SUBMISSION

PLANNING SYSTEM IMPLEMENTATION REVIEW

Planning, Development & Infrastructure Act 2016
and
Planning & Design Code

Prepared by

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16 December 2022

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About the author

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Introduction

The review of the Planning and Design Code should have encompassed a much broader scope than just the five areas designated. Nevertheless, references to the application of the Code are described and as will be seen later, there are significant matters requiring resolution.

There is no better example of how the planning system in South Australia is functioning than to present a case study of an actual development. This submission describes how the *Planning, Development, and Infrastructure Act 2016 (PDI Act)* and the *Planning and Design Code (P&D Code)* have been seriously compromised, misinterpreted, and maligned. It has happened in just the past several years and has involved local, state, and federal governments.

In terms of the *PDI Act,* the Panel's seven areas of reform related to the case study involve ;

1. Public notifications and appeals
2. Accredited professional
3. Impact assessed development
4. Verification of development applications

However, other matters have also been included, and I will leave it to the Panel to determine where they lie in the improvement process.
The complexity of the case study has also meant that the above-mentioned reform areas are in no particular order in this submission, however many issues are raised that will allow the Panel to conduct its own analysis.

The case study is of the proposed Whalers Way Orbital Launch Complex (WWOLC), about 30 kilometres south-west of Port Lincoln. WWOLC was declared a "Major Development" under the now-repealed development Act 1993, and is presently at the EIS stage. The Planning Minister now has a Response Document from the proponent for consideration.

During a 12 month investigation of planning and environmental decisions relating to WWOLC, I discovered a disturbing number of concerns about how and why "major developments" are undertaken, including the decision framework that has underpinned the proposal.
The conclusions are that the integrity of the planning system has been fractured, public interest has been damaged, and trust in the government and its agencies has been eroded.

For context, it is essential to understand that Whalers Way is in a Conservation Zone (under the *P&D Code*) or in a Coastal Conservation Zone (in the District Council of Lower Eyre Peninsula's Development Plan) as became the case when WWOLC was granted "major development" status by former Planning Minister Knoll in August 2019.

Chronology of the Case Study

Mid 2018	proponent selects Whalers Way with no input from state planning authorities
December 2018	former Premier Marshall announces WWOLC and Southern Launch Taskforce without any consideration of the zoning and environmental limitations, and no public consultation
August 2019	former Planning Minister Knoll declares WWOLC a "Major Development" without proper preliminary analysis
November 2019	"Major Development" application submitted by proponent's planning consultant
July 2020	State Planning Commission (SPC) releases "Guidelines for the preparation of an EIS for WWOLC" under the now-repealed *Development Act 1993* and *Development Regulations 2008*
April 2021	former Planning Minister Chapman gazettes a notice to remove rocket launching from the EIS to allow three "test rocket launches"
June 2021	State Commission Assessment Panel (SCAP) grants planning consent to the proponent for the "test launch campaign" at Whalers Way for the purposes of obtaining *"empirical data in respect to two key aspects:* • *empirical noise and vibration data for rocket launches at this site; and,* • *observational data on the behavioural effect on local fauna species during launch events"*[1]
August 2021	EIS (3500 pages) is released for public comment for 30 days
January 2022	former Planning Minister Teague gazettes a notice to vary the April 2021 notice to allow two "test rocket launches"
November 2022	Planning Minister receives Response Document to EIS
December 2022	still no rockets launched at the time of presentation this submission (16 Dec. 2022)

Two Laws and Two Codes

It is acknowledged that at the time of the "Major Development" declaration the transition from the old *Development Act 1993* to the new *PDI Act* was still in progress, and thus Planning Minister Knoll made a declaration under S 46(1) of the old Act. This meant that District Council of Lower Eyre Peninsula's (DCLEP) Development Plan also became a lawful planning instrument.
When Planning Minister Chapman varied the declaration under S 46(4) of the old Act, rocket launching was ostensibly excised from the EIS process, and the new *PDI Act* and the *P&D Code* were then invoked in terms of assessment of the consequent development application.

This action has resulted in several critical questions, the most important of which is whether the EIS process has been interfered with.

- Can a single project (i.e. rocket launch facility) be assessed under two laws and two codes simultaneously?
- Can a project be divided for separate assessments?

[1] Ref. Masterplan letter and report to Planning and Land Use Services, Attorney-General's Department, 23 April 2021, pg. 2

These critical questions remain without answers.

It might be a peculiar situation for the proposed WWOLC because of timing and the transition period between old and new Acts, but it is a Major Development that was (and remains) under the microscope and thus the utmost of deliberation and care should have been undertaken but as will become evident, they were not.

The "test launch campaign" as it came to be called, was introduced as an **additional** component of the overall WWOLC project. It was not flagged in the "Major Development declaration" report nor in the EIS, but as the proponent's planning consultant MasterPlan had advised in a separate Development Application report, the Development Application was headlined "Building work to support test launch campaign", but it was more than that because the report then added it was a test campaign to obtain empirical data for noise and environmental purposes.

Thus, the "test launch campaign" then became a test of the operation and function of the *PDI Act* with Minister Chapman "calling in" the application for assessment by SCAP in accordance with S 94(2)(a)(iv)(A) of the *PDI Act,* as stated in the afore-mentioned MasterPlan report.
Division 5 of the *PDI Act* contains S 94 and is about determining who the relevant authority should be. This matter is not in question, but it is arguable whether the Planning Minister had the power to remove a critical component of the EIS (i.e. rocket launching) for separate assessment under a different law.

In my view the use of S 94 has compromised the initial EIS process because it set in train a chain of wrongs from which the outcomes became deeply disturbing.

The Minister ostensibly fabricated a planning approval pathway for rocket launching at Whalers Way, and this has presented an enormous conundrum for compliance with the *PDI Act* and the *P&D Code*.

The Problems and Failures

Problem 1 - No special use zone for commercial rocket launching

Since 2016 when the first space industries strategy was adopted by the state Labor government, and affirmed and expanded by the subsequent state Liberal government during its term 2018-22, no move has ever been made to identify and zone an appropriate site for a commercial rocket launch facility in South Australia.

Six years to make a dedicated zone, but nothing to show for it.

Commission members (including SCAP members) are required to "carry out their functions with the highest ethical standards", and to "act honestly and ethically with a high degree of accountability".
The Commission's Governance Manual[2] states;

> The Commission is accountable to the Minister for Planning … for the administration of the (Planning Development and Infrastructure) Act and to further the Act's objects and principles.

