



MINUTES

of the Special meeting held on

Thursday 8 October 2015

in the
Colonel Light Room, Town Hall, Adelaide



Adelaide City Council 2014-2018

**Minutes of the Special Meeting held on Thursday 8 October 2015
Commencing at 5.43 pm in the Colonel Light Room, Town Hall, Adelaide**

**Members Present – The Right Honourable the Lord Mayor [Martin Haese] (Presiding);
Deputy Lord Mayor (Councillor Abiad);
Councillors Clearihan, Hender,
Martin, Moran, Slama and Wilkinson**

Acknowledgment of Country

With the opening of the Special meeting the Lord Mayor stated:

‘Adelaide City Council acknowledges that we are meeting on traditional country of the Kaurna people of the Adelaide Plains and pays respect to Elders past and present. We recognise and respect their cultural heritage, beliefs and relationship with the land. We acknowledge that they are of continuing importance to the Kaurna people living today’.

Apologies and Leave of Absence

Apologies: Councillors Antic, Corbell and Malani
On Leave: Nil
Vacancy: 1 Area Councillor

Report for Council (Chief Executive Officer's Report)

1. Agenda Item 3 - Planning, Development and Infrastructure Bill [2013/00519-5] [C]

Having considered that the conduct of the Special meeting would benefit from suspending the operation of regulatory meeting provisions to facilitate informal discussion on Item 3 distributed separately to the Agenda, the Lord Mayor at 5.44 pm, indicated his intent to suspend the operation of all provisions within Division 2 – Prescribed Procedures of the Local Government (Procedures at Meetings) Regulations 2013 for a period of 40 minutes.

It was then -

Moved by Councillor Martin,
Seconded by Councillor Clearihan -

That the operation of all provisions within Division 2 – Prescribed Procedures of the Local Government (Procedures at Meetings) Regulations 2013 be suspended.

Carried with the approval
of at least two thirds of the members present

During the period of suspension:

- Councillor Wilkinson entered the Colonel Light Room at 5.58 pm
- The Deputy Lord Mayor (Councillor Abiad) left the Colonel Light Room at 6.21 pm and re-entered at 6.23 pm

Having facilitated informal discussion on Item 3, the Lord Mayor at 6.25 pm indicated his intent to resume the operation of all provisions within Division 2 – Prescribed Procedures of the Local Government (Procedures at Meetings) Regulations 2013.

It was then -

Moved by Deputy Lord Mayor (Councillor Abiad),
Seconded by Councillor Martin -

That the period of suspension be brought to an end.

Carried with the approval
of at least two thirds of the members present

Discussion ensued

It was then -

Moved by Deputy Lord Mayor (Councillor Abiad),
Seconded by Councillor Martin –

That Council:

1. Notes the introduction of the Planning, Development and Infrastructure Bill 2015 into State Parliament. The Council encourages reform that delivers efficiencies and benefits to business and the community, but finds that the lack of detail on the associated bodies of work and an implementation plan has made it difficult to reach a comprehensive position on the Bill.

2. Having been an active contributor to the Planning Reform agenda, Council welcomes the opportunity to put forward its comments and concerns on the Bill. The Council notes what has been reported as the Minister's openness to consider improvements to the Bill and therefore trusts that this submission will be given due consideration in the interest of the City, its broad community sectors, its future tourism potential linked to heritage values, and ultimately sustainable economic prosperity.
3. Expresses concern that many aspects of its previous submissions appear to have gone unheeded, including maintaining local community input and the role of councils as a source of local knowledge and input to the planning system. These concerns appear to be compounded by the Bill's seemingly increased powers to the Minister with reduced local input, and the lack of adequate independence of the State Planning Commission.
4. Shares the concerns of stakeholders regarding the lack of time to consider the Bill. Council calls on the State Government and members of Parliament to provide all stakeholders more time to fully consider the Bill before it progresses through Parliament, particularly given the importance of the Bill and the long implementation phase of 3-5 years.
5. Notes the Objects and Intent (clause 12) and the Principles of Good Planning (clause 14) of the Bill, however considers that:
 - 5.1 The Objects of the Bill should more clearly articulate the intention to promote sustainable economic prosperity of the state.
 - 5.2 Clause 12(1)(b) must include reference to community participation in development assessment matters.
 - 5.3 The Principles of Good Planning are deficient in respect to community consultation and engagement principles (irrespective of the proposed Community Engagement Charter) for policy development and development assessment.
 - 5.4 Not only the Principles of Good Planning, but also the ODASA Principles of Good Design Review, should reinforce the development of the Planning & Design Code, design standards, practice directions and other instruments.
 - 5.5 The role and primacy of the City as an enabler of strong economic prosperity, as identified in the 30-Year Plan for Greater Adelaide, be expressed in the Objects and Principles of Good Planning.
 - 5.6 The Objects and Principles of Good Planning should serve as a benchmark to the efficacy of the proposed bodies of work associated with the Bill (such as the Community Engagement Charter, Planning & Design Code, and design standards).
6. Urges the State Government to appoint the State Planning Commission as a priority in order to develop in stages or concurrently the following packages of work, in a collaborative manner with key stakeholders:
 - 6.1 Package 1 – a detailed implementation plan that includes the programming of future regulations and associated documents (including the Planning & Design Code and design standards);

- 6.2 Package 2 – develop and introduce the Community Engagement Charter;
 - 6.3 Package 3 – the bodies of work involved in implementing the Bill (including the expected ‘second’ Bill), engagement on those bodies of work consistent with the Community Engagement Charter; and
 - 6.4 Package 4 – report to the Minister and Parliament on the proposed legislative changes and other reforms, with ongoing monitoring and review of outcomes.
7. Holds discussions with the Capital City Committee and Council on the specific planning requirements for the City given the unique and distinctive circumstances of the capital City. The Council holds the firm position that the planning system for the City should:
- 7.1 recognise the city as a ‘region’ in its own capacity (as reflected in the 30-Year Plan) given its role and primacy in the state;
 - 7.2 balance the number of multiple roles as a capital city, both as the centre of business, culture/leisure/entertainment, and retailing for the state but also as a set of local communities and localities;
 - 7.3 strengthen the coordination/integration of strategic planning between the Bill and the City of Adelaide Act and Park Lands Act;
 - 7.4 recognise the importance of heritage as a significant contributor to the identity, character, tourism, vitality, including employment and economic development of the City;
 - 7.5 reinforce through the statutory instruments, the delivery of achieving carbon neutrality for the City.
8. Seeks amendments to the Bill through Parliament as contained in Attachment C to Item 3 on the Agenda for the Special meeting of the Adelaide City Council held on 8 October 2015 that includes the following key components:
- 8.1 Greater empowerment for the State Planning Commission to operate independently from the Minister based on long term goals and strategies set by the State Government.
 - 8.2 The State Planning Commission should not include the Executive Officer of the Department, even in an *ex officio* capacity, noting that it was not a recommendation of the Expert Panel’s final report. The existing arrangement of the LGA nominating a person with extensive local government knowledge and experience on the DAC should apply to establishing membership of the Commission.
 - 8.3 Removal of the provisions relating to the Park Lands in terms of Impact Assessed Development and Essential Infrastructure. Current arrangements of exemptions under the Development Act should remain to ensure the on-going protection and value of the Park Lands.
 - 8.4 Refinements to the head powers for the establishment of the Community Engagement Charter to reinforce principles of inclusiveness, transparency, flexibility, adoption of community input and review/evaluation as a means of

instilling greater confidence in the community of consultation mechanisms and outcomes.

- 8.5 Regional planning mechanisms should reinforce and place due weight on Council and local community input.
- 8.6 As previously submitted to the Expert Panel, and in accordance with COAG and National Productivity Commission recommendations, development assessment should be devolved to the lowest possible level of government. This principle should strongly influence the designation of planning powers to the Commission, and regional and local panels.
- 8.7 Retention of elected member representation (as currently exists) from councils in the region on local or regional assessment panels in recognition of the local context, robust and efficient decision-making arrangements already in place under the current Act. An accreditation system for elected members on panels could complement the accredited professionals scheme under the Bill.
- 8.8 That existing local heritage items be transferred into the Planning & Design Code without appeal rights to owners of those properties. The Council is willing to consider (as part of the 'second' Bill that is understood to deal with heritage), new listings of local heritage items being subject to appeal rights only if it can be shown that criteria, community consultation and expert independent assessment are adequate components of the process.
- 8.9 Remove provisions for the Minister having powers to impose council contributions to infrastructure funding. Essential infrastructure needs should remain the responsibility of the state government, without councils acting as contributors (other than in a voluntary and negotiated manner) or collectors of levies or other charges for the State.
- 8.10 The Planning & Design Code, and other design instruments, should include consideration of local context, as recognised in the Principles of Good Planning of the Bill.
- 8.11 Remove provisions that would allow applicants to defer referral to government agencies until receiving planning consent. Existing arrangements of the Development Act, that require referrals to be completed prior to consent, should remain in force.
- 8.12 Remove provisions that would allow applications to be 'deemed to be approved' if timeframes (as yet unset) are not met. Existing arrangements of the Development Act, that means an application out of time is refused by default, should remain in force.
- 8.13 Minor encroachments (to be defined in the Planning & Design Code to the requirements of local government) may avoid the need for an Encroachment Permit under the Local Government Act but other encroachments should require the permit of councils in recognition of public land, impact on services, public realm design and coordination, and preservation of National Heritage values of the City layout.

- 8.14 Remove the provisions relating to 'access neighbouring land' whereby Council (or possibly a private certifier) would grant those constructing a development to access neighbouring property for the purpose of facilitating construction (without that owner's agreement). The implications of the provisions would seem to contradict laws of trespass.
- 8.15 New enforcement options and sanctions must be made available to councils rather than only to the State Planning Commission, given local government's role in inspection and compliance. This would maintain the current situation under the Development Act.
9. Forwards to the Minister the report 'Principles for Engagement in a new Planning System' as contained in Attachment E to Item 3 on the Agenda for the Special meeting of the Adelaide City Council held on 8 October 2015, to assist in the development of the Community Engagement Charter.
10. Authorises the Lord Mayor and the Chief Executive Officer to forward Council's submission on the Bill to the Minister, all members of Parliament, the Local Government Association and other stakeholders with a key involvement in the planning and development of the state and to brief aforementioned parties as required.
11. Requests Administration to approach the Local Government Association to undertake analysis of the likely impacts of the Bill on the resourcing, administration, and financial obligations on councils.

Discussion ensued

With the consent of the mover, seconder and the meeting, Part 7.4 of the motion was varied to read as follows:

- '7.4 recognise the importance of heritage and historic character buildings as significant contributors to the identity, character, tourism, vitality, including employment and economic development of the City;'

Discussion continued

The motion, as varied, was then put and carried

Item 3 distributed separately to the Agenda is attached for reference at the conclusion of the Minutes of this Special meeting.

Closure

The Special meeting closed at 6.28 pm

Confirmed by the Council at its meeting held on

Peter Scargill,
A/Chief Executive Officer

Martin Haese,
Lord Mayor.

The document referenced in:

- Minute 1 – Agenda Item 3 (Planning, Development and Infrastructure Bill) distributed separately

is attached for reference

Item 3

Adelaide City Council on 08/10/2015

Status: Public

Planning, Development and Infrastructure Bill [2013/00519-5]

Strategic Outcome:

Outcome 1 - City of Great Places

Program & Value Proposition:

City Planning and Development - The City Planning and Development Program will create a City of outstanding places that meets the aspirations of the community

Program Contact No:

Mike Fisher, PM City Planning and Development
8203 7259

Approved:

David Chick, GM, City Planning and Design

RECOMMENDATION

That Council:

- 1. Notes the introduction of the Planning, Development and Infrastructure Bill 2015 into State Parliament. The Council embraces reform that delivers efficiencies and benefits to business and the community, but finds that the lack of detail on the associated bodies of work and an implementation plan has made it difficult to reach a comprehensive position on the Bill.**
- 2. Having been an active contributor to the Planning Reform agenda by the submission of formal feedback and discussion papers throughout the various stages of the Expert Panel, its final report, the State Government's response, welcomes the opportunity to put forward its comments and concerns on the Bill. The Council notes what has been reported as the Minister's openness to consider improvements to the Bill and therefore trusts that this submission will be given due consideration in the interest of the City, its broad community sectors, its future tourism potential linked to heritage values, and ultimately sustainable economic prosperity.**

3. Expresses concern that many aspects of its previous submissions appear to have gone unheeded, including maintaining local community input and the role of councils as a source of local knowledge and input to the planning system. These concerns appear to be compounded by the Bill's seemingly increased powers to the Minister with reduced local input, and the lack of adequate independence of the State Planning Commission.
4. Shares the concerns of stakeholders regarding the lack of time to consider the Bill. Council calls on the State Government and members of Parliament to provide all stakeholders more time to fully consider the Bill before it progresses through Parliament, particularly given the importance of the Bill and the long implementation phase of 3-5 years.
5. Notes the Objects and Intent (clause 12) and the Principles of Good Planning (clause 14) of the Bill, however considers that:
 - 5.1 The Objects of the Bill should more clearly articulate the intention to promote sustainable economic prosperity of the state.
 - 5.2 Clause 12(1)(b) should include reference to community participation in development assessment matters as appropriate.
 - 5.3 The Principles of Good Planning are deficient in respect to community consultation and engagement principles (irrespective of the proposed Community Engagement Charter) for policy development and development assessment.
 - 5.4 Not only the Principles of Good Planning, but also the ODASA Principles of Good Design Review, should reinforce the development of the Planning & Design Code, design standards, practice directions and other instruments.
 - 5.5 The role and primacy of the City as an enabler of strong economic prosperity, as identified in the 30-Year Plan for Greater Adelaide, be expressed in the Objects and Principles of Good Planning.
 - 5.6 The Objects and Principles of Good Planning should serve as a benchmark to the efficacy of the proposed bodies of work associated with the Bill (such as the Community Engagement Charter, Planning & Design Code, and design standards).
6. Urges the State Government to appoint the State Planning Commission as a priority action to develop in stages or concurrently the following packages of work, in a collaborative manner with key stakeholders:
 - 6.1 Package 1 – a detailed implementation plan that includes the programming of future regulations and associated documents (including the Planning & Design Code and design standards);
 - 6.2 Package 2 – develop and introduce the Community Engagement Charter;
 - 6.3 Package 3 – the bodies of work involved in implementing the Bill (including the expected 'second' Bill), engagement on those bodies of work consistent with the Community Engagement Charter; and
 - 6.4 Package 4 – report to the Minister and Parliament on the proposed legislative changes and other reforms, with ongoing monitoring and review of outcomes.

7. Holds discussions through the Capital City Committee on the specific planning requirements for the City given the unique and distinctive circumstances of the capital City. The Council holds the firm position that the planning system for the City should:
- 7.1 recognise the city as a 'region' in its own capacity (as reflected in the 30-Year Plan) given its role and primacy in the state;
 - 7.2 balance the number of multiple roles as a capital city, both as the centre of business, culture/leisure/entertainment, and retailing for the state but also as a set of local communities and localities;
 - 7.3 strengthen the coordination/integration of strategic planning between the Bill and the City of Adelaide Act and Park Lands Act;
 - 7.4 recognise the importance of heritage as a significant contributor to the identity, character and economic vitality of the City; and
 - 7.5 reinforce through the statutory instruments, the delivery of achieving carbon neutrality for the City.
8. Seeks amendments to the Bill through Parliament as contained in in Attachment C to Item 3 on the Agenda for the Special meeting of the Adelaide City Council held on 8 October 2015 that includes the following key components:
- 8.1 Greater empowerment for the State Planning Commission to operate independently from the Minister based on long term goals and strategies set by the State Government.
 - 8.2 The State Planning Commission should not include the Executive Officer of the Department, even in an *ex officio* capacity, noting that it was not a recommendation of the Expert Panel's final report. The existing arrangement of the LGA nominating a person with extensive local government knowledge and experience on the DAC should apply to establishing membership of the Commission.
 - 8.3 Opposition to the provisions relating to the Park Lands in terms of Impact Assessed Development and Essential Infrastructure. Current arrangements of exemptions under the Development Act should remain to ensure the on-going protection and value of the Park Lands.
 - 8.4 Refinements to the head powers for the establishment of the Community Engagement Charter to reinforce principles of inclusiveness, transparency, flexibility, adoption of community input and review/evaluation as a means of instilling greater confidence in the community of consultation mechanisms and outcomes.
 - 8.5 Regional planning mechanisms should reinforce and place due weight on Council and local community input.
 - 8.6 As previously submitted to the Expert Panel, and in accordance with COAG and National Productivity Commission recommendations, development assessment should be devolved to the lowest possible level of government. This principle should strongly influence the designation of planning powers to the Commission, and regional and local panels.

- 8.7 Retention of elected member representation (as currently exists) from councils in the region on local or regional assessment panels in recognition of the local context, robust and efficient decision-making arrangements already in place under the current Act. An accreditation system for elected members on panels could complement the accredited professionals scheme under the Bill.
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- 8.10 The Planning & Design Code, and other design instruments, should include consideration of local context, as recognised in the Principles of Good Planning of the Bill.
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- 8.12 Opposition to the provisions that would allow applications to be 'deemed to be approved' if timeframes (as yet unset) are not met. Existing arrangements of the Development Act, that means an application out of time is refused by default, should remain in force.
- 8.13 Minor encroachments (to be defined in the Planning & Design Code to the requirements of local government) may avoid the need for an Encroachment Permit under the Local Government Act but other encroachments should require the permit of councils in recognition of public land, impact on services, public realm design and coordination, and preservation of National Heritage values of the City layout.
- 8.14 Concern at provisions relating to 'access neighbouring land' whereby Council (or possibly a private certifier) would grant those constructing a development to access neighbouring property for the purpose of facilitating construction (without that owner's agreement). The implications of the provisions would seem to contradict laws of trespass.
- 8.15 New enforcement options and sanctions be made available to councils rather than only to the State Planning Commission, given local government's role in inspection and compliance. This would maintain the current situation under the Development Act.

9. **Forwards to the Minister the report 'Principles for Engagement in a new Planning System' as contained in Attachment E to Item 3 on the Agenda for the Special meeting of the Adelaide City Council held on 8 October 2015, to assist in the development of the Community Engagement Charter.**
10. **Authorises the Chief Executive Officer to forward Council's submission on the Bill to the Minister, all members of Parliament, the Local Government Association and other stakeholders with a key involvement in the planning and development of the state.**
11. **Requests Administration to approach the Local Government Association to undertake analysis of the likely impacts of the Bill on the resourcing, administration, and financial obligations on councils.**

 BACKGROUND

1. In February 2013 the State Government announced its intention to review the current planning system to create a new planning system that meets South Australia's future challenges; this review being the first comprehensive review of the statutory planning system since 1993.
2. An Expert Panel on Planning Reform was established to undertake an independent review of the State's planning system, consult with stakeholders and advise the State Government and Parliament on potential reforms. The Expert Panel operated a review project under the banner Think Design Deliver.
3. Council has been an active contributor to the Planning Reform agenda by the submission of formal feedback and discussion papers throughout the staged process of Expert Panel, its final report, the State Government's response and now the Bill. Up to the stage of the Bill, Council submissions covered the major stages of review as illustrated in the table below:

| Expert Panel | ACC Submission & Documents |
|---|--|
| Listening and Scoping What we have Heard (July – Dec) | <ul style="list-style-type: none"> • Planning System Guiding Principles • Research & Observations Papers: <ul style="list-style-type: none"> ○ Statutory Planning Systems ○ City Planning & Governance ○ Historic Heritage and Character • ACC Experience's & Questions Paper (Oct 2013) • ACC Submission on Planning Reform No.2 (April 2014) |
| Exploring and Discussion Our Ideas for Reform (Aug 2014) | <ul style="list-style-type: none"> • ACC submission to Expert Panels Our Ideas for Reform (Sept 2014) |
| Proposing and Recommending The Planning System We Want on Planning Reform (Dec 2014) | <ul style="list-style-type: none"> • ACC submission to Final Report of Expert Panel on Planning Reform (16 Feb 2015) |
| Transforming our Planning System: SA Government Response to the Final Report and Recommendations of the Expert Panel on Planning Reform (March 2015) | <p><i>*Note: on 12 May 2015 Council resolved to wait on the draft legislation before making any further submission to the State Govt. The following documents were noted by Council on 8 September 2015 in preparation for the release of a bill:</i></p> <ul style="list-style-type: none"> • "What Kind of Plan for the City? Draft Discussion Paper" (relates to a new Planning & Design Code) • "Draft Principles for Engagement in a New Planning System" (relates to a new Community Engagement Charter) • "Low Risk Applications Study" (relates to new assessment pathways) |

4. While many of its previous submissions appear to have gone unheeded in matters such as local communities maintaining input into the planning system and the role of councils as a source of local knowledge and input, the main purpose of this report is again to enable

Council to form a position and make a further submission in respect to the *Planning, Development and Infrastructure Bill 2015*.

