

Summary Papers are also available for the following topics being considered in this community engagement process:

- E-Planning and PlanSA
- Code - Infill

- Code – Trees
- Code – Carparking
- Code – Character and Heritage

For further information on the matters raised in this Summary Paper, please read the full version of the PDI Act Discussion Paper.

Questions To Guide Your Feedback

Public Notifications and Appeals

1. What type of applications are currently not notified that you think should be notified?
2. What type of applications are currently notified that you think should not be notified?
3. What, if any, difficulties have you experienced as a consequence of the notification requirements in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.
4. What, if any, difficulties have you experienced as a consequence of the pathways for appeal in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.
5. Is an alternative planning review mechanism required? If so, what might that mechanism be (i.e. merit or process driven) and what principles should be considered in establishing that process (i.e. cost)?

Accredited Professionals

6. Is there an expectation that only planning certifiers assess applications for planning consent and only building certifiers assess applications for building consent?
7. What would be the advantages of only planning certifiers issuing planning consent? What would be the disadvantages?
8. Would there be any adverse effects to Building Accredited Professionals if they were no longer permitted to assess applications for planning consent?

Impact Assessed Development

9. What are the implications of the determination of an Impact Assessed (Declared)

Development being subject to a whole-of-Government process?

Infrastructure Schemes

10. What do you see as barriers in establishing an infrastructure scheme under the PDI Act?
11. What improvements would you like to see to the infrastructure scheme provisions in the PDI Act?
12. Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?

Local Heritage in the PDI Act

13. What would be the implications of having the heritage process managed by heritage experts through the Heritage Places Act (rather than planners under the PDI Act)?
14. What would be the implications of sections 67(4) and 67(5) of the PDI Act being commenced?

Deemed Consents

15. Do you feel the deemed consent provisions under the PDI Act are effective?
16. Are you supportive of any of the proposed alternative options to deemed consent provided in this Discussion Paper? If not, why not? If yes, which alternative (s) do you consider would be most effective?

Verification of development applications

17. What are the primary reasons for the delay in verification of an application?
18. Should there be consequences on a relevant authority if it fails to verify an application within the prescribed timeframe?
19. Is there a particular type or class of application that seems to always take longer than the prescribed timeframe to verify?
20. What would or could assist in ensuring that verification occurs within the prescribed timeframe?
21. Would there be advantages in amending the scope of Schedule 8 of the PDI Regulations?