[2] See https://dit.sa.gov.au/__data/assets/pdf_file/0003/434172/State_Planning_Commission_Governance_Manual.pdf

> At its core, the Commission's role is to act in the best interests of all South Australians in promoting the objects of the Act, to encourage state-wide economic growth, to support liveability in ways that are ecologically sustainable, and to meet the needs and expectations, and reflect the diversity, of the State's communities by creating an effective, efficient and enabling planning system.
> As a statutory authority, the Commission exists for a public purpose, and is required to both comply with and to implement government policy and existing legislation. This brings with it the highest requirements for transparency, reporting and integrity.

The Commission says it is the "state's independent, principal planning body that provides advice and makes recommendations on the administration of the **Planning, Development and Infrastructure Act 2016**" and "**guides decision-making** of state government, local government and community and business organisations with respect to planning, development and infrastructure provisions in South Australia", and "aims to ensure that a **high benchmark** in both public integrity and contemporary land use planning … is achieved"[3].

There is no evidence that the Commission guided the state government, District Council of Lower Eyre Peninsula, and the proponent 'business organisation' itself, with respect to the zoning and land use limitations of Whalers Way.
At the time that former Premier Marshall announced WWOLC in December 2018 it should have become evident to all in the planning system that **Zoning** was going to be a major sticking point.

This has become a major problem for the proper function of the *PDI Act* and *P&D Code,* as is revealed later.

What is absent in the planning system is **forecasting the need for land use changes** supported by appropriate zone identifications.
Alignment of government strategies and business opportunities with the identification of land that is subsequently zoned for an intended use, is also demonstrably absent.

The planning system must get better at this, if only to maintain public confidence in how decisions are made. After all, the Commission says it "exists for a public purpose" with "the highest requirements for transparency, reporting and integrity". Sadly. As we shall see later, the Commission has not lived up to its stated function.

How matters of land use forecasting and timely zoning can be framed is a matter for the Panel to consider.

Problem 2 - Zone integrity compromised

Whalers Way …

- is privately owned land containing relatively intact native vegetation that is ostensibly now just a remnant coastal fringe
- contains a long-standing "Heritage Agreement" on the property dating back to 1988

[3] Ref. https://www.saplanningcommission.sa.gov.au/about_the_commission

- is in the **Conservation Zone** with a "Visitor Experience sub-zone" as assigned and described in the *Planning & Design Code*, and which does not allow rocket launch facilities
- is in the Coastal Conservation Zone in the District Council of Lower Eyre Peninsula Development Plan, which together with the now-repealed *Development Act 1993* became the development instruments when former Planning Minister Knoll declared WWOLC a "major development"
- lies between Lincoln National Park and Coffin Bay National Park, and the reason why it is zoned "Conservation" is to protect the environment and the ecosystems
- is very limited in the type of land uses that can be undertaken and it should be noted that industrial activities (rocket launching) do not conform
- is in a "High Bushfire Risk" zone and contains similar vegetation structure and type as the vegetation that was destroyed in January 2020 on Kangaroo Island; rocket launching is a high fire risk activity
- contains significant habitat for 4 vulnerable *EPBC Act* listed birds, and 6 endangered *EPBC Act* listed marine species
- contains 11 state listed fauna and flora species, some classified as "vulnerable", some as "endangered", some as "rare"
- contains 3 state listed flora species **protected** under the *National Parks & Wildlife Act*
- is located on land in a State Significant Vegetation Overlay
- has the highest demonstrated amenity value of all the coastlines in South Australia and is visited by thousands of people each year
- contains unique coastline features not seen anywhere else and is highly valued by the local community
- contains an ancient cave system that indicates geological instability in the proposed launch pad areas
- will be subjected to the clearing of 23.76 ha of native vegetation and associated habitat destruction, as described in the Environmental Impact Statement, such habitat being the home of listed endangered bird species
- will be subjected to unprecedented industrial activity and noise that will pose enormous risks to declining populations of endangered birds and marine species

Whalers Way has numerous limitations and restrictions when it comes to industrial development, but as has happened, when a rocket launch facility is proposed, all these limitations have been ignored.
How can that be?

The fact that the proponent selected the site as its "perfect spot" is an indication that the "Major Development" process was flawed. It is also a measure of how flawed the subsequent development assessment of the "test launch campaign" became.
In terms of today's **Impact Assessed Development** categorisation in the *PDI Act*, similar procedures are described as for the repealed Act, but the problem first and foremost is whether a proponent's project is required to be suitably assessed PRIOR to any subsequent declaration.

The proponent's EIS stated that for site selection, eight 'critical criteria' were identified, and that failure to satisfy any one would "almost always rule a site option out of contention". But seven other criteria were identified in my investigation, none more important than **to satisfy the zoning of the land**. Others were - wind factors, bushfire risk, threatened/endangered species, noise, native vegetation clearance, launch trajectory - and all were ignored in the initial site assessment by the proponent.

Thus the problem for the planning system is not only about testing the veracity of a proponent's self assessed site selection process, but also about testing whether the proponent has actually considered the zoning of the land. This would apply not only to impact assessed developments but to all other development proposals.

No independent, expert, and qualified site assessment is required under the *PDI Act*, the *P&D Code*, and neither was it required under the *Development Act* and the DCLEP Development Plan.
As we shall see later, the absence of this basic of checks-and-balances has allowed the planning system to become perverted.

Upholding the integrity of the zoning system is a fundamental foundation of the *P&D Code*.
The mechanisms for this to occur are absent of rigour and legitimate application.

In our case study, here is what has happened in terms of land use zone;

- the proponent ignored the Conservation Zone (previously Coastal Conservation Zone) of Whalers Way during 2018 when selecting the site
- former Premier Marshall (and Space Industries Minister) ignored the Conservation Zone limitations when publicly announcing WWOLC on 4 December 2018.
- the proponent's planning consultant ignored the importance of zone limitations of Whalers Way in all its documents.
- former Planning Minister Knoll ignored the Conservation Zone limitations in his "opinion" in declaring the "Major Development".
- former Planning Minister Chapman ignored the Conservation Zone limitations of Whalers Way when she really should have undertaken a review of past decisions and correct the procedures
- former Planning Minister Teague ignored the Conservation Zone limitations of Whalers Way and should have called for a review of past decisions prior to the Gazette Notice about extending the "test launch campaign" time period
- State Planning Commission and SCAP ignored the Conservation Zone limitations of Whalers Way in assessment of the "test launch campaign"

All this takes us back to Problem 1 and not having a special use zone for commercial rocket launching in South Australia. This is a major failure of the planning system and of those organisations responsible for the lawful discharge of it.

Problem 3 - "Impact Assessed Development" issues

As with the old Development Act 1993 and "Major Developments", the *PDI Act 2016* contains similar requirements for the equivalent **impact assessed development**.

S 108-Categorisation alludes to the involvement of the Minister in "declaring … impact assessed development".