The Bill

5. On 9 September 2015 the *Planning, Development and Infrastructure Bill 2015* proposing changes to the State planning system was released by the State Government. The Bill has been presented to the Lower House of Parliament. Indications are that the Minister is seeking to have the Bill passed this year and with the few remaining sitting dates of Parliament, this report has been prepared to inform the government, members of Parliament and other key stakeholders of Council's concerns and suggestions for improvements.
6. The Bill is to repeal the Development Act, 1993, in its entirety and replace it with the *Planning, Development and Infrastructure Act 2015*. It is therefore a major piece of legislative reform that is complex and its implications on local government extensive with a wide range of matters for Council to consider. Once the Bill is passed, there will be a long implementation phase over a period up to 3-5 years (probably commencing with a second implementation bill) where it is expected that Council will have further opportunity to comment and be involved.
7. Much of the detail for the future operation of the scheme will be set out in the regulations of the Bill and in a variety of statutory instruments (including the Planning & Design Code and design standards). These documents are not available at this time and will be developed through the implementation program. The lack of detail has made it difficult to fully comprehend the Bill and its implications.
8. While these details are still to follow, the Bill supports role and primacy of the City as an enabler of strong economic prosperity, as identified in the 30-Year Plan for Greater Adelaide, by some of the mechanisms outlined in the Bill (such as the urban growth boundary).
9. The State government has outlined that the purpose of the Bill is to lead to a new planning system that will;
 - 9.1 *provide certainty to applicants and communities through streamlined, digitally enabled processes*
 - 9.2 *promote high quality design for the built environment and public realm*
 - 9.3 *require a coordinated approach to planning and delivering infrastructure*
 - 9.4 *require decision makers to possess relevant professional qualifications or experience*
 - 9.5 *promote a culture of collaboration and community engagement in the planning and development of our State*
10. Key information published by DPTI about the new planning system is available on the DPTI website http://dpti.sa.gov.au/planning/planning_reform. The information outlines that the new system will:
 - 10.1 *include a single set of planning and design rules across the State*
 - 10.2 *reduce the burden of red tape for smaller scale development proposals through the introduction of a simpler assessment process*
 - 10.3 *establish an online planning portal that will provide easy, real time access to planning and development information, documents and approvals, enhancing accessibility and accountability*

- 10.4 *enable communities to play a greater role in setting planning policies through the establishment of the Community Engagement Charter*
- 10.5 *integrate infrastructure development with the planning process*
- 10.6 *consider design in every assessment*
- 10.7 *include additional and stronger sanctions for planning breaches and better enforcement mechanisms*

11. To assist Council Members with an understanding the full scope of the Bill, **(Attachment A)** to this report provides DPTI summary of key elements of the proposed new planning systems and some flowcharts on processes will operate.

Consultation on the Bill

12. The Minister for Planning has invited comments on the Bill whilst it is being debated and progressed through State Parliament. It can be expected that wide variety of stakeholders will consider the Bill and make submissions.
13. Administration have sought to raise awareness of the Bill through provision of information to city stakeholders and those groups and individuals who have engaged with Council through the Expert Panel process. Once Council has adopted a position on the Bill, this position will be communicated to key stakeholders and interested persons.
14. The LGA is seeking comments from local government across South Australia by 9 October to then form a consolidated position to put to the State Government on any necessary amendments to the Bill. The LGA has released a consultation paper that outlines some potential key issues for local government. This paper has been separately distributed to Members and is available at <http://www.lga.sa.gov.au/planning>.

SUPPORTING INFORMATION

Analysis of the Bill

15. **Attachment B** to this report provides an analysis of the Bill in comparison to the Expert Panel's final report (Dec 2014) and the State Government's response (March 2015), as well as providing comment in relation to Council's past submissions.
16. The Bill incorporates a number of Objects and Intentions that the Bill is aimed at achieving, as well as a set of Principles of Good Planning (**Attachment D**). Such objects, intentions and principles are reasonably well founded but it is considered that a number of additions should be incorporated, namely:
- 16.1 The Objects of the Bill should more clearly articulate the intention to promote sustainable economic prosperity of the state.
 - 16.2 Clause 12(1)(b) of the Objects should include reference to community participation in development assessment matters as appropriate.
 - 16.3 The Principles of Good Planning are deficient in respect to community consultation and engagement principles (irrespective of the proposed Community Engagement Charter) for policy development and development assessment.
 - 16.4 not only the Principles of Good Planning, but also the ODASA Principles of Good Design Review, should reinforce the development of the Planning & Design Code, design standards, practice directions and other instruments.

- 16.5 the role and primacy of the City as an enabler of strong economic prosperity, as identified in the 30-Year Plan, should be expressed in the Objects and Principles of Good Planning.
17. In respect to the preparation of a Community Engagement Charter, the Council recently received (7 September 2015) the report, prepared by Donna Ferretti, *Principles for Engagement in a new Planning System*. It is recommended that the report be included in the package of information forwarded to the Minister on the Bill to assist in the development of the Charter.
18. It is also important that the Objects and Principles of Good Planning play a part in the development of material associated with the Bill. It is recommended that the objects and principles serve as a benchmark the efficacy of the proposed bodies of work such as the Community Engagement Charter, Planning & Design Code, and design standards.
19. **Attachment C** provides a recommended list of detailed amendments to the Bill based on input from the LGA, legal advice, Council workshops, and staff analysis. Key elements of the attachment are outlined below:
- 19.1 Greater empowerment for the State Planning Commission to operate independently from the Minister based on long term goals and strategies set by the state government.
- 19.2 The State Planning Commission should not include the Executive Officer of the Department, even in an *ex officio* capacity. The existing arrangement of the LGA nominating a person with extensive local government knowledge and experience on the DAC should apply to establishing membership of the Commission.
- 19.3 Opposition to the provisions relating to the Park Lands in terms of Impact Assessed Development and Essential Infrastructure. Current arrangements of exemptions under the Development Act should remain to ensure the on-going protection and value of the Park Lands.
- 19.4 Refinements to the head powers for the establishment of the Community Engagement Charter to reinforce principles of inclusiveness, transparency, flexibility, adoption of community input and review / evaluation as a means of instilling greater confidence in the community of consultation mechanisms and outcomes.
- 19.5 Regional planning mechanisms should reinforce Council and local community input.
- 19.6 Retention of elected member representation (as currently exists) on local or regional assessment panels in recognition of the robust and efficient decision-making arrangements already in place under the current Act. An accreditation system could be implemented for elected members on panels to complement the accredited professionals under the Bill.
- 19.7 Confirmation that existing local heritage items will be transferred into the Planning & Design Code without appeal rights to owners of those properties. The Council is willing to consider new listings of local heritage items being subject to appeal rights if it can be shown that community consultation and expert assessment is maintained in the process.
- 19.8 Opposition to the Minister having powers to impose council contributions to infrastructure funding. Essential infrastructure needs should remain the

responsibility of the state government, without councils acting as contributors (other than in a voluntary and negotiated manner) or collectors of levies or other charges for the State.

- 19.9 The Planning & Design Code should include consideration of local context, as recognised in the Principles of Good Planning of the Bill.
 - 19.10 Opposition to provisions relating to the ability of applicants to defer referral to government agencies until a decision is reached. Likewise, the 'deemed to be approved' provisions if timeframes (as yet unset) are not met are opposed. Existing arrangements of the Development Act should remain in force.
 - 19.11 Minor encroachments (that could be defined in the Planning & Design Code to local government requirements) may avoid the need for an Encroachment Permit under the Local Government Act but other encroachments should require the permit of councils in recognition of use of public land, impact on services, public realm design and coordination, and preservation of national Heritage values of the City layout.
 - 19.12 Concern at provisions relating to 'access neighbouring land' whereby Council (or possibly a private certifier) would grant those constructing a development to access neighbouring property for the purpose of facilitating construction (without that owner's agreement). The implications of the provisions would seem to contradict laws of trespass.
 - 19.13 New enforcement options and sanctions are not available to councils but rather only to the State Planning Commission. This would reverse the current situation where a council is entitled to all fines ordered by the courts and would limit this to circumstances only provided for by regulations.
 - 19.14 In accordance with National Productivity Commission recommendations, development assessment should be devolved to the lowest possible level of government. This principle should influence the designation of planning powers under the Bill.
 - 19.15 That existing local heritage items be transferred into the Planning & Design Code without appeal rights to owners of those properties. The Council is however willing to consider (as part of the second Bill) new listings of local heritage items being subject to appeal rights if it can be shown that criteria, community consultation and expert assessment are adequate components of the process.
20. It is recommended that Council's position on the Bill be communicated in an appropriate manner to all State Parliamentarians, the LGA and metropolitan councils, key professional and community groups and other interested persons. This position will also be made available on Council's website and other appropriate communications will be undertaken to support Council's position.

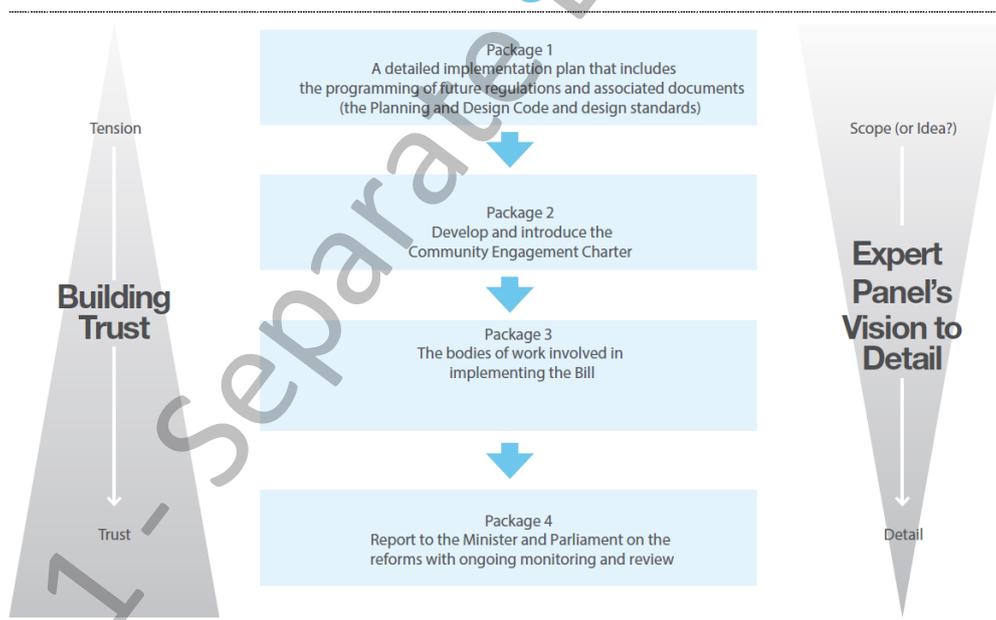
Implementation of a new planning system

21. Council, and many stakeholders and industry groups, have on a number of occasions asked for the State Government outline a time-table for reform with ample opportunity for effective engagement of the public and stakeholders, including issuing draft legislation for comment before it is introduced into Parliament. As noted earlier, the extent of opportunity comment on the draft legislation is not considered adequate and is reaffirmed in the recommendations to this report.

22. The report puts forward a suggested pathway to implementation of reforms that could resolve many of the tensions and lack of faith that exists with the current system (as evidenced by the submissions to the Expert Panel) and build trust in a new system. There is significant risk that a poor implementation process that does not adequately and meaningfully involve all key stakeholders will result in a continued low level of confidence in a new planning system. A preferred approach is illustrated in the diagram below and involves the State Government appointing the State Planning Commission as a priority action to develop, in stages or concurrently, the following packages of work, in a collaborative manner with key stakeholders:

- 22.1 Package 1 – a detailed implementation plan that includes the programming of future regulations and associated documents (including the Planning & Design Code and design standards);
- 22.2 Package 2 – develop and introduce the Community Engagement Charter;
- 22.3 Package 3 – the bodies of work (including the ‘second’ Bill) involved in implementing the Bill, engagement on the bodies of work consistent with the Community Engagement Charter; and
- 22.4 Package 4 – report to the Minister and Parliament on the implementation of the reforms with ongoing monitoring and review.

Phased Implementation of Planning Reform



23. There is also an opportunity for Council to hold discussions on the specific planning requirements for the City of Adelaide at the Capital City Committee. The City plays a unique and distinctive role for the state and metropolitan area, reflected in part by the City of Adelaide Act and the Park Lands Act. There may be opportunities that can be explored in respect to:

- 23.1 Recognising the city as a region in its own capacity given the 30-year plan and the city's role and primacy in the state.

- 23.2 Strengthening the coordination/ integration of strategic planning between the Bill with the City of Adelaide Act and Park Lands Act.
- 23.3 Balancing the number of multiple roles as a capital city, both as the centre of business, culture, leisure, entertainment, and retailing for the state but also as a set of local communities and localities.
- 23.4 Recognising the importance of heritage as a significant contributor to the identity, character and economic vitality of the city
- 23.5 Reinforcing through the statutory instruments, the delivery of achieving carbon neutrality for the city.

Cost Impacts to Council

24. The State Government released a Regulatory Impact Statement that is available on the DPTI website that provides some analysis of the potential financial consequences arising from implementation of the Bill. The statement does not provide sufficient information to understand the full cost implications for local government generally.
25. Accordingly, this report recommends that the LGA be approached to undertake analysis of the potential impact on resourcing, administration, and financial position of councils in the implementation and then ongoing operation of the new planning system.

IMPLICATIONS

| Implication | Applicable | Comment |
|---|------------|---|
| Policy | YES | As a consequence of the Bill, a number of existing policy documents will be replaced, including the Adelaide (City) Development Plan. |
| Business Plan Objectives / Outcomes or Services | YES | Preparation for implementation of a new planning system is a key project in the 2015/16 Business Plan. |
| Consultation | YES | The Minister has outlined a willingness to consider submissions on the Bill through the parliamentary process. Measures are being taken to inform key stakeholders of Council's position on the Bill. |
| Resource | YES | Further analysis will be undertaken of the resource, service and cost implications of implementation of a new planning system |
| Risk / Legal / Legislative | YES | The Bill proposes to replace the existing Development Act, 1993, in its entirety and makes consequential amendments to a number of other existing Acts. |

Budget / Financial Implications

| 15/16 Budget Allocation | 15/16 Budget Reconsideration | Proposed 16/17 Budget Allocation | Ongoing Costs (eg maintenance) | Life of Project / Life Expectancy of Asset |
|-------------------------|------------------------------|----------------------------------|--------------------------------|--|
| NO | YES TBD | YES TBD | YES TBD | YES 2-5 years |

ATTACHMENTS

Attachment A – DPTI advice; New Planning System & Flowcharts

Attachment B – Comparison of Bill + Expert Panel Report + State Government March Position

Attachment C – Legal - Amendments to Bill

Attachment D – Objects, intents and Principles of Good Planning

Attachment E - Principles for Engagement for a new Planning System

A framework for long term planning

The Minister for Planning will be supported by a new independent State Planning Commission which will provide advice on policy direction, assess significant proposals, and promote partnerships between government, business, councils and communities.

The framework for long term planning will include:

- a new State Planning Commission, a central point in the new system will provide independent advice to government
- joint planning arrangements that allow for regional cooperation between councils, state government and communities
- an improved and expanded role for parliament allowing for earlier engagement
- depoliticised and upskilled Development Assessment Panels

The State Planning Commission will:

- act as the State's principal planning advisory and development assessment body
- provide advice and recommendations to the Minister on key planning decisions
- work with councils, govt agencies and infrastructure providers across the State
- have the power to conduct inquiries into planning matters
- provide guidance and support to everyone involved in the system
- undertake research and monitor trends that affect planning
- promote a planning system that meets high standards of performance

Alongside the planning commission the Bill also includes the following:

- joint planning arrangements will be able to encompass other regional functions such as economic or environmental planning
- DAP members will be required to hold accredited professional qualifications
- elected officials will have key roles in setting strategy and policy and in local advocacy, but will not be able to serve on DAPs
- regional plans will be able to support streamlined changes to zoning in certain circumstances

Community Engagement

The new Community Engagement Charter will set benchmarks for meaningful and genuine engagement with communities, particularly in the early stages when planning policies are being formed and tested. The new measures will include:

- a charter that requires engagement with communities to be tailored to their needs
- an obligation on all authorities to meet the requirements of the charter
- a new planning website that will allow South Australians to engage online with the planning system
- a commitment to planning documents being written in a user-friendly format which uses plain language and diagrams
- a new capacity for site notices to be required to inform residents about development proposals

Planning policies and instruments under the new planning system will be subject to consultation requirements set out in the Charter. The Charter will be based on the following principles:

- members of the community should have reasonable, meaningful and ongoing opportunities to participate in planning processes
- community engagement should be encouraged during the early stages of the planning or policy making process
- planning documents should be written in a user friendly format using plain language
- engagement methods should seek to foster and encourage constructive dialogue
- engagement methods should take into consideration the significance, and likely impact, of relevant policies and strategies
- where reasonable, communities should be provided with reasons for decisions that have been made

Design standards

Design quality will be embedded in policies and practices throughout the new planning system – reinforcing its significance in building healthy, vibrant communities. To give effect to the increased focus on design quality in the new system:

- an upfront commitment to design quality will be set out in statutory principles
- planning rules will include new design instruments to assist in shaping the public realm
- complex projects will be subject to design review processes which aim for design excellence
- a new capacity to control design quality in the public realm will be introduced
- there will be a new state design quality policy backed up by statutory principles
- a new Planning and Design Code will promote high standards of design for the built environment through design-oriented zoning rules
- new design standards will help to shape the public realm and ensure infrastructure matches urban context, consistently designed and constructed and is “fit for purpose”
- design review will be embedded within the assessment process for complex projects
- outline consent will offer a way for master planning to be factored into the assessment process for large sites
- regional plans will be able to include structure plans and masterplans

A new planning rulebook

A new planning rule book called the Planning and Design Code will be released. It will focus on design outcomes that contribute to neighbourhood amenity and character. Under the new planning system:

- rules will be user friendly and written in plain language
- clearer, simpler rules will provide certainty to land owners and communities about developments permitted in their area
- a stronger design focus will help to recognise the importance of local character
- a simpler, more consistent rulebook will make updates quicker and easier and reduce the costs of doing business
- councils will retain primary responsibility for ensuring that the Code is applied appropriately in local areas
- more people will be able to initiate a change to a zone, for example infrastructure providers and land owners

Other key information about the Design Code is as follows:

- there will be a single menu of planning rules for the State
- the rules will include a standard set of zones, subzones and overlays
- zones will generally address the basic built form expected of an area
- subzones will be able to address particular local character needs
- overlays will address issues that cut across more than one zone, for example environmental issues
- the rules will feature updated land use definitions and use classes that will make change of use matters easier to determine
- there will be capacity to vary the rules within pre-defined numeric or technical parameters to reflect local conditions
- councils retain their responsibility to initiate changes to local policy
- landowners can apply to change zoning
- the Commission provides independent advice on zoning changes
- the planning rules will not be able to regulate Building Code matters
- other than introducing a new power for the ERD Court to review decisions on local heritage listings, there will be no change to existing local heritage arrangements
- there will be no change to the existing protection of significant and regulated trees
- councils, stakeholders and communities will be extensively consulted before the first version of the new rules are in operation
- the *Planning and Design Code* will be accessible via the SA planning portal

Decision making processes

New measures to achieve a simpler and quicker assessment processes will include:

- assessment pathways which ensure that effort is matched to the scale, impact and risk of a proposed development
- entrusting professionals to undertake assessments rather than elected members, including through privately certified professionals
- a greater focus on working with applicants to deliver optimal results
- consultation and notification rights directly linked to assessment categories, including notices on properties
- special assessment pathways for essential infrastructure and government projects

Other key information about the new assessment processes includes:

- development categorised as 'accepted' under the new *Planning and Design Code* will not require planning consent
- development that meets 'deemed-to-satisfy' standards must be granted planning consent without the need for consultation
- where a development does not meet a 'deemed-to-satisfy' standard, the non-conforming elements will require 'performance-based assessment' (but the other accepted or deemed-to-satisfy elements will not be subject to reassessment)
- complex or sensitive development will require 'impact assessment' by the State Planning Commission
- development that is categorised as 'restricted' will not be assessed unless the Commission has agreed to allow an impact assessment
- complex proposals will be able to seek "outline consent" for an overall masterplan, with subsequent consents sought for individual components
- agency referrals will be codified, wherever possible, providing more certainty during the assessment process
- there will be no change to existing controls over significant and regulated trees
- the scope and versatility of land management agreements will be maintained
- applicants and third parties will have appeal rights in relation to decisions on 'restricted' developments
- new measures will be provided to enforce planning breaches
- applicants will be able to trigger 'deemed consent' if timelines are not met

Coordination and delivery of infrastructure

New financial tools will ensure areas will not be rezoned for growth unless infrastructure is committed and funded. The new system will:

- enable the integration and coordination of land use, transport and infrastructure planning
- ensure that transparent and equitable infrastructure funding arrangements are locked in
- provide checks and balances to ensure new infrastructure is consistent with local character and community needs
- enable off-set arrangements to support financial or in-kind contributions in suitable cases

Other relevant key information includes:

- for the first time in this state, new 'infrastructure delivery schemes' will allow for long-term funding arrangements to be agreed and finalised before a development begins
- these schemes will be based on funding defined infrastructure, not on an infrastructure charge or levy
- development costs will be equitably spread across all beneficiaries of the development with costs being recovered via a 'charge on land', collected by councils
- where agreement cannot be reached, the charge will be independently reviewed and set
- infrastructure design standards must be agreed upon upfront to avoid cost blow-outs and ensure consistent outcomes
- councils will be able to supplement infrastructure delivery schemes with off-set schemes in their local area
- urban tree funds and carparking funds will continue
- contribution off-set schemes will only be applied where they support a 'provide or pay' requirement of the Planning and Design Code, and could relate to public art, publicly accessible areas or affordable housing
- the open space contribution scheme will continue in a fairer manner

e-planning

Planning information will be available online and any public participation will be able to be achieved using the new on line system. The new planning system and central planning website will:

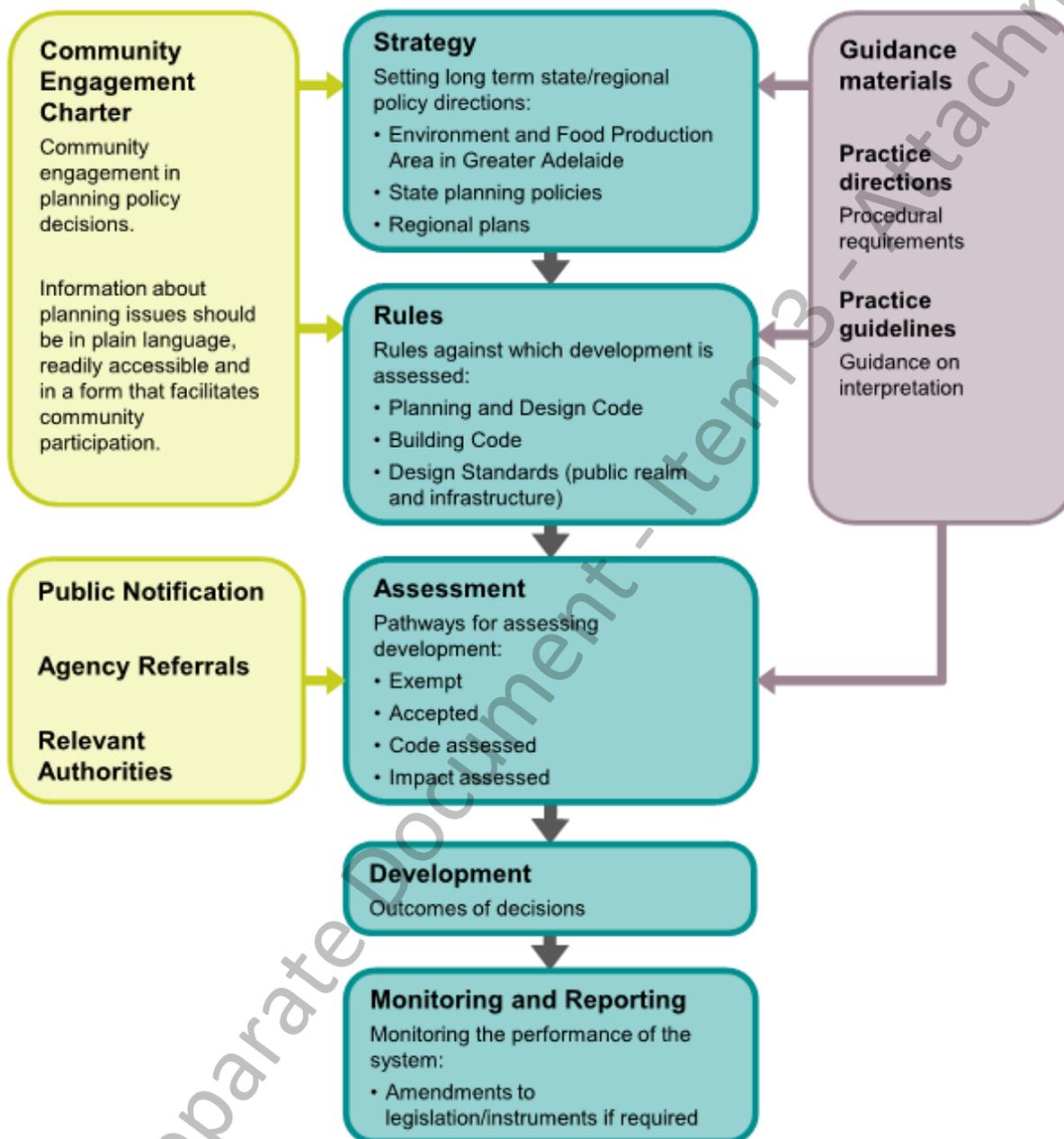
- provide a searchable online atlas, enabling easy access to planning information
- allow people to lodge online applications and provide feedback
- enable real time input and monitoring of decision-making processes

Other key information includes:

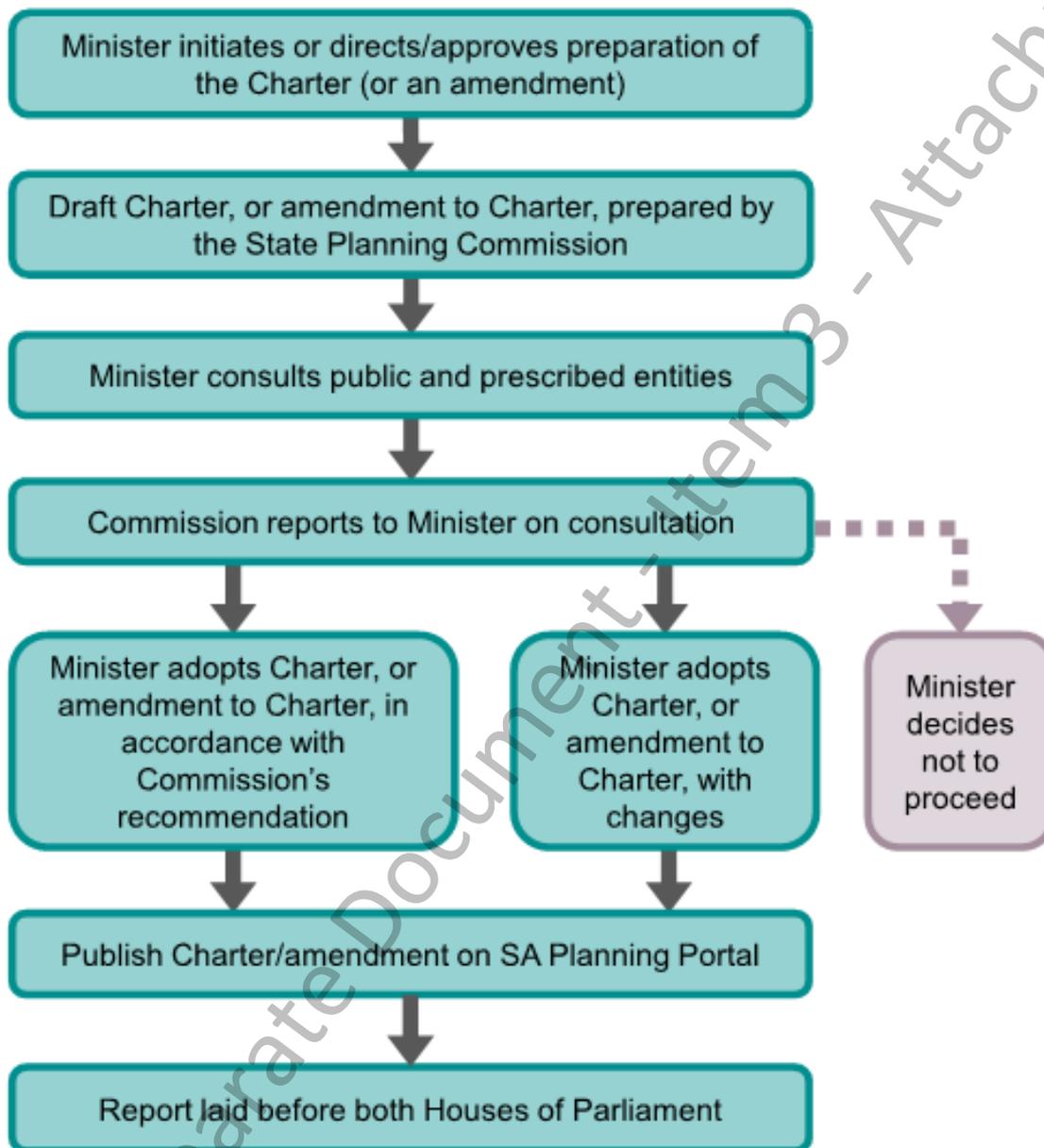
- there will be a central planning website the 'SA planning portal' which will be a whole-of-government repository for planning information
- the portal will be backed by a 'planning database' which will contain all relevant planning rules and spatial information
- users will be able to access information via a searchable online atlas that will form part of the portal
- users can tailor information to suit their needs and include the ability to produce council-based zoning maps
- the website and data will be compliant with user accessibility standards set by the SA Government
- information available from the website will be a legal document and provide greater levels of reliable information to the community
- decision makers will have access to reliable activity and performance monitoring in 'real time'
- cost recovery mechanisms will help to fund the maintenance of the system on a fair and equitable basis

PLANNING SYSTEM OVERVIEW

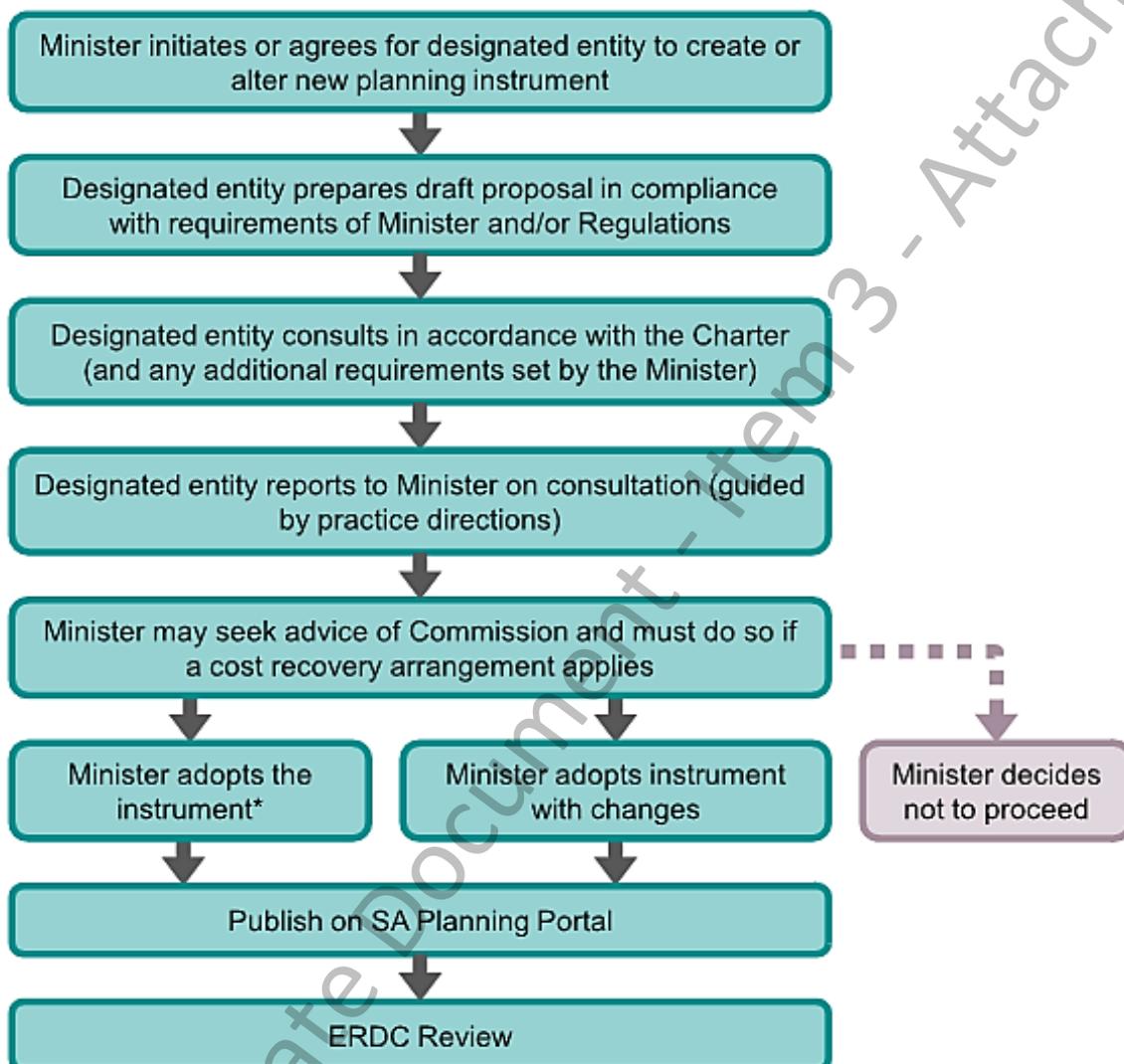
Planning, Development and Infrastructure Bill 2015



COMMUNITY ENGAGEMENT CHARTER



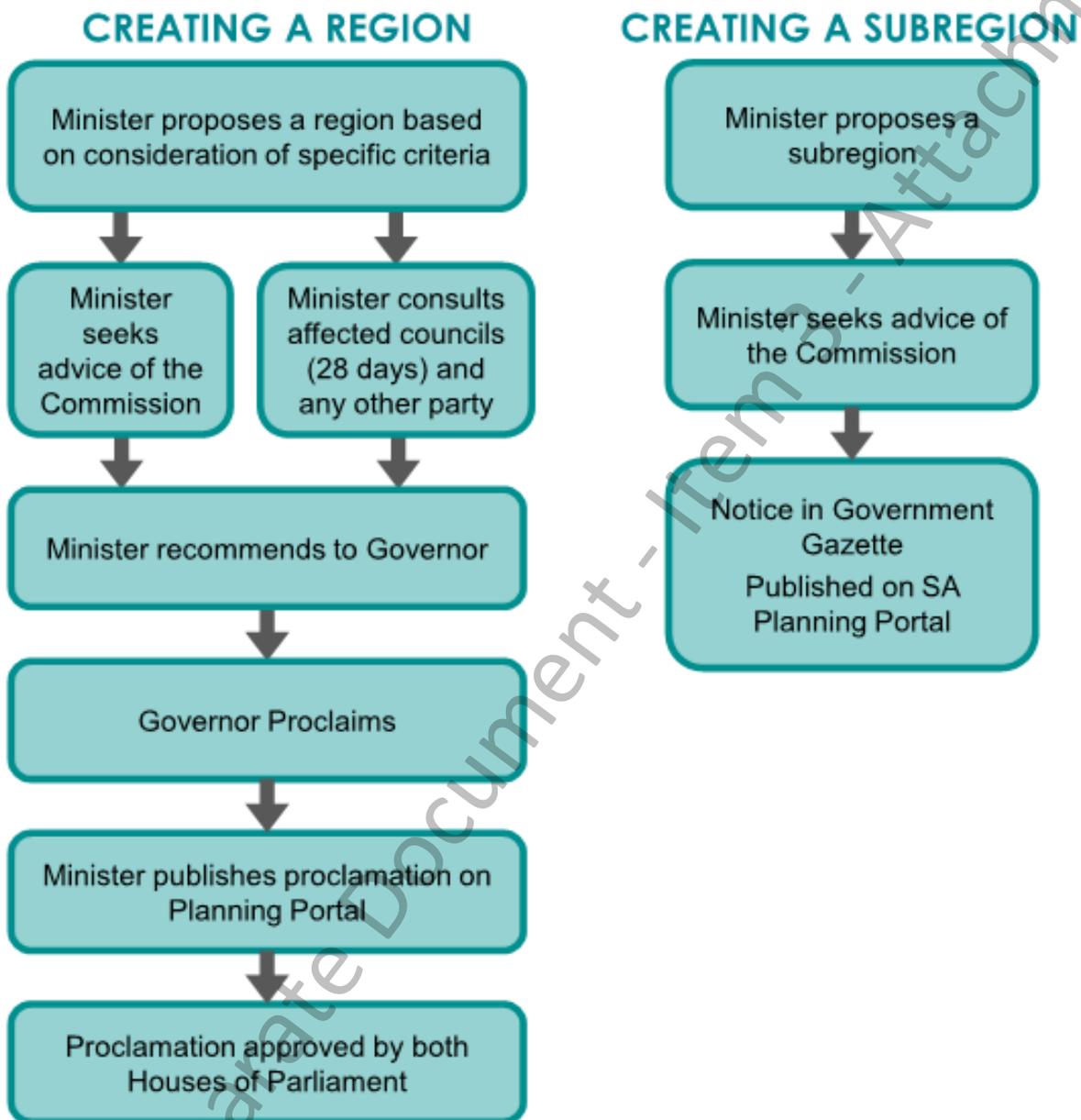
CREATING AND AMENDING PLANNING INSTRUMENTS (Part 5)