The same procedures have generally been adopted as for the old Act, and notable for its omission is that there is no methodology for the Minister to follow to support such a declaration, particularly as such a declaration must be seen to comply with the zoning of the land.

It seems that the Minister's 'opinion' (as described in the old Act) is all that is needed. It is contended this is a weakness in the system because other laws (e.g. *Environment Protection Act 1993*) are at risk of being subverted.

Although **S 27-Impact assessed development-categorisation** in the *PDI (General) Regulations 2017* contains prescribed actions, no public consultation is mandated, particularly with adjoining landowners to the proposed development, and also to other affected citizens, and the public interest test is not required.

- If transparency in planning is a key plank in handling development proposals, then the aforementioned matters are recommended to be included in the *Act* and the *Regulations (S 27(2))*.

S 27(2) of the *Regulations* lists 'prescribed principles' but they only apply to a declaration by the Minister. Impact assessed development may also be classified as 'restricted development' in the *Planning and Design Code*.

- A concern is whether 'principles' are sufficient, because any response to a principle is open to manipulation or opinion and is consequently open to a compromised outcome.
- A further concern is that the Commission is the relevant authority for Code 'restricted development', so who or which body conducts the initial classification? What are the rules by which this analysis is undertaken?

Now to our case study again. As with WWOLC and site selection and political announcements, and at all subsequent stages, **no public consultation** was undertaken and the outcome has been a marked erosion of public trust in the planning system.
If only Minister Knoll exercised the principles as described in S 27(2) of the *Regulations*, to inform his decision on declaring WWOLC a "Major Development", then most likely there would not be the planning controversy that has enveloped this proposal. The Minister only had to exercise his "opinion" under the old *Development Act* - a very unsatisfactory process - and one wonders why the *PDI Act* could not have become the legitimate planning instrument for his declaration. Or at the minimum, to observe the principles contained at S 27(2) of the *Regulations*.

In terms of the function and application of the *PDI Act*, let's now consider how the state's peak planning decision-maker handled the "test launch" development application. But before we do so, we need to understand the next problem.

Note - Problems 4, 5, and 6 are nested under Problem 3- "Impact Assessed Development Issues"

Problem 4 - No definition of "rocket launching"

Nowhere in the *Planning, Development and Infrastructure Act 2016*, nor the *PDI (General) Regulations 2017*, nor the *Planning and Design Code*, is "rocket launching", "rocket launch facility", "launch facility", "orbital launch facility", "test launching" or kindred term mentioned or defined. It is not as if

there has not been sufficient time to amend the lawful instruments accordingly, because the state has had a space strategy in several guises since 2016.

The *P&D Code* contains many land use definitions but no description to assist SCAP when it considered the development application for the "test launch campaign". When SCAP fabricated a decision pathway to grant planning consent, a major error resulted.

There's no doubt that the space industry in South Australia is in a significant phase, but the planning system has yet to catch up.

- The *P&D Code* must be amended to include appropriate definitions for "rocket launching", "launch facility", "rocket waste" and any other like term deemed necessary. Such definitions should be aligned with those in other laws.

Problem 5 - Mistakes in categorisation and assessment

With rocket launching excised from the EIS, the application for the "test launch campaign" was then assessed by SCAP, and planning consent granted on 16 June 2021. Fundamentally, this required the construction of a "launch facility", because Australian Space Agency (and the federal Industry Minister) issued on two occasions a launch facility license and a rocket launch permit - the first in June 2021, the second in June 2022.
Thus, SCAP was required to categorise a non-defined land use activity in a Conservation Zone with a Visitor Experience sub-zone and Bushfire Risk overlay, all in a long-standing Heritage Agreement area.

Rocket launching and a rocket launch facility had already been decided as requiring an EIS, but on this occasion SCAP deemed it not to be ***impact assessed development*** but as ***performance assessed development***.

SCAP and the Commission got it wrong and here's why.

All developments in South Australia must be assessed under the Planning and Design Code, which divides development into 3 categories[4];

1. Accepted development
2. Deemed-to-satisfy development (*code assessed development* as per **S 105** of the *PDI Act*)
3. Restricted development *(impact assessed development* as per **S 108(1)(a)** of the *PDI Act*)

The *Planning and Design Code* states;

"All development is classified firstly by reference to its location and the zone, subzone and overlays that are applicable to the location. Classification tables applicable to each zone identify development as accepted development, deemed-to-satisfy development or restricted development."

[4] Planning and Design Code, pg.1, and S 103 of the PDI Act 2016

SCAP ignored the Conservation Zone of the subject land, ignored **S 12-Objects of Act**, ignored **S 13-Promotion of objects**, and ailed to properly observe **S 14-Principles of good planning.**

The very significant failing was when SCAP mis-classified the development proposal to "performance assessed development" as per **Section 107(2)(c)** of the ***PDI Act 2016.*** This is revealed in SCAP's Minutes of the 114th Meeting.
SCAP's resolution was that an "assessment of the application (was undertaken) against the Planning and Design Code*",* and it further stated that the "application is **NOT** seriously at variance with the provisions of the Planning and Design Code".

Thus, SCAP decided that a rocket launch facility and rocket launching - undefined in all planning statutes and codes in South Australia - were NOT seriously at variance with the provisions of the Planning and Design Code. SCAP's assessment of these undefined land uses in a Conservation Zone, to which there is a Visitor Experience Subzone, and a Heritage Agreement, and listed endangered species both state and federal, and is in a High Bushfire Risk area, is waved through with no supporting evidence of the decision.
But it did not stop at that point.

There is no evidence that SCAP undertook an assessment **against the Planning and Design Code**, and yet SCAP said it did.

Thorough performance assessment is a rigorous task, and although it is apparent that SCAP erred, let's see what the *Planning and Design Code* for the **Conservation Zone**[5] contains about **Performance Outcomes** that the Application **must** be assessed against.

There are at least seven significant **Performance Outcomes** that have been identified that can not be complied with or the Application is at variance with. SCAP's decision was "temporary change of land use to enable the launch of three test rockets …"

The decision was fundamentally about **enabling** rocket launching, and not so much change in land use as this was deemed by SCAP to be merely a temporary and precursive matter, so in terms of Performance Assessment - that is, gauging the performance of rocket launching against the parameters of the Conservation Zone - the application was required to satisfy the following.

Firstly, there is the "Desired Outcome" for the Conservation Zone.

DO 1 The **conservation and enhancement of the natural environment and natural ecological processes** for their ability to reduce the effects of climate change, for their historic, scientific, landscape, habitat, biodiversity, carbon storage and cultural values and provision of opportunities for the public to experience these through low-impact recreational and tourism development.

[5] Planning and Design Code, pg. 492

The Development Application involving "test launching" and a launch facility did not come anywhere near satisfying the Desired Outcome.

Now to the "Performance Outcomes", all described in the *Planning and Design Code* for the Conservation Zone. Here are seven that were identified in my investigation.

Conservation Zone

PO 1.1 Small-scale, low-impact land uses that provide for the conservation and protection of the area, while allowing the public to experience these important environmental assets.

PO 1.2 Development is primarily in the form of:
(a) directional, identification and/or interpretive advertisements and/or advertising hoardings for conservation management and tourist information purposes
(b) scientific monitoring structures or facilities
(c) a small-scale facility associated with the interpretation and appreciation of natural and cultural heritage such as public amenities, camping grounds, remote shelters or huts structures for conservation management purposes.
(d) directional, identification and/or interpretative advertisements and/or advertising

PO 3.1 Development avoids important habitat, nesting or breeding areas or areas that are important for the movement/migration patterns of fauna.

PO 4.1 Development is sited and designed unobtrusively to minimise the visual impact on the natural environment by:
(a) using low-reflective materials and finishes that blend with, and colours that complement, the surrounding landscape
(b) being located below hilltops and ridgelines
(c) being screened by existing vegetation.

PO 4.2 Development is sited and designed to minimise impacts on the natural environment by:
(a) containing construction and built form within a tightly defined site boundary
(b) minimising the extent of earthworks.

PO 4.4 Development does not obscure existing public views to landscape, river or seascape features and is not visibly prominent from key public vantage points, including public roads or car parking areas.

PO 7.1 Screening and planting are provided to buildings and structures and comprise locally indigenous species to enhance the natural environment.

Examining all these, and comparing them against SCAP's decision of "temporary change in land use to enable the launch of three test rockets" as part of the "test launch campaign", the Application was unable to satisfy any of these Performance Outcomes.

In terms of Performance Assessment, **Table 3**[6] for the Conservation Zone contains no reference to "test launching", or "rocket launch campaign", or "launching", or "launch facility", or any kindred term.

With reference to **Table 4 - Restricted Development Classification**, a dwelling is restricted in the Conservation Zone at Whalers Way, but SCAP would have decided, erroneously, that "restricted development" was not applicable to an undefined activity such as rocket launching and rocket launch facility.

With reference to **Table 5 - Procedural Matters - Notification** and the "Class of Development", it is noted that the *Minutes of the 114th Meeting* reveals that SCAP had **not** formed an opinion that the "development … is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development".
SCAP did not decided that the Application was of a "minor nature". Commonsense suggests that a rocket launch facility with all its attendant risks at Whalers Way **would** have a significant impact on adjoining land owners, but SCAP formed no view whatsoever. There are many occupiers of land in the locality of Whalers Way who would be impacted by the development.

Recall that SCAP resolved that "the application is NOT seriously at variance with the provisions of the Planning and Design Code" but what has been illustrated above is the opposite of that resolve.

But this still was not the end of the SCAP story on this Development Application.

Sections 5, 9, and 10 of the ***Environment Protection Act 1993*** contain many requirements that should be, and should have been, implemented in all decisions and investigations to date about Whalers Way Orbital Launch Complex. SCAP was compelled by law to consider the EP Act in forming its final decision.

S 10(1)(b)(iv) of the *Environment Protection Act 1993* requires "a **precautionary approach** to the assessment of risk of environmental harm…"
It is difficult to understand how the act of "environmental nuisance", "harm", "potential harm", and "material environmental harm", all defined in the *Environment Protection Act 1993*, would not be attributed to the Development Application.
Even the "actual" or "potential" harm[7] to the mental health and safety (e.g. elevated bushfire risk) of nearby land owners could be a valid reason that should not be thought to be trivial.

SCAP invoked a "**temporary** change of land use" as revealed in the planning consent Decision Notification Form. There is no interpretation of "temporary change of land use" nor of "change of land use" at **Sec. 3—Interpretations** of the *PDI Act 2016***.**
Section 4—Change of use of land contains four cases about change of use, but there is nothing on **temporary** change of use.

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[6] Planning and Design Code, pg. 489 onwards

[7] Environment Protection Act 1993, Section 5

If the Commission's own Assessment Panel committee can not get it right, then what does that say about upholding the integrity of the *Planning and Design Code*?

SCAP's decision was wrong.

- There is no mechanism in the *PDI Act* and the *P&D Code* to rapidly validate SCAP's decisions prior to being finally minuted.
- There is no oversight of the conduct of SCAP, or if there is oversight it was absent on that day on 16 June 2021.

The subject Development Application of this case study was for a development of impact, it was a contiguous part of a declared "Major Development", but it was erroneously assessed as a separate Application and on a 'performance' basis.

The Response Document

Continuing with our case study, as of writing the State Planning Commission has before it the Response Document to public submissions on the EIS that was released to the public in August 2021.

I have discovered a very concerning abrogation of process;

- the 3,500 page EIS document was released to the public for just 30 business days (yes, the lawful requirement) - a travesty of justice on its own, given the detail that needed to be examined and understood. It was a denial of the public's right to fairness.
- the EIS itself was a DRAFT document, it contained many flaws, was absent of critical information, and did not include one critical report on emergency and bushfire management; it should not have been released because it was still a draft and was incomplete
- the 600 page Response Document contains information that is significantly divergent from the EIS
- the public has no right of review and submission on the Response Document

The 300 page Response Document (with Appendices) is a symptom of the exclusion of the public from proper oversight of a proposal with great impacts to the local community and to the environment. One critical matter that has intentionally not been addressed is the militarisation potential of Whalers Way, given the agreements signed between the proponent and electronic warfare and defence materiel suppliers. This matter was deemed to be "Out of Scope" and not a planning matter.

I totally disagree. It is a matter in and of the public interest.

Problem 6 - No oversight of SCAP decisions

The SCAP experience with the "test launch campaign" Application raises very serious questions of a manufactured planning consent pathway. It can be nothing else.

Let's reiterate. The Planning and Design Code states[8];

> "The Code applies policies to **performance assessed development** through an Applicable Policies for Performance Assessed Development Table relative to each zone - Table 3".

[8] Planning and Design Code, pg. 2

Performance assessment of an undefined land use and an activity not defined in the planning system, and tested relative to Table 3 of the Conservation Zone, should not be able to be undertaken unless an extraordinary oversight had occurred, or unless the whole intention was to fabricate a pathway to allow planning consent to be granted.
In making its decision SCAP said it referred to **Section 107(2)(c)** of the ***PDI Act 2016 which states:***

> (c) to the extent that paragraph (b) applies—the development must not be granted planning consent if it is, in the opinion of the relevant authority, seriously at variance with the Planning and Design Code (disregarding minor variations).