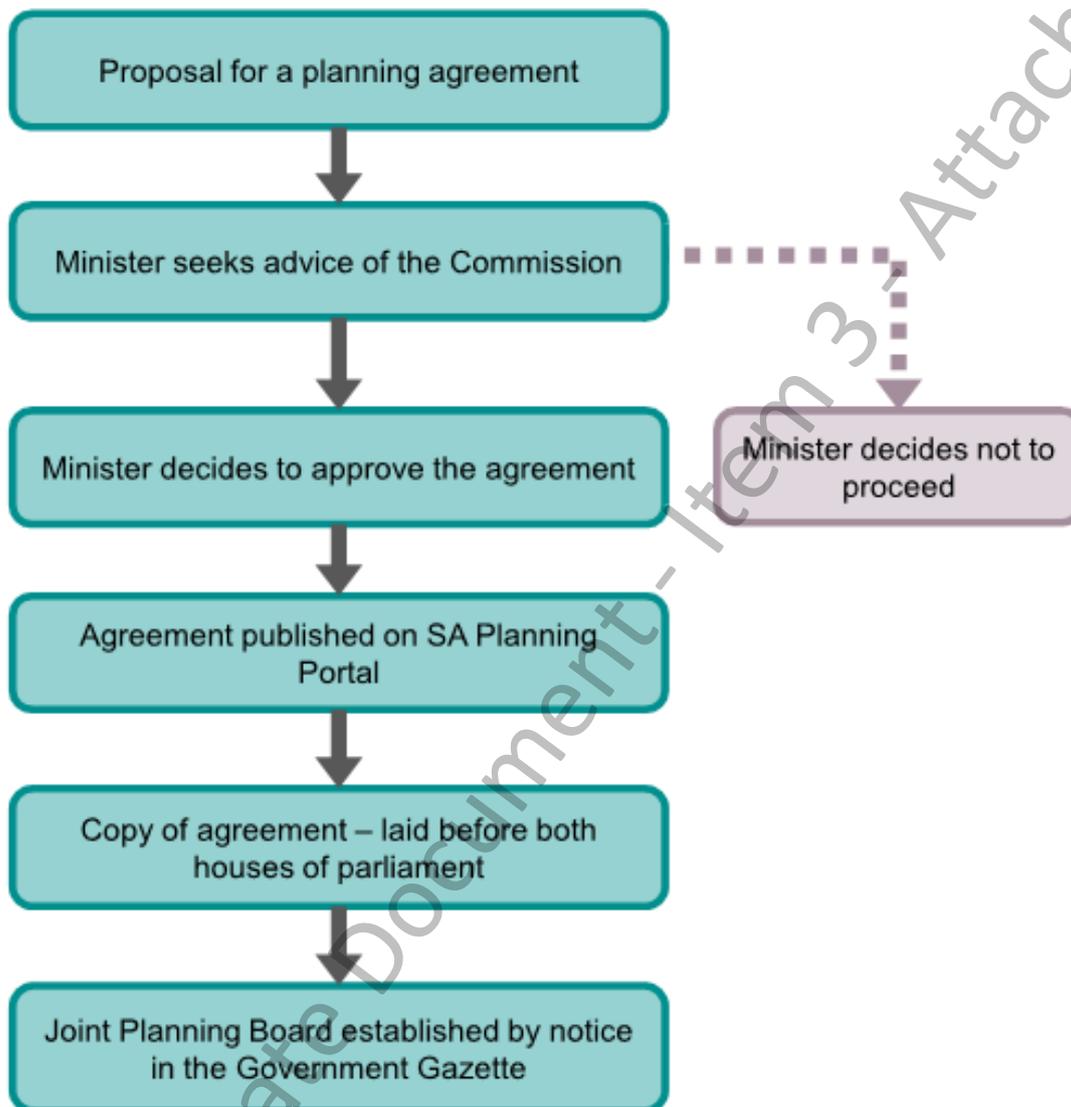
RELEVANT AUTHORITIES

| Type of authority | Type of assessment | How appointed |
|---|--|---|
| Accredited professional | <ul style="list-style-type: none"> • Prescribed in Regulations • Initially applies to building rules consent and certain types of 'complying' planning consents • Intended to apply to deemed-to-satisfy assessment | <ul style="list-style-type: none"> • Accreditation scheme provided in Regulations |
| Assessment manager | <ul style="list-style-type: none"> • Prescribed in Regulations • Currently akin to delegated decisions • Intended to apply to deemed-to-satisfy assessment and a range of other, generally minor, development | <ul style="list-style-type: none"> • Appointed by assessment panel • Must be an accredited professional or meet other prescribed criteria • Every assessment panel must have a manager • An assessment panel may review an assessment manager's decision, if an applicant so requests |
| Assessment panels <ul style="list-style-type: none"> • Council • Local • Regional • Combined | <ul style="list-style-type: none"> • Prescribed in Regulations • Intended to apply to more complex developments (performance-based and other assessment) | <ul style="list-style-type: none"> • Various appointment methods • Council-appointed panel is the default (typical) assessment authority |
| State Planning Commission | <ul style="list-style-type: none"> • Restricted development (not assessable unless Commission determines) • Call-ins by the Minister due to state significance or delays • Development outside of council areas • Crown development and essential infrastructure | <ul style="list-style-type: none"> • Appointed by Minister |
| Minister | <ul style="list-style-type: none"> • Impact assessable (other than restricted) • Commission prepares and releases assessment report • Crown development and essential infrastructure | |

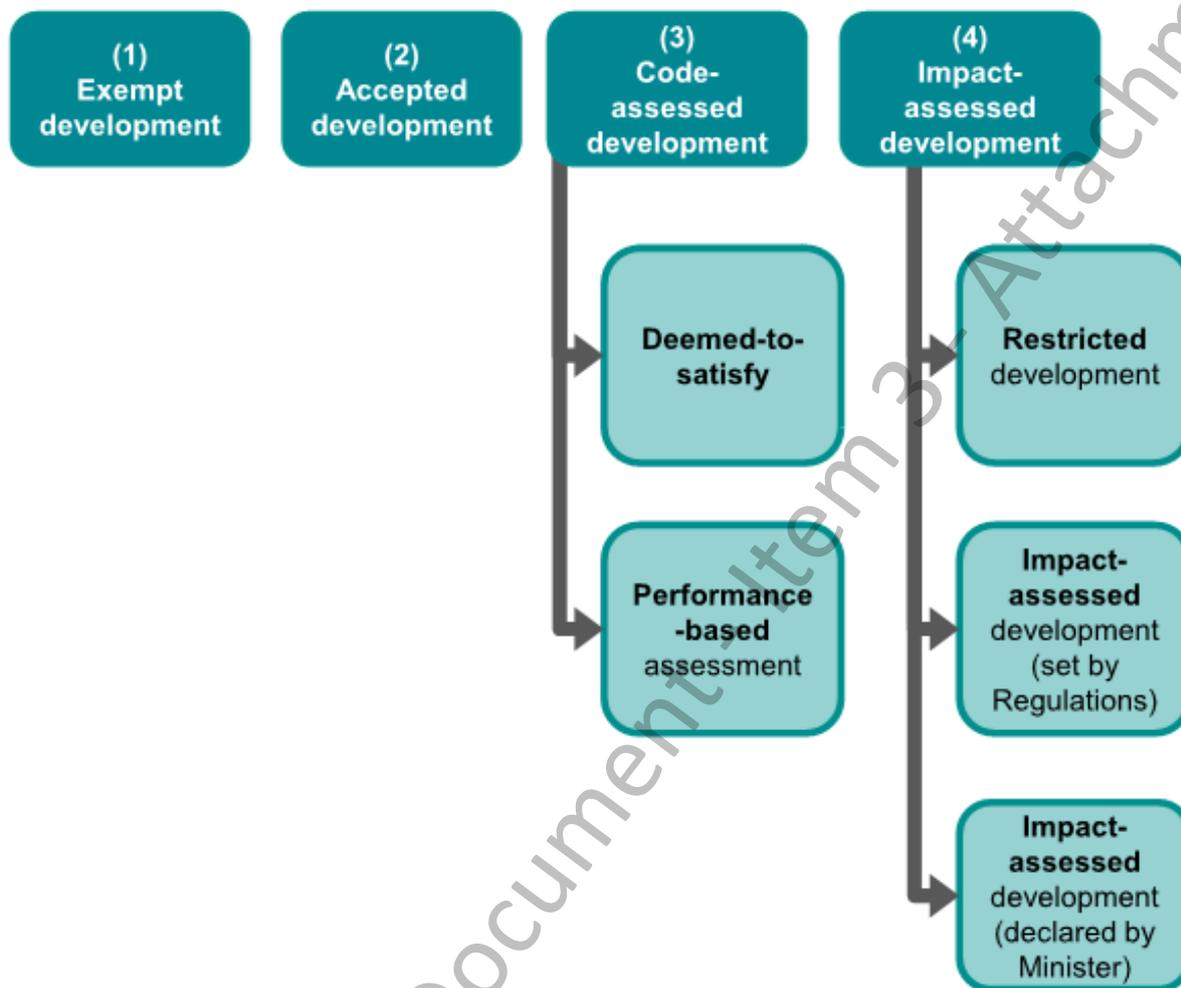
ESTABLISH PLANNING REGIONS



ESTABLISH PLANNING AGREEMENT

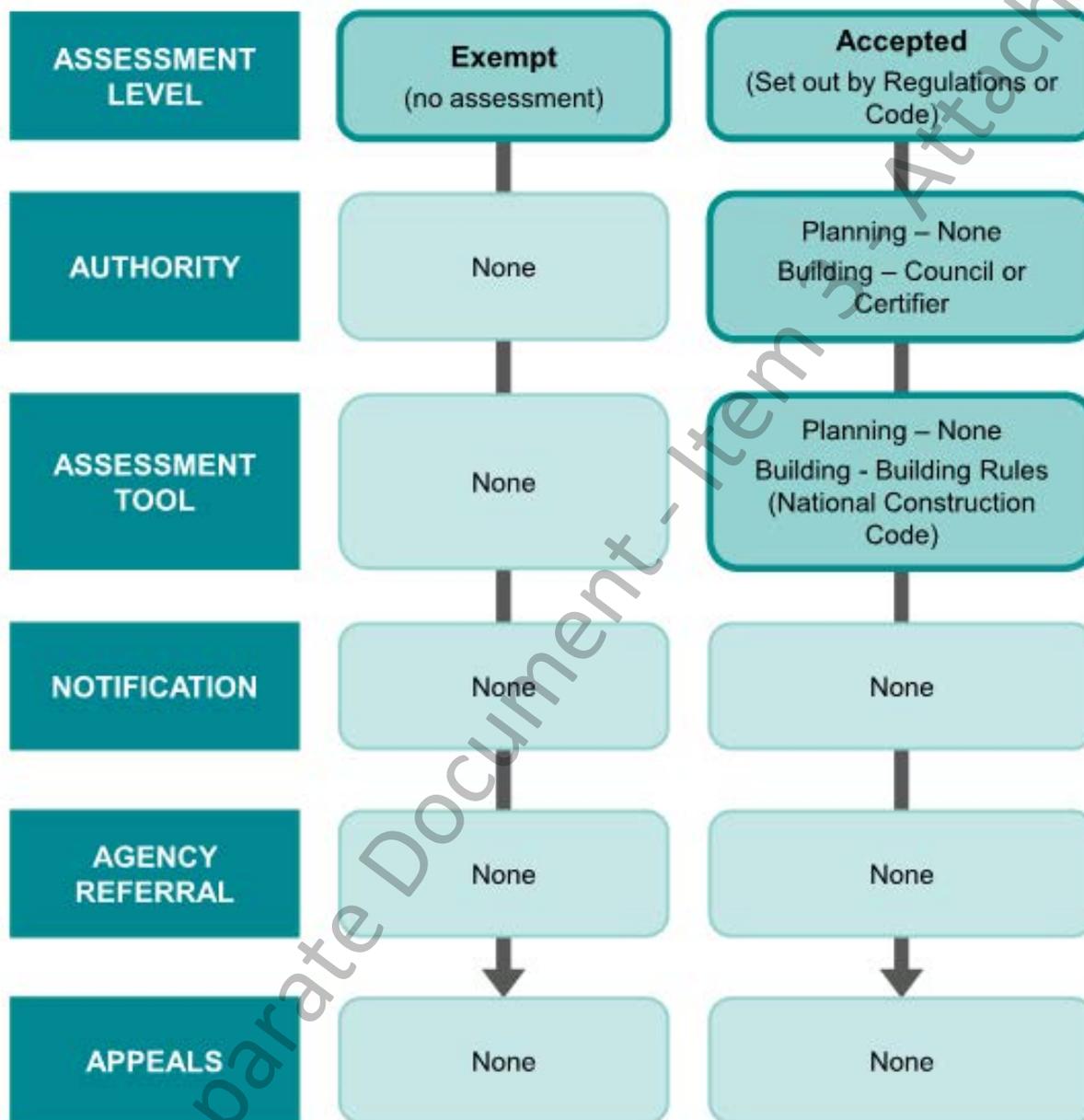


ASSESSMENT PATHWAYS



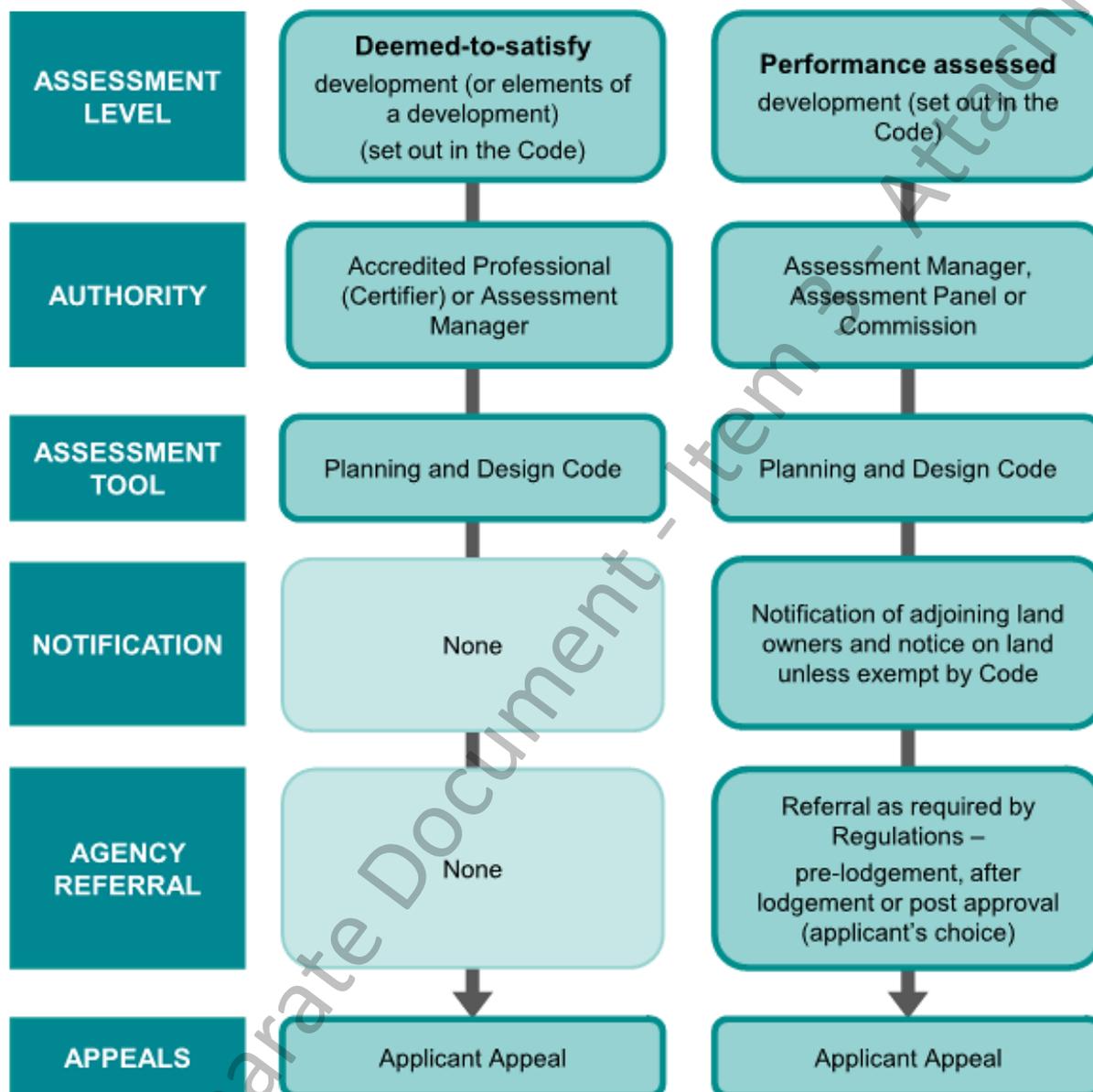
ASSESSMENT PATHWAYS

(1) Exempt and (2) Accepted development



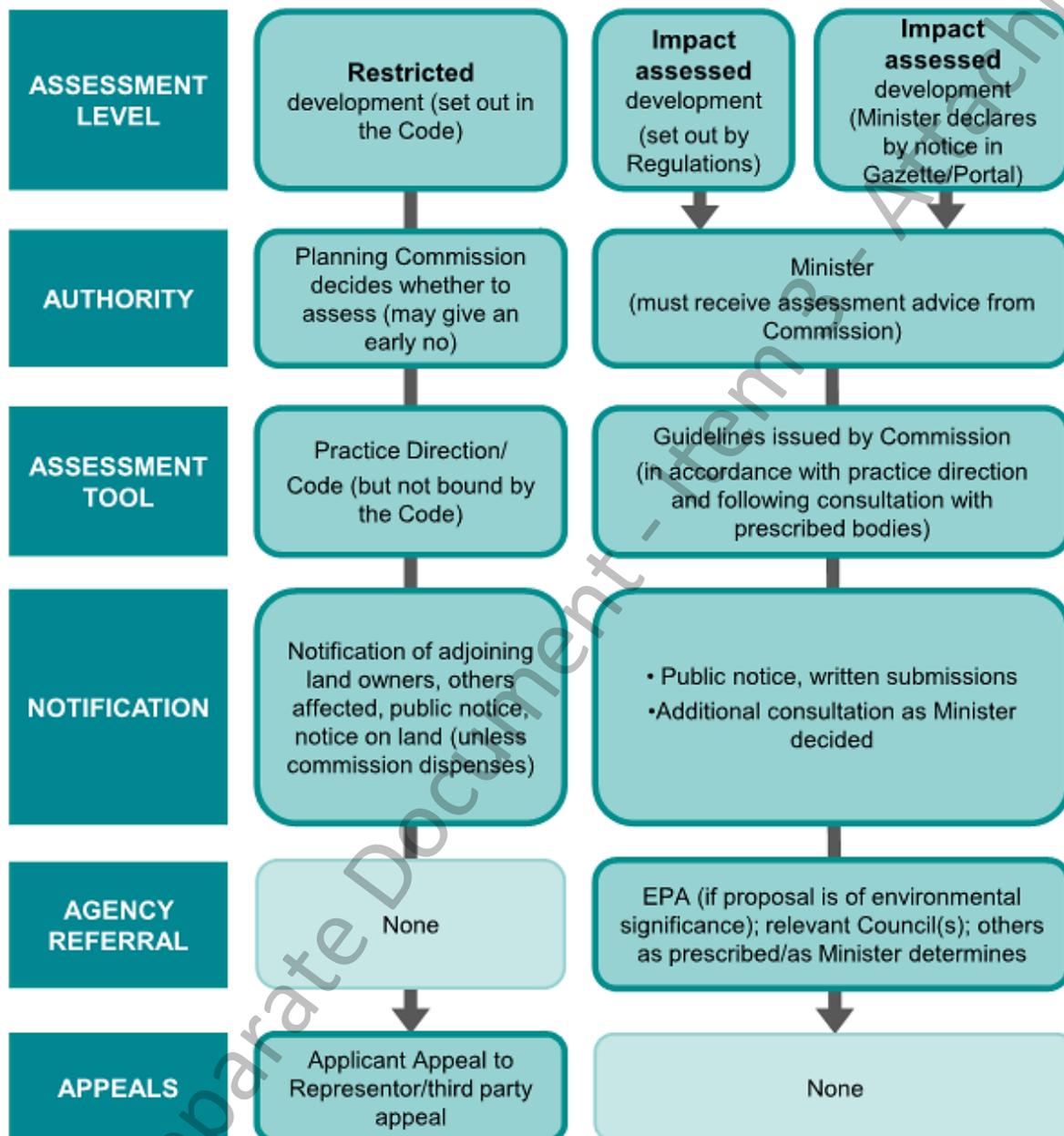
ASSESSMENT PATHWAYS

(3) Code-assessed development



ASSESSMENT PATHWAYS

(4) Impact assessed development



Review of the Planning, Development and Infrastructure Bill (September 2015) with State Government Position Paper (January 2015), Expert Panel on Planning Reform Report – The Planning System We Want’ (December 2014) and Administration comment.