There is that word "opinion" again. It is very open to corruption of thought and decisions, that the following is recommended;

- replace "in the opinion of" with "following proper and lawful assessment"

It has already been demonstrated that the Application **was** seriously at variance with the *P&D Code*, and therefore planning consent "must not be granted". The Application was in conflict with the *P&D Code* in terms of zoning and it was unable to comply with performance assessment.
SCAP mis-classified the Development Application which then resulted in serious conflict with the *PDI Act* and the *Environment Protection Act 1993*.
The *P&D Code* contains nothing about "rocket launch facility, or "launch facility", or "test launch", or like terms. It is worth repeating SCAP's decision - "temporary change of land use to enable the launch of three test rockets … associated with the Whalers Way Orbital Launch Complex Test Campaign". The key words are "temporary change … to enable … associated with …".

Planning consent should not have been granted. How did SCAP get it so wrong?

The repercussions of that decision are continuing today. Following the illegitimate planning consent, a launch facility license and launch permit were granted twice. The initial planning consent was granted an extension of time, further perpetuating the illegitimacy of SCAP's decision. The proponent has been marketing Whalers Way as a legitimate and fully functioning orbital launch facility that has obtained all government and environmental approvals. It is not true.

SCAP's decision has undermined the integrity of the *Planning & Design Code* and SCAP itself has maligned the *PDI Act*.
If ever there was a reason to oversight SCAP's decisions, this case study is it.

- The Panel is requested to examine the function and operation of SCAP for lawful compliance with the *Act* and *Code*.

Although something else seems to have intervened in or influenced SCAP's decision-making process, it is the next part of this case study that is the most troublesome.

Problem 7 - The Commission's Governance able to be compromised

Commission members (including SCAP members) are required to "carry out their functions with the highest ethical standards", and to "act honestly and ethically with a high degree of accountability" in accordance with their Code of Conduct.
The Commission's Governance Manual[9] states;

> The Commission is accountable to the Minister for Planning … for the administration of the (Planning Development and Infrastructure) Act and to further the Act's objects and principles.
>
> At its core, the Commission's role is to act in the best interests of all South Australians in promoting the objects of the Act, to encourage state-wide economic growth, to support liveability in ways that are ecologically sustainable, and to meet the needs and expectations, and reflect the diversity, of the State's communities by creating an effective, efficient and enabling planning system.
> As a statutory authority, the Commission exists for a public purpose, and is required to both comply with and to implement government policy and existing legislation. This brings with it the highest requirements for transparency, reporting and integrity.

The matter of furthering the Act's objects and principles was raised earlier and it is considered that the Commission failed in this respect.
Consider the contentious factors described above and whether SCAP's decision portrays that of "highest ethical standards" and "high degree of accountability", with "highest requirements for transparency, reporting and integrity", and to "implement government policy and existing legislation".

Is it ethical to ignore the requirements in the *Planning and Design Code*? To ignore the specific zone limitations of Whalers Way? To mis-categorise the development? To declare that the "test launch campaign" was insignificant and NOT seriously at variance with the Planning and Design Code?
Is this acting honestly in accordance with the Code of Conduct? Is it acting "with integrity, good faith and equity"[10]? Was it acting in the best interests of all South Australians?

SCAP members should have known that there were serious inconsistencies with the Development Application, and instead of deliberating in great depth, it merely waved the application through.
The Commission is the "state's independent, principal planning body that provides advice and makes recommendations on the administration of the Planning, Development and Infrastructure Act 2016" and "**guides decision-making** of state government, local government and community and business organisations with respect to planning, development and infrastructure provisions in South Australia", and "aims to ensure that a **high benchmark** in both public integrity and contemporary land use planning … is achieved".[11]

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[9] See https://dit.sa.gov.au/__data/assets/pdf_file/0003/434172/State_Planning_Commission_Governance_Manual.pdf

[10] See requirement 6 in Code of Conduct

[11] Ref. https://www.saplanningcommission.sa.gov.au/about_the_commission

Is this acting honestly in accordance with the Code of Conduct? Is it acting "with integrity, good faith and equity"[12]? Was it acting in the best interests of all South Australians?

I will leave these questions to the Panel to find answers to, but there is a further matter that raises the alarm bells even more. Once again, I refer to our case study and SCAP's *Minutes of the 114th Meeting*.

A blow to public integrity?

The permanent list[13] of SCAP members consists of seven - Thomas, Rutschack, Eckert, Herriman, Leadbeter, Pember, and Altman. Two occasional members are Adcock and Wohlstadt.
For the *114th Meeting*, a majority of SCAP's seven members was not available, and neither was a quorum of four. One member left because of a conflict of interest declaration, and thus the Commission's member Craig Holden acted as an 'occasional member' on 16 June 2021.
The *Minutes* show that two members were apologies but were also listed as present. Were they present or absent? My investigation assumed they were both absent from the meeting.

Serious questions are raised.

- Why weren't either of the two appointed occasional members present?
- Was Mr Holden **approved** as an occasional member?
- If Mr Holden was not formally approved as an occasional member, then was the SCAP decision lawful because a quorum was not available?
- If Mr Holden had been called in at the last moment to fill an emergency void, then what authorisation did he have and who gave it?
- Were the *Minutes of the 114th Meeting* of SCAP accurate when two members of SCAP were recorded as both present and an apology?
- If the Minutes were not accurate, would that invalidate the planning consent for the applicant on that day?

At that meeting, the Governance Officer (presumably SCAP's or the Commission's) was present, so it would be expected that all Commission protocols and lawful requirements would have been observed.
Two Attorney-General's Department staff were also present. If there was anything untoward at that meeting then the Governance Officer was compelled to advise the Deputy Presiding Member. This did not happen.

Although there is a clause (1.2) in the Commission's Governance Manual about 'formal delegations', and this is taken to be about Mr Holden's role at that meeting, they must be by "resolution (and) recorded in the minutes of the relevant Commission meeting". SCAP is a committee of the Commission, but nowhere is it specifically mentioned that a Commission member is automatically a member of SCAP.

The Commission's Code of Conduct[14] "is a key tool to ensure that all members of the State Planning Commission act honestly and ethically with a high degree of accountability".

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[12] See requirement 6 in Code of Conduct

[13] See https://www.saplanningcommission.sa.gov.au/scap/members

[14] See https://dit.sa.gov.au/__data/assets/pdf_file/0011/353675/Code_of_Conduct_-_State_Planning_Commission_Members.pdf

There is no mention of its committee SCAP and therefore no mechanism that was able to be found at the time that supported a Commission member to also be on SCAP.

Recall the date of the *114th Meeting* - 16 June 2021. Further investigations led to PlanSA's website where the following document was discovered - *"State Commission Assessment Panel (SCAP) Practice and Operating Directions"*[15]. It was adopted by the Commission on **13 April 2022** and signed by the Chair on 26 April 2022. Note the dates. It is not known whether this was a review document or first-time document, but it was adopted nine months **after** the *114th Meeting*.

I now refer the Panel to parts 3.2, 4.1, 5.1, 5.2, 5.3, and 17.3 of the SCAP *Practice and Operating Directions*. The following questions are raised for the Panel to consider;

- Has Mr Holden obtained **Accredited Professional Level 2 - Planning** qualification?
- Was he **appointed** to SCAP as an Ordinary Member by the Commission?
- Did he appoint himself? And if so, was this valid?
- How is an 'appointment' conducted?
- Did Mr Holden have "relevant development assessment expertise" or have completed a "Development Assessment Induction module"?

These are all the requirements for a member and occasional member of SCAP.
No publicly available information could be discovered at the Commission's website about Mr Holden's planning accreditation and **appointment** to SCAP, or any Commission approved arrangement about the use of persons other than accredited occasional members.

The SCAP decision on that day on 16 June 2021 was a critical turning point for the applicant/ proponent. Although the launch of rockets was given consent, there was much more information that SCAP should have relied on, and that is biodiversity issues and *EPBC Act* listings at Whalers Way, and the social impact issue. None of these seemed to have been factored into SCAP's decision.

The Panel would do well to discover the Commission's and SCAP's conduct. Answers to all the questions raised in this section are needed, if only to underpin the shaky foundations of the *Planning and Design Code* and the planning procedures adopted for Whalers Way Orbital Launch Complex.

The problem then is accountability for the lawful discharge of the requirements in the *PDI Act*, the *P&D Code*, the Code of Conduct for Assessment Panel Members, and the Governance of the Commission.

Problem 8 - Accountability of the Commission and SCAP

The travails of the case study presented above illustrate that the Commission is able and prepared to make up its own rules, ignore the zone requirements of land, and allow non-conforming development proposals to sidestep the law. The ordinary citizen might ask how can this be so, when their proposals are required to conform with, and are tested against, the *Planning and Design Code* and the *PDI Act*.

[15] See https://plan.sa.gov.au/__data/assets/pdf_file/0004/923701/SCAP_Practice_and_Operating_Directions.pdf

Although **S 17(4)** of the *PDI Act* states that the Commission is "subject to the general control and direction of the Minister", **S 17(5)** almost over-rides this requirement and renders it superfluous. The current Planning Minister has advised me by letter that he "has no capacity to unilaterally unwind a decision made by the Commission." (Ref. Letter dated 5 June 2022).
What happens when the Commission makes a mistake? Where are the checks-and-balances and the accountability mechanisms?

S 22-Functions of the *PDI Act* defines the Commission's work, but what are absent are accountability and responsibilities. **S 24** and **S 25** of the *Act* reveal the involvement of the Minister, but it is only about access to information.
Although the Attorney-General's Department website states that it has administrative responsibility for the Commission, there is no mention of the accountability of the Commission.

Who is the Commission accountable to for its decisions? The government? The Governor? The Minister? The people to whom it must serve?
The Commission is all-powerful, and as **S 23-Power**s in the *Act* says, it "may do anything necessary or convenient to be done in the performance of its functions."
Is this the sort of planning body that the people want and need? Was it really intended in the PDI Act when first drafted that the Commission should not be accountable for its actions and decisions?

SCAP's planning consent decision as described previously, should have been reviewed independently, as it has caused enormous fall-out and ructions within the public. Trust has been fractured. Public safety has demonstrably been overlooked. For example, to allow an experimental rocket launch facility into an area of high and extreme fire risk and in a Fire Danger season, makes no sense and is illogical. Lower Eyre Peninsula has experienced many catastrophic bushfire events over the years, and local citizens are acutely aware of the consequences from the failure of any of the systems or rockets from WWOLC. There is already a severely enhanced state of alarm. This is a matter of public safety.

The safety of the environment has not been satisfactorily considered. Whalers Way is home to numerous listed endangered and threatened species, and there is also the vitally significant marine species and migratory pathways of endangered species. But their expendability and risk have been overlooked by SCAP in the pursuit of a lofty goal by the proponent. In terms of biodiversity, both the state SoE 2018 report and the federal SoE 2021 have been ignored. Indeed, WWOLC and the "test launch campaign" are inconsistent with a range of biodiversity strategies and recovery plans that apply to Whalers Way, thus making the critical landscapes and habitats less safe for the survival of threatened and endangered flora and fauna species.

A procession of oversights and mistakes have been made by SCAP and the Commission.

An independent body would ensure that SCAP (i.e. the Commission) is not compromised and would dutifully and diligently follow the law.

This to my mind is a very big problem, and needs to be addressed.

And for good measure, who is that 'Minister' referred to in the Act? "Minister" is not defined at **S 3- Interpretation** in the *PDI Act*.

Problem 9 - Faltering consistency

The *Planning and Design Code* became the lawful planning tool for country areas commencing 31 July 2020. The proponent for the WWOLC had established Koonibba Test Range (KTR) located 40 kilometres north-west of Ceduna and on Koonibba Community Aboriginal Corporation (KCAC) land.
KTR is in cleared farm land and presents minimum land-based environmental risk. A test launch was conducted on 19 September 2020.

KTR is a rocket launch facility, but for some obscure reason, it did not require declaration as a "Major Development" or "Major Project" or categorised as "Impact Assessed Development". No EIS was required, and no planning consent or development approval has been granted.
As discussed previously, "rocket launch facility" or kindred terms are not defined in the *Planning and Design Code*, the *PDI Act*, nor the *PDI Act Regulations*.
A rocket launch facility is a **change of use of the land**, and therefore the proponent developer should have been required to obtain planning consent for KTR under the *Planning and Design Code*. Investigations at District Council of Ceduna's website[16] and the PlanSA portal[17] has revealed no application nor approval.

Eyre Peninsula Regional Assessment Panel (EPRAP) was functioning at that time but did not become involved in any planning procedure, nor did it insert itself into the frame when KTR became an active facility.
KTR might appear to be a planning anomaly, but my investigations revealed that neither Ceduna District Council nor EPRAP were required to be involved in planning assessment of the rocket range. It was all in the hands of the state government and the infant Australian Space Agency.

It has been discovered that the proponent had been in consultation with KCAC since April 2018. Although a test launch was conducted on 19 September 2020, it was not until June 2021 when an application for authorisation under the *Aboriginal Heritage Act 1988* (SA) was sought. This surely was an afterthought. Former Premier Marshall was the Aboriginal Affairs Minister at the time.