Each idea is coloured as follows to reflect feedback from CEO Briefing on the Bill and administration review.

| |
|----------------------------|
| Idea has merit |
| Unsure without more detail |
| Unconvinced of merit |

| Establish a State Planning Commission (Reform 1) | | | |
|--|--|--|--|
| State Mar 15 | Bill | Panel Ideas not in State Mar 15 | ACC Staff Comment Sep 15 |
| <p>‘The Government supports the reform in principle.’</p> <p>Will be the government’s principal planning advisory body.</p> <p>Will be an <i>expert not representative</i> body.</p> <p>Membership suggests a mix of people with the highest standing and a mix of skills and expertise in law, planning or design, economics, policy or environmental management.</p> <p>Has delegated decision-making powers.</p> <p>Drives the delivery of State priorities with a role in co-ordinating infrastructure.</p> <p>Acts transparently on evidence based policy principles.</p> | <p>Powers to establish as peak policy advice and answerable to Minister. Principal role is advisory. Empowered for significant assessment decisions.</p> | <p>Commission recommended to be authority for State Significant Development and assumes that the rest are Regional Panel matters or delegated.</p> | <p>Bill largely consistent with Panel’s (Dec 14) envisaged role for the Commission</p> <p><i>‘1.2 The State Planning Commission will <u>provide high-level advice to the minister and Cabinet on planning, provision of infrastructure and services, urban renewal and related issues.</u></i></p> <p><i>1.3 It will have a <u>primary role in advising the minister on planning policies and directions and in delivering state priorities.</u></i></p> <p><i>1.4 The <u>minister will maintain overall responsibility for the system with the support of the State Planning Commission.</u></i></p> <p><i>1.5 The State Planning Commission will have general responsibility for administering the planning system, including coordinating and overseeing engagement practices.’</i></p> <p>However, the Panel (Dec 14) also set out that one task is around <i>‘<u>developing policies such as the state planning and design code, and overseeing planning processes such as zoning changes’.</u></i></p> <p>Council could contend that the Panel’s role in ‘developing and overseeing zoning’ is about deciding whether such</p> |

| | | | |
|--|--|--|--|
| <p>Works to raise planning performance and system culture.</p> | <p>Membership</p> <p>Membership to include a mix of skills as per the State March 15. CE of DPTI an exofficio member. The Minister may appoint other persons relevant to the operation of the Commission.</p> | <p>Membership</p> <p>Recommended that government employees should not be members. Whether this precludes agency staff being members of Commission is unclear.</p> <p>Expertise suggested (but not expressly mentioned):</p> | <p>zoning is appropriate. Council could seek that the Bill is explicit in the powers of the Commission to make decisions that can't be overridden by the Minister eg:</p> <ul style="list-style-type: none"> € Seek for Commission (rather than Minister) to decide Regional plans (noting Bill empowers Minister to decide State planning policies based on advice from Commission) € Seek for Commission to establish the 'Planning and Design Code' and decide all amendments (after comment from the Minister) € Maintain the Bill allowing Ministerial Code amendments to be decided by the Minister (after public advice from the Commission) <p>Council could affirm an earlier position that the Commission be established first to prepare the Charter for Citizens Participation, lead roll-out of other reforms (in particular regional planning and the Planning and Design Code), as well as culture (see Attachment – reform implementation).</p> <p>Council's Feb 2015 submission suggested support could swing to objection if there is lack of accountability and transparency. This has now occurred.</p> <p>Membership</p> <p>The Bill's membership is consistent with the Panel, except in the Bill providing that the CE of DPTI be an ex officio member.</p> <p>Council could seek the CE not be a Commission member on basis of Expert Panel (Dec 14) <i>'For the State Planning Commission to garner public confidence, it will include members with expertise in planning-related topics, specified in legislation. They should not be government employees, representatives of any particular sector or be otherwise</i></p> |
|--|--|--|--|

| | | | |
|--|--|--|--|
| | <p>Transparency and Accountability</p> <p>Bill provides powers for Minister to make information confidential on advice of Commission.</p> | <ul style="list-style-type: none"> £ Development industry; £ Infrastructure or services; £ Social policy; £ Local government or public administration; £ Economics, commerce or finance. <p>Transparency and Accountability</p> <p>Interim report <i>'The commission should make its advice publicly available wherever possible'</i>.</p> <p>Whilst this was removed from the Dec 14 report, in talking about the Commission, the Panel's Dec 14 report sets out <i>'Issues this reform addresses ... a perceived lack of transparency in the rationale and information behind major decisions'</i></p> | <p><u>directly connected to the state government or its agencies.</u> <i>This will ensure members are, and are seen to be, independent arbiters of the planning system and that the commission's deliberations are not influenced by particular agency perspectives. Commission members will be appointed by the minister, who should be required to consult before taking recommendations to Cabinet.'</i></p> <p>This same Panel advice informs the Bill setting out that one person be in the area of 'local government, public administration or the law'. This could be an elected representative but not necessarily.</p> <p>Sydney is exploring a combined decision making model</p> <p>Transparency and Accountability</p> <p>Council could affirm the view of the Panel in its interim report that "The commission should make its advice publicly available wherever possible".</p> <p>Other</p> <p>No detail is provided about whether there will be peer review of the Commission's decisions.</p> <p>The Commission's role in practice directions and practice guidelines is of potential value to lead to consistent interpretation and application of the planning system.</p> |
|--|--|--|--|

| Create a Network of Regional Planning Boards (Reform 2) | | | |
|--|--|---------------------------------|---|
| State Mar 15 | Bill | Panel Ideas not in State Mar 15 | ACC Staff Comment Sep 15 |
| <p>'The Government supports this reform in part.'</p> <p>Regional Boards will not be formed in the metropolitan area at this time.</p> <p>Regional Boards will be piloted in country regions where there is support.</p> <p>"A conversation with council and communities about <u>how local government can be improved and reformed is needed</u>. Dialogue in relation to these issues has already commenced through the Premier's State-Local Government Forum."</p> <p>Consideration of wider legislative reforms will occur in 2016.</p> | <p>Regions (eg. Greater Adelaide) will be set up by the Governor on the advice of the Minister (after consulting Commission).</p> <p>Bill identifies that a Greater Adelaide region will be set up.</p> <p>Minister has power to create sub-regions without consent of parliament or imprimatur of Governor.</p> <p>Bill enables Minister to enter into planning agreement with Councils, agencies, state ministries and other entities, and if so, a planning board must be established</p> <p>Minister has power to establish boards if Council's do not.</p> <p>Boards can establish subsidiaries.</p> <p>The Bill proposes a change to the Public Sector Act that would require Agencies to align with State Planning boundaries</p> | | <p>Bill provides Minister power to create sub-regions with no advice from Commission or Councils. Council could seek for this power to reside with Commission, and for Commission to consult with Minister and Council's in exercising this power (emerging Greater Sydney model)</p> <p>The Bill provides for two or more Councils to enter into an agreement with the Minister to undertake functions under the Act through a partnership arrangement. The agreement may also be extended to other Ministers to include other functions (NRM etc). Funding and governance arrangements would be by negotiation to achieve flexibility.</p> <p>Discussion of other more flexible ways to address regional scale issues will be required with the Premier, relevant ministers and inner-metro councils.</p> |

| Legislate to create a Charter for Citizens Participation (Reform 3) | | | |
|---|--|--|--|
| State Mar 15 | Bill | Panel Ideas not in State Mar 15 | ACC Staff Comment Sep 15 |
| <p>'The Government supports this reform in principle.'</p> <p>Legislation will provide for development of the charter and how it should apply to councils and Government agencies.</p> <p>Indication is that major community input would occur at the strategy and policy formulation stage, not at assessment stage.</p> <p>Acts as a guide to authorities – not as a legally enforceable instrument.</p> <p>Planning authorities will be required to determine and implement detailed consultation mechanisms to achieve the expectations of the charter.</p> <p>Regular review is envisaged.</p> <p>Clear minimum standards will be set out.</p> | <p>The Community Engagement Charter is the responsibility of the Minister, not the Commission. The Commission will act at the direction of the Minister.</p> <p>Major community input will be limited to the strategy and policy formulation stage. Excludes development assessment.</p> <p>Will act as a guide to authorities, however will be specific in some details on how to achieve satisfactory alternative levels of engagement.</p> <p>The Commission will have the power to direct an authority to comply with the Charter if it is of the opinion that the authority has failed in its duty.</p> <p>No details provided on methods of consultation to prepare the Charter.</p> | <p>Unsure if the guiding principles as recommended in the Panel's final report will be taken on board by government when developing the Charter.</p> <p>Details of the minimum and consistent requirements for consultation on straightforward planning processes and specify matters for which consultation is not required are unknown.</p> <p>Use of modern engagement techniques such as digital media were suggested.</p> | <p>Bill's principles for engagement around strategy and policy cover some principles suggested by Donna Ferretti. Reference to the following could be increased or included: inclusiveness, transparency, respect, review, and evaluation.</p> <p>As Bill sets out that Charter does not apply to assessment, Council could set out that:</p> <ul style="list-style-type: none"> £ Donna's suggestion that proponents of more significant development conduct engagement be included £ the preparation of the Code is important to be undertaken based on the Charter for Participation and for Council to be involved in early <p>The extent to which development applications are notified is closely linked to the development of the Planning and Design Code.</p> |

| Establish a single state-wide menu of planning rules (Reform 7) | | | |
|---|---|--|---|
| State Mar 15 | Bill | Panel Ideas not in State Mar 15 | ACC Staff Comment Sep 15 |
| <p>'The Government supports this reform.'</p> <p>'Menu' of zoning rules to apply across the State.</p> <p>Reduces unnecessary variation, inconsistency and complexity.</p> <p>Emphasis on built form and high quality design.</p> <p>Form-based approaches where appropriate.</p> <p>Includes design standards and guidelines as appropriate and capable of linking to third party documents as appropriate.</p> <p>Includes landscaping requirements.</p> <p>Linked to the on-line e-planning system.</p> <p>To be developed with strong input from councils, communities and industry.</p> <p>Provides for local variation, subject to clear parameters and justification.</p> <p>Code should be developed and adopted in a staged fashion. Staging to be resolved by the Minister as advised by the Commission, in discussion with councils and agencies, over time.</p> <p>Initial version of the planning code, design standards and guidelines to be prepared following passage of the legislation.</p> | <p>The Minister is responsible for preparing and maintaining the Planning and Design Code – not the Commission.</p> <p>The Menu will apply across the State.</p> <p>Seeks to minimise variation, inconsistency and complexity.</p> <p>Includes Planning and Design Code, Design Standards, manuals and practice directions and practice guidelines as appropriate and capable of linking to third party documents as appropriate.</p> <p>It will be customisable for individual regions (subject to control by the Minister or Commission).</p> <p>May provide for guidance in the design of the public realm.</p> <p>Councils may make amendments to any of the aforementioned planning instruments with the approval of the Minister.</p> | <p>Commission to develop and maintain Code at direction of Minister with a legislated requirement for consultation (7.5) with Councils, planning boards and agencies. Appears that the Minister will drive creation of the code initially.</p> <p>Suggested that the Code would be completely reviewed every five years, however out-of-cycle reviews could occur if required. No mention of review cycle is made in the government response.</p> <p>A review of definitions and change-of-use principles will be necessary for a form-based approach.</p> | <p>The Bill relies on the Code which is yet to be seen. The Code also is intended to be used for many of the streams of development, hence, preparation of the Code using processes based on the participation charter is critical</p> <p>Reference to 'desired character' in the part of the Act about advertisements should also be added to the part of the Act that provides head powers for the Code so that the intent of the Code to have desired character statements – a hallmark of good planning – is explicit</p> <p>The Bill does not mandate Code co-development with other stakeholders however DPTI Technical Guide indicates collaboration will occur. Collaboration in development with Council is required to ensure that the rules are adapted to the high density form and high value character areas.</p> <p>Form-based approach supported, but place sensitive approach emphasised and unclear how state code will achieve this.</p> <p>Emphasises the need for the Code to be prepared thoroughly and with strong feedback loops to reflect lessons from best practice.</p> |

| Place heritage on new foundations (Reform 8) | | | |
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| State Mar 15 | Bill | Panel Ideas not in State Mar 15 | ACC Staff Comment Sep 15 |
| <p>'The Government supports this reform in principle and will undertake further investigation.'</p> <p>Step 1:</p> <p>Merge State and local heritage listing processes into a single framework.</p> <p>The new legislation will:</p> <ul style="list-style-type: none"> - provide a single set of criteria for place-based heritage assessment. - replace existing heritage terminology with a new term (to be determined during the drafting process) and a refreshed set of value-based criteria - set out a process to migrate existing State and local listings for inclusion on the new register with refinements as identified - allow land owners to contract accredited heritage professionals to provide actionable advice on the management of their properties - enable a code of practice that sets out how listed items/places may be developed, altered or adaptively reused. - substitute contributory items and historic conservation zones and areas with new mechanisms. | <p>The Bill maintains the power of the current Act for the 'Planning and Design Code' to designate Local Heritage places.</p> <p>The Minister may amend the Code in order to include a local or State Heritage Place, or re-designate an existing local or state place to a higher or lower grade or remove the place entirely.</p> | <p>Recommends a single integrated statutory body to replace multiple heritage bodies – located under the planning portfolio.</p> <p>Discounts on property based taxes for heritage listed property owners who enter into heritage management agreements. This is not identified specifically in the government response, but it can be surmised that it is included within 'other options' for supporting heritage.</p> <p>Aboriginal heritage would be better integrated with the planning system.</p> | <p>The Bill provides for the ERD Court to have a right of review over local heritage designations in the 'Planning and Design Code'.</p> <p>This provides the same legal appeal rights to an owner of local heritage place as is available to owner of a property listed as a as State Heritage Place.</p> <p>It is unclear if this would apply to existing listings transferred to the Code and/or new proposed listings. Suggest this clause be deleted until time of broader review of heritage.</p> <p>The process of migrating existing listings has not been identified.</p> <p>Major changes have been deferred, such as:</p> <ul style="list-style-type: none"> £ A single heritage authority, process, criteria, register £ A single set of criteria for place-based assessment £ The creation of accredited heritage professionals <p>Generally support proposals to integrate legislation and listing and consolidate heritage bodies into one independent statutory body. Will need to look closely at any code of practice allowing changes to listed properties.</p> <p>Seek Burra Charter recognition and reinstatement of State-wide heritage advisory service. Possibility that discount on property based tax will be linked to heritage agreement.</p> |

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| <p>Step 2:</p> <p>Prepare a Discussion Paper on what is meant by 'heritage' – from places to cultural policy. The paper will discuss:</p> <ul style="list-style-type: none">- the tangible and intangible nature of 'heritage'- how heritage should align with cultural policies, practices and institutions.- options for a heritage or cultural lottery and endowment fund.- financial subsidies and other options for supporting place based heritage. | | | |
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| Take next steps towards professional assessment (Reform 11) | | | |
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| State Mar 15 | Bill | Panel Ideas not in State approach | AGC Staff Comment Sep 15 |
| <p>'The Government supports this reform in part and will undertake further investigation.'</p> <p>Elected members will no longer be part of Development Assessment Panels.</p> <p>Two step approach.</p> <p>Members of assessment bodies should be accredited professionals with expertise relevant to development assessment such as planning, engineering, environmental science, architecture and urban design.</p> <p>A system of professional accreditation, including regular training and auditing, should be established.</p> <p>Private certification should be expanded to include a wider range of standard assessment functions, subject to stricter auditing and oversight.</p> <p>Assessment bodies should be able to co-opt specialist members as necessary.</p> <p>Accreditation, training and auditing will be established in co-operation with councils and professional groups.</p> <p>The rights of elected members to advocate for their communities in relation to any matters should be protected.</p> | <p>Accredited professionals created including Panel members, Assessment Managers, the Commission, etc.</p> <p>Does not include elected or parliamentary decision makers.</p> <p>The accreditation scheme will be set up by the Governor on the advice of the Minister together with the Commissioner for Consumer Affairs.</p> | <p>It is envisaged that panels will only consider contestable matters within the performance-based assessment pathway.</p> <p>This has not been confirmed in the government response.</p> <p>The Commission would manage the registration, accreditation and audit of professionals.</p> <p>Unclear from the government response on which body will govern accreditation, selection and auditing.</p> | <p>Rationale to alter the existing DAP system not based on robust data f review. Question Panel view (see below) that 'development assessment is now a technical discipline that should be undertaken by professionals at arms' length from elected bodies'.</p> <p>Legitimate skill-set in making merit based assessment decisions is local knowledge.</p> <p>Panel (December 14) '<i>Communities and investors need to be confident that projects are assessed impartially and dispassionately. The panel suggests that South Australia's current hybrid arrangements—involving a mix of private and public officials, and elected and non-elected decision-makers—fall short of achieving this and have now reached their use-by date. Assessment panels were established to achieve these impartial outcomes. However, it has become clear that the panels should be more independent and professional. There is no longer a compelling case for elected councillors to have roles in assessment decision-making; rather, <u>development assessment is now a technical discipline that should be undertaken by professionals at arm's length from elected bodies.</u> The assessment process must be professional, regional and fully independent. In addition, users should have the choice to contract accredited private-sector professionals to certify technical matters if it saves them time and costs.'</i></p> |

| Regionalisation of Assessment Panels (Reform 2) | | | |
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| State Mar 15 | Bill | Panel Ideas not in State approach | ACC Staff Comment Sep 15 |
| <p>'The Government supports this reform in part and will undertake further investigation.'</p> <p>Existing council assessment panels continue for an interim period.</p> <p>The planning commission (or like body) establish its own regional and/or specialist panels for matters currently handled by the Development Assessment Commission.</p> <p>Councils be encouraged to establish regional panels, with the ability to negotiate for matters currently handled centrally to be delegated.</p> <p>Further roll-out of regional panels should be dependent upon the outcomes of the wider regionalisation agenda.</p> | <p>The Minister has powers to establish.</p> <p>The Minister can replace a Council appointed panel due to poor performance and after consultation with the Commission.</p> | <p>There would be flexibility for regions to determine their own arrangements, which may include more than one Panel operating within a region.</p> <p>An assessment coordinator would manage assessment processes for each panel.</p> <p>Council assessment managers would present recommendations on proposals within their Council area.</p> <p>Applications would continue to be lodged with and processed by Councils, including the preparation of recommendation reports.</p> | <p>Regional assessment potential models in Bill along the lines of the Regional Panel. Council can continue its own panel or, with the Minister's approval, potentially establish another panel with inner councils</p> <p>Inclusion of Adelaide City in a Regional DAP at odds with City of Perth and City of Sydney which are separate assessment bodies. CBD/inner city may be best served by a specialist body.</p> <p>Questions:</p> <ul style="list-style-type: none"> £ Unclear how many current Schedule 10 matters would be decided by regional panels £ Unclear how panel business will be managed. |

| Engage Parliament in the development of planning policy (Reform 4) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE MAR 15 | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform.'</p> <p>Explore options for early engagement on key categories of planning instruments with the parliamentary committee.</p> <p>Investigate giving parliament the ability to scrutinise planning instruments instead of DPAs.</p> <p>Review the parliamentary committee structure to better align with the new legislation.</p> | <p>Early engagement is enabled.</p> <p>Parliament will be involved in considering the creation, alteration and abolition of Planning Regions (but not sub-regions), Environment and Food Production Areas and the various planning instruments.</p> <p>The ERD Committee will consider designated instruments including a state planning policy, regional plan, the Planning and Design Code or a design standard. These instruments need to be approved by Parliament.</p> | <p>None.</p> | <p>Need to streamline local policy amendments.</p> <p>Support this proposal as it introduces parliamentary scrutiny and approval early, subject to details of the parliamentary committee structure and process of review.</p> <p>The Charter should also be subject to this level of consideration and approval.</p> |

| Create in legislation a new framework for State directions (Reform 5) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN MAR 15 | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform.'</p> <p>The Government will create State directions that are short, succinct and provide certainty.</p> <p>They will contain clear and measurable targets that are seen to have longevity.</p> <p>Seek ways for Parliament involvement in the preparation of directions, such as through upfront engagement with the relevant parliamentary committee.</p> <p>The planning commission (or like body) will have a role in providing expert advice to the Minister on draft State directions.</p> <p>Generally, State directions will be mandatory.</p> <p>The Government proposes to provide for the urban growth boundary of metropolitan Adelaide to be treated as a special class of State direction subject to statutory criteria, evaluation by an independent body and requiring parliamentary consent for amendment.</p> | <p>The Minister alone has the responsibility of preparing state planning policies. The Minister must seek the advice of the Commission but is not bound by that advice.</p> <p>Public consultation will be in accordance with the Charter.</p> <p>The ERD Committee will consider designated instruments including state planning policy. These instruments require the approval of Parliament.</p> | <p>State directions considered to remove the need for Councils to undertake Development Plan f strategic directions reviews under Section 30 of the Development Act.</p> | <p>Advice from Commission to Minister on State directions should be public.</p> <p>Involvement of Council will be subject to the Charter, but is not outlined in the legislation.</p> |