This part of the story illustrates the following;

- the State Planning Commission should have alerted itself at least in 2020 to the need for appropriate zoning for a rocket launch facility, but it failed to realise this need.
- the state government should have complied with its own planning procedures but it failed to do so
- EPRAP should have complied with its own Code of Conduct and become involved in the lack of planning assessment for KTR
- the requirements under the *Planning and Design Code* in terms of change of land use and appropriate zoning have been sidestepped and the fledgling *Code* has been compromised
- poor oversight, complacency, and lack of consistency has plagued the space industries sector since 2018.

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[16] See https://www.ceduna.sa.gov.au/services-and-facilities/development2/public-register-development-applications

[17] See https://plan.sa.gov.au/development_application_register

Problem 10 - Compliance with other laws

When making planning decisions and assessment of development applications, it has become apparent that other laws are not satisfactorily considered. **S 12-Objects** of *Act* and **S 13-Promotion of objects** and **S 14-Principles of good planning** all convey a general sentiment, but as illustrated in our case study, they have all been subjugated. Indeed, **S 14** does not contain any reference to biodiversity, conservation, and climate change.

Good decision-making requires compliance with all laws, but in our case study the *Environment Protection Act 1993* has been absent in deliberations. **S 5-Environmental harm** of the *EP Act* has not been factored into SCAP's decision on the "test launch campaign" Application. Even the obvious matter of adopting a "**precautionary approach** to the assessment of risk of environmental harm" has evaded the attention of all parties to the proposal from the outset. The *Landscape Act 2016* is another that should have been considered but was not.

As required in the *EP Act 1993*, critical social impacts and mental health risks to local residents were not assessed, and bushfire risk was also not assessed, to inform SCAP's decision.

The federal *EPBC Act 1999* is a key piece of legislation that applies to Whalers Way Orbital Launch Complex, and indeed any other land use that could be proposed at the property, and yet for SCAP's decision it was overlooked. It is incomprehensible that the contiguous EIS process has drawn in a 'controlled action' for WWOLC, and yet the "test launch campaign" considered no such thing.

A native title claim (Nauo Native Title Claim No. 2) has been active over all of lower Eyre Peninsula, including Whalers Way and adjoining land, since 2016, and yet it was not considered by SCAP.

SCAP's accountability and questionable diligence should be put under the microscope by the Panel, if only to ensure compliance with the *PDI Act* and the *P&D Code*. If the Minister is powerless to intervene, and there is no oversight body, then how can planning decision mistakes be corrected before they become 'official'?

This is another very significant problem that the Panel is requested to address.

Thus, if an answer to redress mistakes is a judicial review, then let's consider the next problem.

Problem 11 - Judicial reviews are a poor substitute for public redress

Our case study illustrates that no voice was available to affected members of the public and the impacted environment. This is a very poor outcome for citizens' justice. Adjoining land owners and other concerned citizens have had no recourse to influence and /or test the following;

initial site selection by the proponent
public announcement by Premier Marshall
"Major Development" declaration by the Planning Minister
State Planning Commission involvement in the EIS Guidelines framework
SCAP decision on planning consent for an incompatible development

S 202-Rights of review and appeal in the *PDI Act*, specifically S 202(1)(d) and (g) refer to an application to the Court by adjacent landowners for a review. But this can only happen after a development authorisation has been granted. But S 202(1)(d) refers only to **S 110-Restricted development**, and as we know in our case study, SCAP categorised the "test launch campaign" as "performance assessment development", not "restricted development". This is where the assertion of a manufactured planning consent pathway becomes clearer. Adjoining landowners' rights of appeal were limited, whether deliberately or not is for further investigation.

Thus S 202(1)(g) is where a review by the Supreme Court can be undertaken. But should this be the only mechanism for redress or to expose mistakes in process?
I do not think that a court of law is the best place to hear planning arguments and disputes.

The planning system must become more friendly and less legalistic. Courts are highly intimidatory to the general community, and the *PDI Act* reveals an astonishing level of exclusion of the public in the planning decision process.

In reference to the *PDI Act Discussion Paper* (pg 19), it is stated that the Commission says …

> development which is envisaged in the zone should not be subject to notification; except where either acceptable standards of built form or intensity are exceeded, and/or the development is likely to result in substantial impacts on the amenity of adjacent dwellings located on land in another zone.

Although the statement is about notifications, there is an implied contradiction if we think about non-complying developments. The Commission's (SCAP's) decision about WWOLC and the "test launch" planning consent in the Conservation Zone is worrying. "Acceptable standards" were exceeded, and "substantial impacts on amenity" are likely.
It is possible that SCAP intentionally chose not to categorise the development as restricted, thus denying one avenue of appeal. This is what I have referred to as a manufactured planning consent pathway; it can be nothing else.

How should the Commission be judged for this extraordinary oversight or mistake?

If the default position is for a judicial review for project such as WWOLC, then I believe this is an unsatisfactory method of dispute resolution. Surely we can do better?
Mistakes made by SCAP or by other decision-makers should not be the responsibility of the public to bear the cost of exposure and correction. I discuss possible solutions at Problem 12 below.

A judicial review is a time-consuming and costly mechanism to expose maladministration of the *Planning, Development and Infrastructure Act 2016* and the *Planning and Design Code*, including serious weaknesses in the efficient and effective administration of planning and environmental justice in South Australia.
In Problem 7 above I described the possible serious matter of an invalid planning consent and a questionable SCAP quorum, and when a complaint to the OPI for investigation was made, it was not taken seriously. It was a matter of maladministration that was at stake, and yet OPI failed to undertake what it was supposed to do.

An alternative to a judicial review hearing is to expand the scope of South Australian Civil and Administrative Tribunal (SACAT) to include planning disputes and environment and resources decisions by government organisations, similar to how Victorian Civil and Administrative Tribunal resolves such matters. SACAT is presently limited in its capacities, but further investigations about

However, as a result of my investigations and conclusions of the WWOLC and the "test launch campaign" that exposed many serious failures and wrongs, I have given thought to another way to redress the serious imbalance of the public voice as presented in the *PDI Act*. We now come to the next problem.

Problem 12 - Limited ability for the public voice to be heard

The *Planning, Development and Infrastructure Act 2016*, the *Regulations*, the *Planning and Design Code*, and the Commission's Governance system, all lack a simple mechanism for the public to alert about problems and concerns. If we look again at our case study, then it has been exceedingly difficult for the Commission and SCAP to accept their mistakes about WWOLC and the "test launch campaign". In wanting to not generate public opprobrium, I wrote to both the Commission and SCAP about their wrongs, but after four months all I received was a two line innocuous reply from an anonymous person in PlanSA.
They must do better than that if public trust in the planning system is to be sought. To some extent, WWOLC has been shrouded in secrecy since 2018.