| Reshape planning documents on a regional basis (Reform 6) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE MAR 15 | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform in principle.'</p> <p>Initially confined to planning and infrastructure (i.e. excluding education, primary industries, health and so on).</p> <p>Further discussion about integrating other forms of strategic plans will be explored.</p> <p>Will replace the Planning Strategy (over time).</p> <p>Electronic development plans will replace existing documents.</p> | <p>Regional approach to planning documents is adopted through 10 year planning agreements. There is no ability for an individual party to opt out once entering into an agreement.</p> <p>Planning Agreements can be entered into with a number of different parties, does not need to include a Council.</p> <p>Regional Plans must be prepared by the Minister or a regional board (in line with the planning agreement).</p> <p>The form and content of the regional plans is not known beyond requiring various plans; (structure, master and concept plans).</p> <p>Other information to guide regional planning will be guided by Practice Directions issued by the Commission.</p> | <p>Councils and Regional Boards would share responsibility for regional schemes.</p> <p>There would be a single scheme for the metropolitan area to be developed by the Commission and Boards.</p> <p>Councils would retain an ability to propose changes to a regional scheme to reflect local needs.</p> <p>Local character would be reflected through the use of tailored local policies.</p> | <p>The Bill provides opportunity for Council enter into long term planning arrangements with the Minister, either by itself or in collaboration with others.</p> <p>Further investigation is needed around the potential role of a council within a regional planning agreement (including if the Minister can impose a board without needing any approval from local government).</p> <p>Challenging to consolidate existing plans applying to different areas. Details on how these documents will be developed and how individual Development Plans will be integrated are not known.</p> <p>Unique nature of City needs to be recognised, noting the Bill's principles support recognition of local character.</p> |

| Make changing plans easy, quick and transparent (Reform 9) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE MAR 15 | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform in part.'</p> <p>Statements of intent should be short initiation documents.</p> <p>The Minister must remain the primary decision-maker for any changes to development plans, including zoning changes. Although this will be on the advice of the planning commission (or like body), the decision should rest with the Minister.</p> <p>There should be the ability to approve a rezoning program.</p> <p>Private land owners, Government agencies and infrastructure providers should be able to initiate a rezoning.</p> <p>Interim operation criteria should be clarified by policy rather than in legislation.</p> <p>The Government will also consider further models for area-wide zoning changes based on approval of a master plan or a development site or area, building upon a precinct planning approach (see Reform 16).</p> | <p>Powers for Minister, Commission and others including Councils to change higher level planning documents (regional plans, etc.) provided the Minister approves.</p> <p>Third parties (including owners, developers) may seek to amend the Planning and Design Code or a design standard as it relates to land.</p> <p>Third parties with the approval of the Minister may prepare the documents, undertake community consultation and submit the report for Ministerial approval.</p> | <p>A statement of intent would be required to include a community engagement plan, consistent with the Charter of Citizen Participation.</p> <p>Recommends that Regional Boards approve Statements of Intent but Commission approves actual amendments. Minister would retain a call-in power that is sparingly used. Government response indicates that the Minister will retain the power to approve amendments.</p> <p>The Commission would make guidelines that govern when and how zoning changes may be sought – particularly to manage potential conflict of interest.</p> <p>Panel says the ability to use interim control should not be tightened until "there has been substantial roll-out of the state planning & design code".</p> <p>All regional planning schemes will be based on the state planning and design code, so that changes will be rarely required.</p> <p>Regional planning schemes will include both strategic and zoning plans, so there will be no need for strategic directions reports.</p> | <p>Insufficient clarity re private initiated matters and Council's role in safeguarding the public interest.</p> <p>The Bill maintains interim control powers so any tightening may need to come from the Commission via guidelines.</p> <p>Further investigation occurring regarding ministerial powers for amending the Code without involvement of councils (Section 71 & 72).</p> <p>The Bill continues the current approach sign-offs on policy amendments or address the current delays in the amendment process.</p> |

| Adopt clear, simple development pathways (Reform 10) | | | |
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| Proposes four assessment streams: exempt, standard, performance–assessment and prohibited (first and last involve no assessment as such). They will replace complying, merit and non–complying streams of current system | | | |
| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE MAR 15 | ACC STAFF COMMENT SEP 15 |
| <p>‘The Government supports this reform in part.’</p> <p>New, simple assessment pathways – including standard (‘as of right’) and performance–based assessment.</p> <p>The ability for an ‘outline’ consent process to enable staged and negotiated assessment, and incorporate design review where appropriate and link to environmental assessment processes under other statutes.</p> <p>The need for a significant increase in the proportion of development not requiring assessment or requiring only standard assessment.</p> <p>Linking notification rights directly to assessment pathways and the cost–effective use of on–site notices as an alternative to postal notification in urban areas.</p> <p>The opportunity for revised environment impact assessment to be incorporated as part of the performance–based pathway.</p> <p>Incorporating other statutory consents (e.g. site contamination clearance), where appropriate, into a single assessment process (see also Reform 19).</p> <p>Further consideration regarding the creation of a ‘prohibited’ use category will occur whilst the drafting process is under way.</p> | <p>New assessment pathways are set up.</p> <p>Outline consent process is set up enabling staged and negotiated assessment.</p> <p>Code will determine distribution of development into ‘fast track’ streams of <i>Accepted Development</i> and <i>Code Assessed Development</i>’.</p> <p>Reduced scope for relevant assessing authorities to consider merits of proposals.</p> <p>The intent for reduced public notification due to smaller area of notification and less applications falling into the <i>Performance Assessed and Impact Assessed</i>’ streams which mandates public notification.</p> <p>Introduces deemed approvals.</p> <p>Increases options for an applicant for timing of statutory referrals.</p> <p>Retains Design Review as an option subject to the Planning and Design Code.</p> | <p>Proposals regarding consultation on assessment matters (previously reform idea 14) have also been incorporated in this recommendation:</p> <p>“...councils will provide an applicant with a template ‘assessment’ notice to be attached to the exterior of the relevant property. At the same time, information about the proposed development will be published on a searchable, public on–line portal, with citizens able to subscribe for updates.”</p> <p>“Third–party review rights should be limited to cases involving a planning judgement and based on the level at which a project is assessed.”</p> <p>The prohibited category of development will be controlled by the Commission. The government response does not support the introduction of this category immediately and suggest further consideration.</p> | <p>Much of the detail for this reform area will be laid out in future documents, principally the Planning and Design Code.</p> <p>The intent is to ‘stream’ the majority of development into the Accepted and Code–assessed streams whereby none or limited assessment will be required. This is dependent on the content of the Code and the suitability in the City context is unknown.</p> <p>Important that the State collaborates with Local Government on the development of the Code – ensuring that low impact development is fast–tracked and complex and high–impact development is adequately scrutinised.</p> <p>Further investigation is needed to understand the implications in the City context for a number of the proposed changes to the application processes (eg. outline consents, deemed approvals and statutory referrals).</p> |

| Clarify the approval pathways for projects of state significance (Reform 13) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government notes this reform and will undertake further investigation.'</p> <p>The State should retain a power to call in major projects, with the option for advice from the planning commission (or like body) in specified circumstances.</p> <p>The evaluation of major projects should use a sliding scale that factors in benefits, risks and impact.</p> <p>There is an opportunity to align state environmental impact assessment processes with federal laws – including potential for strategic impact assessment.</p> <p>The proposed 'performance-based assessment' pathway will help to clarify the triggers for an environment impact assessment.</p> <p>Future Investigations on the Expert Panel's recommendations:</p> <ul style="list-style-type: none"> - Whether the benefits of allowing judicial review outweigh any perceived disadvantages. - Better link mining approvals to approvals for mine-related infrastructure requiring planning consent. <p>Consider as a solution – a single stand-alone 'Major Projects Act' that brings together the relevant portfolio interests and provides a single doorway to Government for complex projects.</p> | <p>Minister is the authority for <i>Impact Assessed Development</i>. This stream of development is likely to encompass developments of State Significance.</p> <p>The types of development that will fall into this category will be determined by the future Planning and Design Code or can be declared so by the Minister.</p> <p>Impact Assessed Development proposals must be accompanied by an EIS (Environmental Impact Statement).</p> <p>The Commission must publish a Practice Direction on the details required in an EIS relevant to the type, scale and impact of the proposal.</p> <p>An applicant may prepare an EIS or the Minister can nominate an independent person.</p> <p>The EIS must be publically available and is referred to Council, or EPA or other affected agency for comment only. The Minister has discretion on whether the applicant must do further consultation.</p> | <p>The Minister (having consulted with the Commission prior to declaring a project to be of state significance) must publish reasons for a declaration.</p> <p>A specially constituted panel of experts under the Commission would assess the projects, with the specific expertise determined based on the nature of the project.</p> <p>Process should be transparent and "clearly measurable".</p> <p>Consultation on major projects would need to accord with the Charter of Citizen Participation.</p> <p>Differentiates between state significance matters and those matters requiring environmental impact assessment which can be either state or regional significance. Not all state significance will require EIA.</p> | <p>Need to monitor the development of the Planning and Design Code around what it might designate as 'Impact assessed' development.</p> |

| Makes the appeals process more accessible and accountable (Reform 14) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform in principle.'</p> <p>Desktop review of a planning decision as an option for applicants.</p> <p>Will explore the possibility of enabling re-hearing by an appropriate person or body.</p> <p>Will explore the potential to integrate the Environment, Resources and Development Court with the South Australian Civil and Administrative Tribunal.</p> <p>Support the suggestion of the Panel that discretion to award costs should be wider (as it is for the South Australian Civil and Administrative Tribunal) to address commercially motivated appeals.</p> | <p>Powers provide additional review options, including for judicial review of major developments.</p> <p>Where the decision of an Assessment Manager is appealed – review is made by the supervising Assessment Panel in the first instance, with the Panel's decision appealable to the ERD Court.</p> | <p>None.</p> | <p>Consequences of the potential for review of an Assessment Manager's decision by the relevant assessment panel warrants further consideration.</p> |

| Streamline assessment for essential infrastructure (Reform 13) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform in principle.'</p> <p>Link infrastructure planning with regional strategic plans, allowing for infrastructure corridors and growth area infrastructure requirements to be identified as early as possible.</p> <p>Provide for streamlined assessment of essential infrastructure, with clear criteria and subject to control by the planning commission (or like body).</p> <p>Ensure essential infrastructure meets community expectations for high quality design.</p> <p>Improve the assessment process for public infrastructure and development undertaken by Government agencies.</p> <p>This reform closely links with the infrastructure funding framework proposed by in Reform 17.</p> <p>Agree that assessment pathways should generally be determined by the class of development (rather than the applicant), but is cautious about removing the Crown development pathway altogether so will investigate this further.</p> | <p>The Minister will continue to be the authority for essential infrastructure through a <i>crown development pathway</i>. Development over \$10m will require public consultation.</p> <p>Code can nominate 'infrastructure reserve', and subject to meeting design standard, no planning consent is needed.</p> <p>Councils affected have 4 weeks to review and comment.</p> <p>Definition of "Essential infrastructure" is very broad.</p> | <p>Separate assessment pathway for essential infrastructure. Categories of essential infrastructure to be determined by regulation.</p> <p>Approval of essential infrastructure will be linked to strategic planning and impact assessment as required. Consultation in line with Charter of Citizen Participation would be early in the planning stages.</p> <p>Commission to determine assessment process for essential infrastructure. Should be confined to design and engineering issues.</p> <p>Exemption classes for infrastructure should be reviewed as part of the state planning and design code.</p> <p>The concept of a special category for Crown development should be removed as a consequence of these changes.</p> | <p>Concern about apparent disconnect with plans.</p> <p>Only the Minister has the ability to establish a Design Standard. Council can only seek to amend an existing Design Standard.</p> <p>The relationship is unclear of Council's existing public realm design standards (Adelaide Design Manual) and implications for Council in managing the public space.</p> <p>Unclear the impact of designated infrastructure reserves on efficient and co-ordinated delivery of infrastructure given exemption from planning consent processes.</p> |

| Settle and deliver an infrastructure funding framework (Reform 17) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform.'</p> <p>Integrate infrastructure legislation with the planning legislation.</p> <p>It is intended that the legislation will seek to spread costs for infrastructure fairly over time using innovative funding techniques including infrastructure levies and infrastructure bonds.</p> <p>Provide a standard framework for augmentation funding.</p> <p>Links with the State budget process, taxation and finance frameworks.</p> <p>Is integrated with existing pricing regulation of essential services.</p> | <p>Bill provides for 'infrastructure delivery schemes' introduced by Minister on a land area in order to fund infrastructure.</p> <p>Only the Minister may initiate an infrastructure scheme however the Minister can be requested to do so by any person or body.</p> <p>Minister may impose scheme on an area and may impose funding arrangements (subject to consultation with Council but is specified at the Minister's discretion).</p> <p>Scheme envisages agreements to fund infrastructure, with one method being a levy on land. Scheme can also exempt imposition of Council rates.</p> <p>Scheme contains power for Council to contribute funds and Council must impose a rateable charge on the land area to reimburse itself.</p> <p>Bill provides powers for Council to be reimbursed for costs of administering the scheme (detail to be in regulations and the LGA consulted).</p> <p>Retains open space contribution scheme generally as it exists now but with broader range of uses that funds can be expended.</p> | <p>Legislation to provide mechanisms to identify infrastructure needs and triggers.</p> <p>Oversight of any levies must be independent and directly linked to the infrastructure required.</p> <p>Clear infrastructure design standards be developed to prevent gold-plating and enable alignment with planning and urban design outcomes through practices such as common trenching that minimise disruption.</p> | <p>No mechanism for Council(s) to be consulted early at the 'draft outline' stage.</p> <p>The scope to negotiate 'appropriate' sharing of costs for essential infrastructure is unknown (subject to detail contained in the regulations).</p> |

| Provide new and effective enforcement options (Reform 15) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform in part.'</p> <p>There should be a range of easy-to-use administrative tools to address non-compliance such as enforceable undertakings and improvement notices.</p> <p>There should be a range of alternatives to monetary penalties drawn from best practice in other regulatory regimes, such as adverse publicity orders.</p> <p>Monetary penalties should include a sliding scale, including regard for profits.</p> <p>Civil damages should be available as an alternative to criminal sanctions.</p> <p>The State should provide greater guidance for targeted system-wide enforcement and improve linkages to occupational licensing laws.</p> <p>Will consider the merits of an enforceable duty of care on builders and professionals whose actions may lead to non-compliance.</p> <p>Will look closely at models in consumer, workplace safety and road safety laws that could be adapted to the planning system.</p> <p>Will investigate expiation notices further as part of the legislative drafting process.</p> | <p>Powers provide higher penalties and new sanction.</p> <p>Offences which include an expiation fee in the current Act no longer do so in the Bill.</p> <p>The Bill introduces the option for a person who has contravened the Bill to provide a written undertaking to the Chief Executive. This will bind them to rectify the situation in agreement with the authority and avoid prosecution.</p> | <p>Create administrative sanctions to simplify enforcement of minor or simple matters – Government response is positive but does not include expiations at this time.</p> <p>Require assessment conditions to be aligned with enforcement and more accessible through an online planning portal.</p> <p>Allow for the Commission to issue enforcement guidelines to help coordinate enforcement activities more effectively.</p> | <p>The proceedings in relation to enforcement, both civil and criminal, are, for the most part, the same in the Bill as they are in the Development Act.</p> <p>Enforcement and compliance responsibilities should sit with the decision making authority and not default to councils if they have not made the decision.</p> <p>Further investigation required into the implications of new power for builders to enter neighbouring land for the purpose of construction and Council's role.</p> |

| Reinforce precinct-based urban renewal (Reform 16) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform.'</p> <p>Opening precinct development opportunities to private sector parties on an application basis.</p> <p>Creating more scalable precinct development processes to suit small-scale redevelopment opportunities.</p> <p>Simplifying more cumbersome aspects of the currently legislated process.</p> <p>Streetscape guidelines and incentive schemes to leverage public benefits from private investment.</p> <p>Examination of expansion of incentives arrangements such as building upgrade, finance and streetscape contribution schemes and the potential for a roll-out of an 'improvement district' model.</p> <p>Revisit the question of the vesting of assets and infrastructure in public authorities at the conclusion of a precinct project.</p> <p>Will consider if there is scope to enable master plans for a development site or area to carry greater development entitlements once approved.</p> | <p>Separate Act maintained. Bill provides powers for regional authorities to have subsidiaries.</p> | <p>Expand precinct planning to include greenfields – <i>however there is no apparent constraint on this in current Act.</i></p> <p>Give statutory head powers to the Commission to approve governance, engagement and precinct master plans.</p> <p>Legislate for precinct governance bodies to galvanise business and community involvement in urban renewal, similar to 'improvement districts'.</p> <p>"While it is beyond the scope of this review, it is recommended that the government consider tax and financial reforms that would support urban renewal in the longer term."</p> | <p>The Bill does not address any concerns established in past Council decisions.</p> |

| Integrate open spaces and the public realm into the planning system (Reform 18) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform in principle and will undertake further investigation.'</p> <p>Comprehensive review of the existing open space scheme, including broadening it to cover streetscapes, urban vegetation and other forms of green infrastructure.</p> <p>Fragmented laws dealing with the public realm, trees, parks and streetscapes need to be rationalised and modernised.</p> <p>Public space planning should be an integral part of regional strategic plans.</p> <p>Consideration should be given to 'green infrastructure' approaches with a focus on improved management of urban vegetation and significant trees</p> <p>Financial contributions should be better related to demand for public space, including improvements to existing public realm assets.</p> <p>A review of the use of open space levy funds to ensure that funds are spent in areas where the highest need exists will be undertaken.</p> <p>Further investigation is required to determine ongoing responsibility and maintenance needs of open space once developed</p> | <p>Provisions in the existing Act retained.</p> <p>Likely to be addressed in a future bill or amendment.</p> | <p>Embed open space and public realm planning in all relevant processes in the new planning system.</p> <p>Regional boards should ensure that there is a strategic plan for the provision of open space in each regional planning scheme.</p> <p>Review the means by which the open space levy is raised and spent, within the context of the infrastructure planning and funding review described in Reform 17.</p> <p>"Landowners should be able to invest directly in public realm improvements in their local neighbourhoods instead of paying a levy. This should be examined closely as part of the review of the open space levy."</p> <p>"Regional planning schemes should be required to include open space planning, subject to state directions and design guidelines to be included in the state planning and design code."</p> | <p>Still under consideration.</p> |

| Aim for seamless legislative interface (Reform 19) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform in principle and will undertake further investigation.'</p> <p>The statute books should be audited to identify and remove duplication of planning processes and to remove unnecessary referrals.</p> <p>Many licences and permits under other laws could be dealt with through effective policy or as part of the development assessment process.</p> <p>Referrals should be subject to tighter criteria, timeframes and processes.</p> <p>E-planning should be used to drive more effective referrals.</p> <p>Infrastructure to be brought under this legislation.</p> <p>Further consideration will be given to reviewing environment and land laws in due course at a later time.</p> | <p>Combined Assessment Panels (consisting of experts in areas besides planning – such as infrastructure, mining, etc.) which can issue multiple approvals, permits, licenses for developments.</p> <p>Amends process for dealing with development within the public realm – the Bill seeks consequential amendments to delete existing processes under the Local Govt. Act and consider concepts in the planning process (noting that how & who assess proposals are subject to further detail yet to be provided, but it may not necessarily involve Council).</p> | <p>Assessment panels should be empowered to issue minor statutory approvals or permits, as delegates of a home agency (reversing the traditional relationship).</p> <p>The use of referrals should be limited to where there are other statutory approvals or permits are required. Referrals on policy issues will be removed from the legislation. The Commission will regularly review referrals to ensure their currency.</p> <p>Referral agencies should be required to have timeframes that detail the criteria on which referral advice is given and the types of conditions that will be imposed. To be reviewed regularly by the Commission.</p> <p>Referral timeframes should be rigorously enforced. Agencies will advise if they intend to provide comment, otherwise it will be deemed as 'no comment'.</p> <p>Agencies should be able to provide advice to planning authorities, but through a separate stream and only on matters relating to their portfolio responsibilities.</p> <p>Fragmented environmental and infrastructure laws will be reviewed and consolidated and statutory boards rationalised.</p> | <p>Some benefits; e.g. consolidated assessment, planning consent includes encroachment approval.</p> <p>Suggests a technical group be established to foster efficient regulation of licensed premises.</p> <p>The Bill removes the need for council approval (currently under the Local Government Act) for development on, over and under public land.</p> |

| Adopt an on-line approach to planning (Reform 20) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform.'</p> <p>The legislation should—</p> <ul style="list-style-type: none"> - mandate a 'digital first' approach in line with Government policy - provide an equitable, fair and sustainable cost recovery model - enable planning processes and transactions to be conducted online - ensure data is searchable according to the needs of users - provide for a cooperative approach between councils and agencies in a staged development of the e-planning approach. <p>Initial funding commitments will be outlined by Government as part of the budget process.</p> <p>Details of staging and funding models will be realised in 2016.</p> | <p>Powers to establish SA Planning Portal. Costs are unknown.</p> <p>Costs for the running of the Portal, SA Planning Database, online atlas and search facility described in the Bill are to be shared with Local Government at the Minister's discretion.</p> | <p>The online portal should be searchable to enable citizens to subscribe to updates.</p> <p>Create a joint local-state governance body for e-planning through the commission.</p> <p>Provide a sustainable revenue stream through a co-contribution regime from government agencies and councils, based on detailed costing analysis.</p> <p>Legislate to provide a basis for relying on e-planning online data to an evidentiary standard</p> | <p>State to fund start-up costs, but the Bill permits council to be charged for development and maintenance of the system.</p> <p>The State recognises efficiency and time as the driving factors for on-line approach. There is no recognition that Councils currently obtain data on development applications that inform strategic outcomes. Will the new system prevent or permit the collection of such information?</p> <p>Funding issues and compatibility with Council systems critical.</p> |

| Adopt a rigorous performance monitoring system (Reform 21) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform in principle.'</p> <p>Primary responsibility for performance monitoring should remain with the Minister, rather than the planning commission (or like body).</p> <p>Legislation should—</p> <ul style="list-style-type: none"> - provide for measurable targets to be set and performance against them audited using the e-planning system. - ensure that there is ongoing monitoring, and periodic evaluation, of relevant trends and data. - allow arm's-length reporting to Government and Parliament through the Planning Commission (or like body). - provide for intervention where necessary in cases of underperformance. <p>Powers being provided to the planning commission (or like body) to address cases of underperformance by planning bodies.</p> <p>Recognise the benefit of linking discretionary grant funding to performance and will investigate this further. The Government will advance this through further discussion with the local government sector.</p> | <p>Powers for Minister to set targets and Commission to monitor.</p> | <p>The State Planning Commission will monitor overall system performance. This will include monitoring system operations and the achievement of policy priorities and regional targets.</p> | <p>Independent audit not mentioned.</p> <p>Measures of underperformance needs to be calibrated to reflect the complexity of applications for specific jurisdictions. The types of development in the City differs from other councils. Performance measures need to be calibrated accordingly.</p> <p>Linking funding to performance may have undesirable consequences (e.g. incentivises quick decision making balanced and considered decisions).</p> |

| Pursue culture change and improved practice across the system (Reform22) | | | |
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| STATE MAR 15 | BILL | PANEL IDEAS NOT IN STATE APPROACH | ACC STAFF COMMENT SEP 15 |
| <p>'The Government supports this reform in part.'</p> <p>The legislation should—</p> <ul style="list-style-type: none"> - Include a strong 'customer guarantee' or code that promotes professional excellence across the system (additional to the charter of citizen participation). - Provide for statutorily-recognised practice directions to guide staff and users. - Require professionals to be accredited, where appropriate using existing occupational frameworks under other laws. - Include an enhanced complaints-handling mechanism. - Provide 'good faith' indemnities for planning staff to provide advice to users and facilitate development outcomes consistent with the broader statutory objectives to ensure economic outcomes for the State. - Incorporate values in the statutory objects that reinforce the importance of a facilitative culture across the planning system. <p>Consequential amendments to occupational licensing laws may be desirable.</p> | <p>Bill sets out 'general duty', and expects coordination</p> | <p>The State Planning Commission will take a leading role in shaping system culture. It will have a coordinator of planning excellence to lead this work.</p> <p>The State Planning Commission will be responsible for a code of planning excellence that forms a charter for customer service and facilitation across the system.</p> <p>The State Planning Commission will work with local government, the public service and professional organisations to pursue culture change that will contribute to planning excellence.</p> | <p>No mention of engagement in developing measures.</p> <p>Culture relates to Charter for Citizen's Participation as well as operation of system overall.</p> <p>Limits to what legislation can do.</p> |

Recommended Amendments to the Planning, Development and Infrastructure Bill 2015.

| Bill Section | Council Submission | Suggested Methods | Reason |
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| State Planning Commission | | | |
| 12(1) | Amend | <ul style="list-style-type: none"> Insert new section 12(1)(c) to include as an object of the Act the promotion of ecologically sustainable development; or Amend section 12(1) to include ecologically sustainable development as part of the primary object of the Act (i.e., the subsection could include additional words in bold read "<i>the primary object of this Act is to support and enhance the State's prosperity in an ecologically sustainable manner by creating an effective efficient and enabling planning system, linked with other laws, that...</i>") | The Objects of the Bill should more clearly articulate the intention to promote sustainable economic prosperity of the State as is currently the case in s 3(c) of the <i>Development Act 1993</i> . |
| | Amend | Amend section 12(1)(b) to extend the role of community participation to development assessment matters, as appropriate (i.e. paragraph could include additional words in bold to read " <i>provides a scheme for community participation in relation to the initiation and development of planning policies and strategies and in relation to development assessment matters, as appropriate</i> ") | Clause 12(1)(b) should include reference to community participation in development assessment matters as appropriate as is currently the case in s 3(e) of the <i>Development Act 1993</i> . |
| 14 | Amend | <ul style="list-style-type: none"> Include as a new section 14(h) <i>community consultation and engagement principles</i> with the particulars of these principles to relate to both policy development and development assessment. | The Principles of Good Planning are deficient in respect to community consultation and engagement principles (irrespective of the proposed Community Engagement Charter) for policy development and development assessment |
| 17(4) and 17(5) | Amend | <ul style="list-style-type: none"> Place the power of general control and direction over the Commission in the | Seek that the Commission is provided with more independence. This is consistent with Expert Panel |

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| 22(1)-(2) and 25(1)-(2) | Amend | <p>Parliament, rather than the Minister. This could be supplemented with specific circumstances in which the Minister may direct the Commission (i.e. in a similar manner to the drafting of s 17(5) and/or with reporting requirements on the Commission to the Minister or the Parliament; or</p> <ul style="list-style-type: none"> • Delete or re-draft the general power granted to the Minister in s 17(4) into a set of discrete circumstances in which the Minister can give direction and control to the Commission (i.e. reverse sub-sections (4) and (5) so that the Minister's direction and control is limited, rather than there being a set of carve-outs in (5); or • Expand the circumstances in s 17(5) where the Minister may not direct the Commission. <p>Require the Minister to report annually to the Parliament on any directions or requests made to the Commission under s 22 and any information sought under s 25.</p> <ul style="list-style-type: none"> • Amend section 25 to place further limits on the Minister's powers to require the Commission take certain action(s) or provide certain information; or • include a mechanism in s 25 to for the Commission to refuse an unreasonable request of the Minister, with a review of that refusal to be determined by, for example the Ombudsman or a Parliamentary Committee | <p>recommendations.</p> <p>Accepts that the Commission must report to the Minister but should ultimately be accountable to Parliament. This will support long term decision making separate from political influence.</p> <p>Retain Ministerial role for overall setting of State Planning Policy.</p> <p>Supports a transparent and accountable planning system.</p> |
| 18(1)(a) | Amend | <p>Replace the entity appointing Commission members in s 18(1)(a) from the Minister to, for example, the Governor or Parliament.</p> | |

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| 18(1)(b) | Delete | <ul style="list-style-type: none"> Delete s 18(1)(b) (to remove the CEO from membership of the Commission); or | No government employee being appointed to the Commission consistent with the Expert Panel's recommendation. Not needed for efficient functioning of the system. |
| Regional Planning | | | |
| 6 | Amend | <ul style="list-style-type: none"> Amend s 6(1) to provide that either the Governor or the Commission, rather than the Minister, may establish a subregion; or Insert a new subsection to provide that prior to establishing a subregion under s 6(1) the Minister must consult and reach agreement with the Commission. <p>These provisions could also apply to varying or abolishing a planning region under s 6(2).</p> <p>Introduce a new s 6(3a) that would require the Minister (or the Commission or Governor in the event that s 6(1) is amended) to, prior to establishing, amending or abolishing a subregion:</p> <ul style="list-style-type: none"> consult with any council whose area, or part of area, would form part of the subregion; and if one or more councils object to the formation of the subregion, require the Commission to undertake any necessary investigations and prepare a report on the proposal | <p>Creation of sub-regions should not be at the unilateral discretion of the Minister but should be based on mutual agreement between affected Councils and the Commission with evidence-based report on communities of interest.</p> <p>Likewise, the ability of the Minister to enter planning agreements should rest with the Commission (in consultation with the Minister) and acknowledging that Minister in certain circumstances should have ultimate ability to issue direction where prescribed.</p> <p>Where agreement cannot be made, the Minister should be presented with a report and recommendation prepared by the Commission before making a decision.</p> |
| 35(1) | Amend | <p>Amend s 35(1) so that planning agreements are entered into with the Commission (in consultation with the Minister) rather than the Minister.</p> <p>Include a new s 35(1a) to clarify that a planning</p> | |

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| 35(5) | Delete | <p>agreement cannot be entered into in relation to or over an area or part of an area of a council without the agreement of that council except in prescribed circumstances.</p> <p>Include a new s 35(1b) to provide that where prescribed circumstances exist, additional measures must be undertaken before a planning agreement can be entered into in relation to the council area, including that investigations be undertaken and a report drafted and considered (by the s 35(1) decision-maker) in relation to:</p> <ul style="list-style-type: none"> • whether it is appropriate that the agreement be entered into; and • if so, the terms of that agreement under s 35(2) in relation to the affected council. <p>Delete s 35(5) which provides a limitation on the Minister's ability to agree to terminate a joint planning agreement by consent of all other parties.</p> | <p>This clause is unnecessary and has no work to do. If all other parties to a planning agreement no longer wish to be bound by it, the Minister should not be able to unilaterally prevent its termination.</p> <p>The "public interest" is very broad and difficult to define. It should not be used in this context.</p> |
| Regional Boards | | | |
| Joint Planning Boards 36(1) | Amend | | <p>Should enable a council to establish a board without the requirement for amalgamation (if the case is made that a local government area has unique urban form or absence of suitable merger partner is evident). On our reading, it does – see s 35(1)(a) – "any council".</p> <p>ACC could, if the Minister agreed, enter into a planning agreement with the Council as a sole council. It could then establish a joint planning board as a sole council.</p> <p>Could potentially recommend amendments which confirm</p> |

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| 35(2)(b)(i) | Amend | <p>Amend the membership requirements for joint planning boards under s 35(2)(b)(i) to ensure that all councils whose areas comprise the planning agreement area are represented. For example, amend to include that:</p> <ul style="list-style-type: none"> • that each council whose area (or part thereof) is within the area over which a planning agreement operates must have at least one representative on the board, nominated by the council; and • where the number of councils who have their area (or part thereof) within the area over which a planning agreement operates is more than, say, 5, then the maximum number of members of a board shall be that number plus not more than 2. | <p>this.</p> <p>Do not support Minister's unilateral ability to impose a board if councils are unable to form a regional board. Do you mean Ministerial establishment of a Regional DAP? Or the possibility that a JPA can be agreed over an area without all affected Councils signing on (which the suggested amendments above are directed to)</p> <p>What resolution procedures could be employed to enable regional board formation where agreement between parties cannot be obtained? The amendments we suggest in relation to s 35 should address this concern.</p> <p>The Bill should be amended so that a Council is consulted in the preparation of the planning agreement, and a Council retains the right to have a seat on the planning board.</p> |
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| 41 | Amend | <p>Amend s 41(1) to:</p> <ul style="list-style-type: none"> require objective criteria for the appointment of an administrator; or require an adverse finding from the Ombudsman, ICAC, court or the Commission before an appointment can be made under s 41(1). <p>Include additional provisions to establish a mechanism to review a decision to appoint an administrator, including that before an administrator is appointed, the Minister advises the board that the Minister is considering appointing an administrator and providing an opportunity for the board to make submissions to the Minister.</p> | <p>Seek criteria written into legislation identifying circumstances by which the Minister can appoint an administrator if the Minister is of the opinion that the board is not fulfilling its charter (i.e. corruption, unreasonable delay in decision-making, excessive administration costs, errant decisions) - subject to consultation with the relevant board prior to making a decision.</p> |
| Assessment Panels | | | |
| Regional Assessment Panels –s 77 and 78 | | <p>Permit representation of elected members on assessment panels by:</p> <ul style="list-style-type: none"> deleting subsections 77(1)(d) and 78(1)(f) which prohibit elected members from sitting on assessment panels; or amending subsections 77(1)(d) and 78(1)(f) to limit the number of elected members who are able to sit on assessment panels <u>and</u> requiring them to hold the relevant accreditation under s 81. <p>Alternately, amend sections 77(1)(b) and 78(e)(i) (with consequential amendments to sections 77(1)(d) and 78(1)(f)) to require that:</p> | <p>Permit members of Council to sit on Assessment Panels subject to accreditation to retain an element of elected member representation on assessment panels. Recognition of the robust and efficient decision-making arrangements already in place under the current Act.</p> <p>Seek representation of local government to allow legitimate input of local knowledge and input.</p> |

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| | | <ul style="list-style-type: none"> when regional panels are established, membership of the panels must comprise at least one representative from each constituent council in an <i>ex-officio</i> capacity; and/or panels must have regard to submissions made by constituent councils in relation to matters which concern their council area. | |
| Local Assessment Panels 78(1)(d) | Amend | <p>Amend s 78(1)(d) to:</p> <ul style="list-style-type: none"> require objective criteria for the appointment of a local assessment panel; or require an adverse finding from the Ombudsman, ICAC, court or the Commission before an appointment can be made under s 78(1)(d). <p>Include additional provisions to establish a mechanism to review a decision to appoint a local assessment panel, including that before an administrator is appointed, the Minister advises the council assessment panel and/or the council's CEO that the Minister is considering appointing an administrator and providing an opportunity submissions to be made to the Minister.</p> | Seek criteria written into legislation identifying circumstances by which the Minister can dismiss a Council Assessment Panel if the Minister thinks the panel is not fulfilling its charter. |
| 78(1)(e) | Amend | Amend s 78(1)(e)(i) (with subsequent amendments to s 78(1)(f)) to require one or more elected members be appointed to a local assessment panel, if established by the Minister. | Retain an element of elected member representation on local assessment panels in recognition of the robust and efficient decision-making arrangements already in place under the current Act. |
| Status of Regional Assessment Panel Manager - sections | | <p>Amend section 78(1) to require:</p> <ul style="list-style-type: none"> consultation with councils in relation to cost sharing arrangements (and other prescribed | Appointed by and answerable to the panel (or, in the case of s 80(d)(iii), the Chief Executive) but funded by Councils represents divided 'loyalties'. |

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| 78(1)(j) and 80(d) | | <p>mattes), prior to the Gazettal of regional assessment panels; and</p> <ul style="list-style-type: none"> if agreement on a cost sharing arrangement ins not able to be reached, the Minister is to seek and consider a report from the Commission in relation to the matter. <p>Similar provisions could also be incorporated in section 71(1)(k) if it is proposed to vary a cost sharing arrangement.</p> <p>Amend s 80(d) such that an assessment manager is always appointed by and answerable to the Panel for which he/she works</p> <p>Amend s 80 to prohibit an assessment manager who is appointed in relation to a regional of combined panel from also being an employee of one of the constituent councils</p> | Costs incurred borne by Local Government – including legal costs despite not being party to development decisions. |
| Heritage | | | |
| 63 | Seek clarification | <p>Seek confirmation (not necessarily alterations to the Bill) that:</p> <ul style="list-style-type: none"> all existing places of local heritage value will automatically be listed as places of local heritage value in the Code; places for which designations of local heritage value were made prior to the requirement that the designation nominate or identify the component or other item, feature or attribute of local heritage value (as proposed to continue in the Bill at s 63(2)(b)) will not be required to be re-assessed to determine such components or items when the listing is continued under the Code; and no right of appeal will lie against an | Seek inclusion of implementation plan with the Bill confirming that existing local heritage items will be transferred into the Planning & Design Code without appeal rights to owners of those properties . |

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| 3(f) and 63(2)(b) | Seek clarification | <p>existing place of local heritage value being listed under the Code</p> <p>Should the above not be able to be confirmed, include transitional provisions in the Bill that will address these concerns.</p> <p>Seek confirmation that the definition of “development” in s 3(f) of the Bill in relation to a local heritage place will not be limited to the component or other item, feature or attribute which is recorded as forming part of, or contributing to, the heritage significance of the place but will apply in relation to the whole of the place, which will be relevant where a property was listed prior to the requirement that the designation nominate or identify the component or other item, feature or attribute of local heritage value.</p> | <p>Seek release of timeframe and consultation process for review of heritage matters in subsequent Bill(s).</p> <p>The Council is willing to consider new listings of local heritage items being subject to appeal rights if it can be shown that community consultation and expert assessment is maintained in the process.</p> |
| Recognition of Park Lands | | | |
| 11(b) and 59 | Amend | Include <i>Adelaide Park Lands Act 2005</i> in s 11(b) | Seek inclusion of the Park Lands Act as a Special Legislative Scheme recognised by the Bill to recognise the unique nature of the Park Lands and existing management arrangements and controls. Doing so will require (in s 59) the creation of a specific state planning policy to address the Park Lands and recognises the Statutory Principles of the <i>Adelaide Park Lands Act 2005</i> |
| 101, 123, 124 | Amend | Include new subsections in sections 101, 123 and 124 exempting development within the Adelaide | Provisions in the current Act exempting development within the Park Lands from being declared a major project |

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| | | <p>Park Lands from being:</p> <ul style="list-style-type: none"> declared by the Minister to be impact assessed development under s 101(1)(c); assessed as essential infrastructure under s 123; or assessed as Crown development under s 124. | <p>(s 46(3a)) or assessed as electricity infrastructure (s 49A(22)) or Crown infrastructure (s 49(18)) are not replicated in the Bill. The Council seeks that these exemptions are maintained in the Bill.</p> |
| Essential Infrastructure | | | |
| 155 | Amend | <p>Amend section 155(2) to include, as a precondition to the operation of s 155(2)(a) and (b), a requirement that either:</p> <ul style="list-style-type: none"> the infrastructure scheme accord with the relevant regional plan(s) and/or the Planning Rules; or where the infrastructure scheme does not accord with the relevant regional plan(s) and/or the Planning Rules, the Minister consult with the councils who will be affected by the scheme (either by infrastructure being developed within its area or by falling within a proposed contribution area) prior to initiating the scheme. | <p>Only the Minister may initiate an infrastructure scheme however the Minister can be requested to do so by any person or body. There is no linkage tying the creation of infrastructure schemes with adopted regional plans.</p> <p>There is no mechanism that determines when infrastructure upgrade is reasonably required in accordance with adopted regional plans.</p> |
| 122(2) | Amend | <p>Include additional provisions in section 122 requiring the Commission to consult with stakeholders (including councils/local government) prior to recommending a design standard</p> <p>Include a requirement that any minimum design standard for the Capital be developed in consultation with the Council.</p> | <p>Incorporation of head powers for new 'design standards' which may apply to public realm and infrastructure, that may be developed by the Minister through the State Planning Commission. Seek that the Commission be tasked with the formulation of minimum acceptable standards in consultation with stakeholders (with final approval to be given by the Minister) to ensure that the public realm in the City is of a suitable quality commensurate with its Capital City status.</p> |