The travesty is that the proponent selected Whalers Way without proper understanding of all the limitations, ignored the zoning of the land, failed to adhere to its own stated 'critical criteria' for site selection, and failed to properly consult with adjoining land owners and citizens in the locality.
The additional travesty is that the state government at the time accepted at face value all that the proponent had stated about Whalers Way, thus ignoring its own planning law.

To accept the word of a proponent for such a "major development" without thorough examination and assessment, is considered to be an abrogation of duty.

The Commission's involvement and complicity in allowing this to happen has compromised the zoning of the land including the performance requirements described in the *Planning and Design Code*. The Commission's role is highly questionable and should be scrutinised.
On discovering many breaches of the law and codes of conduct, I wrote to the present Planning Minister Nick Champion and the Environment Minister/Space Industries Minister Susan Close last May and June respectively to inform them of numerous wrongs that have occurred, and requested that they use their powers to intervene in the process to ensure the planning pathway was corrected.
Unfortunately, their advice was to let the process continue, error-ridden as it is.

I wrote to the Commission and SCAP to inform of very serious miscalculations that were applied to the aforementioned planning consent, and to seek answers to many questions. After four months of silence and several requests from me for a reply, all I received was a brief anonymous response with no answers to any of the serious matters of law I raised. SCAP failed to reply at all.
I questioned the validity of the planning consent because there is strong evidence of non-compliance with the law and the *Planning and Design Code*.

In March 2022 I wrote to the Eyre Peninsula Regional Assessment Panel (EPRAP) and appealed to the panel to seek a review of SCAP's decision, to inform the Minister of such concerns and that a review of past decisions would be in order, to assist the Minister in finding an appropriate site for a rocket launch facility in SA, and to confer with the proponent about the futility of its chosen site. EPRAP was advised that to know that a non-conforming and non-defined land use (i.e. rocket launching) under the *Planning and Design Code* is proposed for a Conservation Zone, and would be a test of ethics and accountability as described in the Code of Conduct for Assessment Panel Members.
To stay silent about it would be a blight on the conduct of proper planning procedures. EPRAP was further advised that this is a matter of upholding the public interest, because if the Conservation Zone and the Planning and Design Code can be seriously compromised once, then what is to prevent it from happening again?

The reply I received was that all this was not in EPRAP's "remit … to act as an advocate or provide comment on matters beyond the scope of its role as an assessment authority."
This reply was rejected, because EPRAP was not upholding the integrity of the *Planning and Design Code*, the very instrument that it uses for all its planning assessments. A benign player merely encourages more wrongs to happen, and this is unacceptable in terms of the public trust.
This example has produced the following conclusions.

- Regional Assessment Panels should be the 'voice' of the people of their regions in terms of developments that impact, or potentially impact, people and the environment.
- Regional Assessment Panels should be a primary source of advice for "impact assessed development" proposals in their regions.
- RAP members should be reminded that they are required in their Code of Conduct to "protect (and) promote the public interest", and to this end the reference is to upholding the integrity of land zone requirements in the P&D Code.
- The Planning Minister should inform regional assessment panels that they all have a duty of care and an environmental duty under the *Environment Protection Act 1993* to actively participate in "impact" and "restricted" development proposals.
- The Planning Minister should actively seek advice from RAP's prior to any significant development proposal coming before the Minister for subsequent declaration.
- RAP Code of Conduct should be reviewed and revised to reflect consistency and cross-law responsibilities.

The public voice
This is the next piece of the jigsaw, and there is no better illustration than WWOLC.

(1) <u>RAP community review committee</u>
When a developer/proponent has chosen a site for a significant project, then that decision must be tested against the requirements of all laws, including the *P&D Code* and land use zones.
This can be achieved by involving RAP's who can subsequently engage on an as-needed basis a community advisory committee of say three independent representatives with skills to suit. This

committee would examine the subject site as well as consult with affected landowners and with the proponent.
This committee would review the proponent's concept, examine other site characteristics, conduct public meetings, and then report accordingly to the RAP, which can then advise the Minister.

This concept is similar to the quoted 16.1 at pg. 28 of the *Discussion Paper*.

Note - with WWOLC, it is understood that no site visit was undertaken to inform decision-makers in the planning pathway devised for the proponent; it was a major failing of process.
In addition, the whole WWOLC project has been absent of public consultation.

(2) SCAP review committee

An independent 3 person qualified committee could be established to ensure that significant decisions made by SCAP are lawfully correct and comply with the P&D Code.
This committee could also ensure that the Commission and SCAP are applying their Code of Conduct, Operation Manual, and Governance arrangements.

(3) A community arbiter

If RAP's perform just an assessment function, then there is scope to allow the planning system to be more transparent and community friendly. In the event of planning appeals, it would be far more beneficial to resolve these at the local level.
The afore-mentioned community review committee might also function as a quasi-arbiter of planning disputes, with the benefit of avoiding costly and time-consuming judicial reviews.
This community committee would not necessarily operate like a Court of law, but as an arbiter and conciliator.
Respect for the planning system would be uplifted accordingly.

Public consultation

If there is a single stand-out factor in the planning process it is poor public consultation.
In our case study, the DCLEP was engaged with the proponent from at least 2018, and the Council resolved its 'support' for the WWOLC project. That support has continued to this day, but it has resulted in a significant part of the local community feeling disenfranchised from the WWOLC process.

- The Council and the proponent have not engaged with this community.
- The Council has compromised the Code of Conduct for Council Members, and it has compromised the requirements of its own Development Plan which has become the lawful planning instrument for the "Major Development", which incidentally still falls under the PDI Act because of transitionary arrangements.
- The Council has failed to speak up about the active Nauo Native Title Claim No. 2 that lies over lower Eyre Peninsula land.
- The Council compromised its own Community Engagement Strategy and its Public Consultation Policy.

Pre-planning public consultation about Restricted Developments and Impact Assessed Developments is absent from the *PDI Act* and *Regulations*. In my view this should be a normal democratic process, where community

engagement on impactful development proposals should be a primary action. The *PDI Act* displays nothing of the sort, and indeed it appears to be slanted much more in favour of the proponent.

WWOLC is a case study in how not to do things, but there is another recent and on-going case that is riddled with problems, and that is the proposed National Nuclear Waste Management Facility at Napandee near Kimba. The state government has chosen not to uphold its own Nuclear Waste Storage Prohibition Act, and as far as can be ascertained, no development application has come before planning authorities for the facility.

What does this say about upholding the integrity of the *PDI Act* and the *P&D Code*?

Of great concern is how the process has diminished the proper engagement of local and regional communities. Public consultation on this nationally important issue was left to just the people of Kimba, a deplorable situation given that it is not just the people of this town that deserve a say but all of the people of the state.

This example illustrates a deep hole in the democratic application of planning and environmental law.
I hope the Panel can direct a lot of attention to the public consultation deficit that exists in the planning system.

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