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| <p>Funding</p> <p>Compulsory contributions</p> <p>155, 158, 160, 164</p> | <p>Delete/Amend</p> | <p>Amend or delete those provisions in Part 13 which provide that the costs of essential infrastructure projects can be recovered via contributions made and/or collected by councils without the consent of the affected councils by:</p> <ul style="list-style-type: none"> • amending s 155(4) to include a requirement that consultation must occur with all councils whose area may include the whole or any part of a proposed contribution area; • deleting s 155(5)(b) and replace with a requirement that a draft outline must not include a proposal for the collection of contributions under subdivision 3 unless agreement has been reached with all councils whose area may include the whole or any part of the contribution area; • including a new s 158(5a) to limit the Minister's ability to vary a funding arrangement to circumstances where agreement has first been reached with all councils whose area may include the whole or any part of the contribution area; • including a new s 160(3a) to limit the Governor's ability to approve a funding arrangement which includes the collection of contributions under subdivision 3 to circumstances where agreement has first been reached with all councils whose area may include the whole or any part of the contribution area; • including a new s 160(4a) to limit the Governor's ability to vary a funding | <p>Opposition to the Minister having powers to impose council contributions to infrastructure funding. Essential infrastructure needs should remain the responsibility of the state government, without councils acting as contributors (other than in a voluntary and negotiated manner) or collectors of levies or other charges for the State</p> |
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| | | <p>arrangement to when agreement has first been reached with all councils whose area may include the whole or any part of the contribution area;</p> <ul style="list-style-type: none"> • amending s 164(1) to require agreement between the Minister and the relevant council(s) as to the amount of a contribution in accordance with subdivision 2 (and consistent with the funding arrangement), rather than the Minister specifying this amount; • including a new s 160(4a) to limit the Governor's ability to vary a funding arrangement to circumstances where agreement has first been reached with all councils whose area may include the whole or any part of the contribution area; • amending s 164(1) to require agreement between the Minister and the relevant council(s) as to the amount of a contribution in accordance with subdivision 2 (and consistent with the funding arrangement) , rather than the Minister specifying this amount; • including a new s 164(1a) to provide that where agreement under subsection (1) cannot be reached, the Commission will make a binding determination; • amending s 164(4) to require the share of each council to be agreed between the Minister and the relevant council(s), consistent with any relevant provisions of a funding arrangement; and • including a new s 164(4a) to provide that where agreement under subsection (4) cannot be reached, the Commission will make a binding determination. | |
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| | | <p>Amend s 71(1) to provide that the Commission, rather than the Minister, has the responsibility for and is the decision-maker in relation to amendments to the Code under s 71.</p> <p>Amend s 71(2) to require the Commission to consult with the Minister prior to agreeing an amendment under s 71(1).</p> <p>Amend s 72 to provide that the Commission, rather than the Minister, has the responsibility for and is the decision-maker in relation to amendments to the Code under s 72. This would require amending subsections (1), (1)(b), (2),(2)(b),(2)(c) and (3) to refer to the Commission, rather than the Minister.</p> <p>Amend s 73 to provide that the Commission, rather than the Minister will be responsible for decisions concerning the early commencement of amendments.</p> | |
| Community Engagement | | | |
| 44 (2) | <p>Amend</p> <p>Amend</p> | <p>Amend s 44(2) to provide that the Commission, rather than the Minister, is responsible for preparing and maintaining the Charter.</p> <p>Include a new s 44(2a) requiring that Parliament is to ratify or adopt the Charter.</p> <p>Include a new s 44(3a) to include similar provisions to those in section 45(2)(b) regarding the consultation that is to be undertaken during the preparation of the charter. It would be expected that prescribed entities for the purpose of this proposed section (and for section 45(2)(b)) would include local government, government agencies, development industries, the community (etc)).</p> | <p>Should be developed by the Commission and include wide-ranging consultation with stakeholders: government agencies, utilities, development industry, local government, public, etc.</p> <p>The Charter (and alterations to it) should be approved by parliament, not by the Minister.</p> |

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| 44(3) | Amend | Include one or more new paragraphs in section 44(3) to incorporate the principles of inclusiveness, transparency, flexibility, adoption of community input and review/evaluation as principles which must be taken into account in relation to the preparation of the charter. | Refinement of the head powers for the establishment of the Community Engagement Charter to reinforce principles of inclusiveness, transparency, flexibility, adoption of community input and review / evaluation. |
| 60 | Amend | Include a new subsection in section 60 to require input from relevant councils and the local community to be sought and considered as part of the drafting of regional plans. | Regional planning mechanisms should reinforce Council and local community input |
| Benchmarks and Timing | | | |
| 15(3) Schedule 4 | Amend | <p>Include in s 15(3) a requirement that local government is consulted as well as the Commission prior to establishing service benchmarks</p> <p>Include new paragraphs in s 15(3) requiring that:</p> <ul style="list-style-type: none"> • relevant authorities be afforded an opportunity to provide a report to the Minister setting out their funding abilities and that service benchmarks are to be developed consistently with such report(s); • service benchmarks are not to be increased without further consultation (as per above).. | Seek inclusion of consultation process with Local Government (as the major funder of the services) to determine service levels reflecting funding ability. |
| 118 (1) | seek clarification | It would be expected that timeframes for dealing with applications in s 118(1) would not be set without consultation with local government being undertaken. | Seek inclusion of consultation process with Local Government (as the major funder of the services) to ensure that time taken for decision making is reasonable, comparable to and competitive with best practice benchmarks in Australia. |
| 118(2)-(8) | Delete | <ul style="list-style-type: none"> • Delete section 118(2) to (7) (inclusive); and | Council does not support the 'deemed approval' |

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| | | <ul style="list-style-type: none"> Delete the words “<i>other than planning consent</i>” in section 118(8). | provisions. Existing options in the <i>Development Act</i> for triggering a deemed refusal in s 41(2) should remain. |
| Planning Instruments | | | |
| Planning and Design Code | Amend | Amend s 61(2) to provide that the Commission, rather than the Minister, is responsible for preparing and maintaining the Planning and Design Code. | Seek that the Planning and Code be developed, maintained and amended by the Commission in consultation with key stakeholders – and approved by the Minister. |
| 61(2) | | | Seek release of Implementation Plan with the Bill detailing timeframe and inclusive consultation process for development of the Code. It is important that such detail is made available at an early stage in this process, as it informs the Council’s position on the Bill. |
| 62 (3) and (4) | Amend/clarify | <p>Include a new paragraph in s 62(3) to provide that policies and rules are to include consideration of the local context</p> <p>Clarify the role of subzones in s 62(4) as accommodating issues of local character or unique importance.</p> | <p>The Planning & Design Code should include consideration of local context, as recognised in the Principles of Good Planning of the Bill at s 14(c).</p> <p>Seek that the Code be allowed to include variations that enable policy appropriate to deal accommodate issues of local character or unique importance.</p> |
| 96, 97, 98 | | | Support new development assessment categories subject to collaboration with the Minister and Commission to ensure that development in the City is appropriately categorised. |
| 4 and 62(2)(c) | | | Support the creation of land use classes that enable changes of use within classes to occur speedily provided collaboration with the Minister and the Commission occurs to ensure appropriate classification occurs supporting City circumstances. |
| Enforcement | | | |
| 210, 212, 217 | Amend | Amend sections 210, 212 and 217 to enable | New enforcement options and sanctions are not available to councils but rather only to the State Planning |

| | | | |
|-------------------|------------------|---|--|
| | | councils to utilise these provisions | Commission (s 210 & 212) or the Chief Executive (s 217). |
| Fines | | | |
| 211 | Amend | Delete the words " <i>brought within the ambit of this section by the regulations</i> " from s 211(a) | Section 211 would reverse the current situation where a council is entitled to all fines ordered by the court in relation to proceedings commenced by it and would limit this to circumstances only provided for by regulation. Payments to Council would be dependent on details of the Regulations (which may change from time to time). Councils will still incur costs associated with inspections and initiation of enforcement actions – with no clear link to payment of fines imposed as a result of a prosecution to Council (at this time). |
| 216(1) | Amend | Amend s 216(1) to provide that where enforcement action is commenced by a council, any order requiring payment of an economic benefit is to be paid to the council, not the Commission. | |
| Encroachments | | | |
| 92 and 95(10) | Amend | Include additional provision(s) in section 92 such that relevant authority in relation to s 95(1)(e) is the owner of, or entity with the care, control and management of, the public place which will be encroached upon by the proposed development in the same manner as the Council is the relevant authority for development approval. Delete s 95(1)(e) to remove the words " <i>(and not otherwise dealt with above)</i> " so that all encroachments over public places will require development authorisation from the relevant authority who is the owner of, or has the care, control and management of, the public place | The removal of the requirement to obtain permits under s 221 and 222 of the <i>Local Government Act 1999</i> will potentially impact on a council's ability to co-ordinate maintenance of existing and planned public infrastructure |
| Schedule 6 Part 7 | Delete and amend | Delete clauses 21 and 22 of Part 7 of Schedule 6 Delete the words " <i>as part of a development authorisation under the Planning Development and Infrastructure Act 2015</i> " from clause 23 of Part 7 of Schedule 6 (as that clause refers to proposed s | |

| | | | |
|---|--------------------|--|---|
| | | <p>234A(1) of the <i>Local Government Act 1999</i>). This amendment will retain the requirement that encroachments comply with relevant design standards, but pursuant to a permit under the <i>Local Government Act</i>, rather than pursuant to a development authorisation.</p> <p>Delete proposed s 234A(2) to (7) of the <i>Local Government Act</i> contained in clause 23 of Part 7 of Schedule 6.</p> | <p>at grade, above and below ground level.</p> <p>It will inappropriately result in matters of tenure being dealt with (or not) under the development approval process.</p> |
| Other | | | |
| Significant trees s 64 | Seek clarification | Seek confirmation that all trees or stands of trees which are declared to be significant trees in Development Plans will automatically be listed as significant trees under the Planning and Design Code without requiring a nomination as to which of the criteria in s 64(a) or (b) each tree or stand of trees meets. | |
| Public Realm Design Standards 65(1) and (2)(b). | Amend | <p>Amend s 65(1) to provide that the Commission, rather than the Minister, is responsible for preparing, maintaining and amending the Design Standards.</p> <p>Include a new subsection in s 65 to require that local government (including relevant council(s) and/or joint planning boards) are consulted in relation to the preparation of design standards, particularly where they relate to land within a council/joint planning board's area.</p> | Seek that Design Standards be developed, maintained and amended by the Commission in consultation with stakeholders (for final approval by the Minister). |
| Referrals 115(10) | Delete | Delete section 115(10) | Council does not support the ability for applicants to defer referral to government agencies |
| Access to neighbouring land s 133 | Delete or amend | <p>Delete section 133; or</p> <p>Amend s 133(4) such that applications to gain access to neighbouring land are made to the ERD</p> | <p>New provisions enabling access to neighbouring land to facilitate development contravenes principles of trespass.</p> <p>What safeguards are required to deal with theft, property</p> |

| | | | |
|-------------|--|--|--|
| | | Court, not to the council (with subsequent amendments to appeal rights in s 189) and delete s 133(5), (6) and (7). | <p>damage incurred, making secure neighbouring land and safety of children residing on adjacent land?</p> <p>Council should not be involved in what is essentially a private dispute between neighbours.</p> |
| Regulations | | | Seek release of Implementation Plan with the Bill detailing timeframe and consultation process for development of the Regulations. |

Objectives, Intentions and Principles of Good Planning of the Planning, Development and Infrastructure Bill 2015

Division 1—Objects and Planning Principles

12—Objects of Act

- (1) The primary object of this Act is to support and enhance the State's prosperity by creating an effective, efficient and enabling planning system, linked with other laws, that—
 - (a) promotes and facilitates development, and the integrated delivery and management of infrastructure and public spaces and facilities, consistent with planning principles and policies; and
 - (b) provides a scheme for community participation in relation to the initiation and development of planning policies and strategies.
- (2) In association with the object referred to subsection (1), the scheme established by this Act is intended to—
 - (a) be based on policies, processes and practices that are designed to be simple and easily understood and that provide consistency in interpretation and application; and
 - (b) enable people who use or interact with the planning system to access planning information, and to undertake processes and transactions, by digital means; and
 - (c) promote certainty for people and bodies proposing to undertake development while at the same time providing scope for innovation; and
 - (d) promote high standards for the built environment through an emphasis on design quality in policies, processes and practices; and
 - (e) promote safe and efficient construction through cost-effective technical requirements that form part of a national scheme of construction rules and product accreditation; and
 - (f) provide financial mechanisms, incentives and value-capture schemes that support development and that can be used to capitalise on investment opportunities; and
 - (g) promote cooperation, collaboration and policy integration between and among State government agencies and local government bodies.

13—Promotion of objects

A person or body involved in the administration of this Act must have regard to, and seek to further, the objects established by this section.

14—Principles of good planning

In seeking to further the objects of this Act, regard should be given to the following principles that relate to the planning system established by this Act (insofar as may be reasonably practicable and relevant in the circumstances):

- (a) long-term focus principles as follows:
- (i) policy frameworks should be based around long-term priorities, be ecologically sound, and seek to promote equity between present and future generations;
 - (ii) policy frameworks should be responsive to emerging challenges, changing trends and cumulative impacts identified by monitoring, benchmarking and evaluation programs;
- (b) urban renewal principles as follows:
- (i) preference should be given to accommodating expected future growth of cities and towns through the logical consolidation and redevelopment of existing urban areas;
 - (ii) the encroachment of urban areas on areas of rural, landscape or environmental significance is to be avoided other than in exceptional circumstances;
 - (iii) urban renewal should seek to make the best use (as appropriate) of underlying or latent potential associated with land, buildings and infrastructure;
- (c) high-quality design principles as follows:
- (i) development should be designed to reflect local setting and context, to have a distinctive identity that responds to the existing character of its locality, and to strike a balance between built form, infrastructure and public realm;
 - (ii) built form should be durable, designed to be adaptive (including in relation to the reuse of buildings or parts of buildings) and compatible with relevant public realm;
 - (iii) public realm should be designed to be used, accessible, and appropriately landscaped and vegetated;
 - (iv) cities and towns should be planned and designed to be well-connected in ways that facilitate the safe, secure and effective movement of people within and through them;
- (d) activation and liveability principles as follows:
- (i) planning and design should promote mixed use neighbourhoods and buildings that support diverse economic and social activities;
 - (ii) urban areas should include a range of high quality housing options with an emphasis on living affordability;
 - (iii) neighbourhoods and regions should be planned, designed and developed to support active and healthy lifestyles and to cater for a diverse range of cultural and social activities;
- (e) sustainability principles as follows:
- (i) cities and towns should be planned, designed and developed to be sustainable;
 - (ii) particular effort should be focussed on achieving energy efficient urban environments that address the implications of climate change;
 - (iii) policies and practices should promote sustainable resource use, reuse and renewal and minimise the impact of human activities on natural systems that support life and biodiversity;
- (f) investment facilitation principles as follows:

- (i) planning and design should be undertaken with a view to strengthening the economic prosperity of the State and facilitating proposals that foster employment growth;
 - (ii) the achievement of good planning outcomes should be facilitated by coordinated approaches that promote public and private investment towards common goals.
- (g) integrated delivery principles as follows:
- (i) policies, including those arising outside the planning system, should be coordinated to ensure the efficient and effective achievement of planning outcomes;
 - (ii) planning, design and development should promote integrated transport connections and ensure equitable access to services and amenities;
 - (iii) any upgrade of, or improvement to, infrastructure or public spaces or facilities should be coordinated with related development;

Adelaide City Council

Principles for Engagement in a New Planning System

August 2015

Donna Ferretti & Associates



Donna Ferretti and Associates Pty Ltd

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1. Introduction

Donna Ferretti and Associates has been engaged by Adelaide City Council (Council) to prepare a set of high level Engagement Principles and Options to enable more effective involvement and participation of the City community in South Australia's new planning system.

The study has come about in response to proposed changes to South Australia's planning system put forward by the Expert Panel on Planning Reform in its final report *The Planning System We Want*. Adelaide City Council, as an important contributor to the Expert Panel's deliberations, resolved to prepare a series of evidence-based planning studies in order to provide an informed response to the Expert Panel's proposals. The engagement of citizens in the planning process was identified by Council as an area for such a study.

The Expert Panel identified community engagement in the planning system as an important area for reform during the course of its work, arguing that the intent of the 1993 legislation (i.e., the Development Act and Regulations) to enable greater levels of public involvement has never been realised. To address this concern, the Expert Panel has put forward a number of proposals which are intended to enhance the involvement of communities in planning decisions and "...establish[es] constructive engagement between users and decision-makers" (Expert Panel on Planning Reform 2014, p.16). The most prominent of these is the proposal to create a Charter of Citizen Participation, which has subsequently been supported in principle by the South Australian Government (Government of South Australia 2015).

Although the detailed development and intended application of the Expert Panel's proposals has yet to be released¹, there is sufficient evidence available to develop a critical response to the proposed planning reforms as these are likely to affect public engagement in the planning system. Given Council's desire to be proactive in showcasing model engagement principles for application in the City's planning functions, this study provides a basis for Council to meaningfully contribute to the progressive development and delivery of the South Australian Government's reform agenda.

1.1 Study Objectives

The key rationale underpinning this study is to encourage and enable greater and more effective public engagement in the planning system and in the ongoing planning and development of the City's built environment.

Additional objectives are to:

- Identify best practice principles and options for public engagement in South Australia's proposed new planning system;
- Detail the roles and responsibilities of Council in employing these principles and options at different stages of the planning process;
- Address expectations of appropriate levels of engagement and mechanisms by which to engage in the City's planning processes;
- Interrogate the nexus between the impact of development proposals and notification/engagement procedures;

¹ There has been a delay in the release of the draft planning bill containing the details of the reformed planning system, now expected sometime in September 2015.

- Indicate how Council can improve public awareness of planning processes and the capacity to productively contribute to these processes;
- Contribute to the South Australian Government's development of engagement principles and practices for application in the new planning system.

1.2 Study Inputs

Information used to inform this paper has been drawn from the following:

- Research articles and papers that focus on guiding principles for more effective and meaningful public engagement (see Reference List below).
- A range of papers produced by Adelaide City Council in response to the Expert Panel's Proposals for Planning Reform (see Reference List).
- Face-to-face interviews with three prominent developers in the City of Adelaide.
- Facilitation of a workshop with planning staff of Adelaide City Council which focused on:
 - key issues associated with current notification processes
 - potential improvements to notification processes for development proposals.
- Discussions with executive staff of the Department of Planning, Transport and Infrastructure (DPTI) on:
 - progress on the planning reform agenda, including the draft development legislation and proposed Charter of Citizen Participation
 - ways to encourage and enable greater levels of public engagement in the formulation of planning strategies and policies shaping future development.

2. Current Engagement Practice

The existing planning system in South Australia was brought into effect with the passage of the Development Act and Regulations in 1993. While there have been a number of changes to the system since that time – most notably the introduction of independent Development Assessment Panels and the Residential Code – there has been no change of substance to the legislative requirements for public participation and involvement in the various stages of the planning process².

The following sections outline the existing system requirements across the planning process and discuss some of the shortcomings in relation to desired approaches to community engagement. The Expert Panel's proposed reforms are then considered alongside a discussion of the potential advantages associated with deliberative approaches to engaging the public.

2.1 Existing System Requirements

The Development Act requires the public to be involved in the development or alteration of volumes of the Planning Strategy, local Development Plans and, in particular cases, in the assessment of development proposals.

2.1.1. Planning Strategy

When creating and/or altering a volume of the South Australian Planning Strategy³, the Minister is required to place a public advertisement informing members of the public where copies of the Strategy are available for viewing and purchase, and inviting interested people to make written representations. For the most part, the 'public advertisements' take the form of notices in the local newspaper, notices on relevant council websites and signs at relevant council libraries and community facilities.

The annual report to Parliament on the Planning Strategy is also required to document any community consultation undertaken on the Strategy.

It is also worth noting the legislative requirements for public consultation on council Strategic Directions Reports (SDRs). Local councils are required to develop these reports in order to ensure that local Development Plan policy (see below) is aligned with the most recent version of the Planning Strategy. The Act specifies that councils must consult with the public when preparing SDRs for a minimum period of two months and provide an opportunity for any interested person who makes a written response to appear and be heard in person (or through a representative) by the council or a council committee.

2.1.2. Planning Policy

Planning policy is contained in local Development Plans that are generally administered by local councils, although it is important to acknowledge that they remain the property of the Minister. When a council or the Minister amends a Development Plan (a Development Plan Amendment or DPA), a public consultation period of at least eight weeks is generally required over and above the requirements for government agency consultation. The exception to this occurs for Process C (there are a number of different DPA processes) where the public consultation occurs concurrently with government agency consultation for a minimum period of four weeks.

² Minor changes to the assessment of major developments and Development Plan Amendments have been made, but these have had little effect on requirements for public engagement.

³ Commonly known as Regional Plans and include, for example, *The 30-Year Plan for Greater Adelaide*.

In general, the owners or occupiers of the land subject to the DPA as well as the owners and occupiers of adjacent land must be provided with a written notice of the proposed DPA. Interested members of the public have the opportunity to make written and verbal representations in relation to the proposed DPA, with verbal representations made at a public meeting held within the relevant council area. If the public consultation process for a DPA is not undertaken in accordance with the legislation, the Minister may lapse the DPA.

As is the case for changes to volumes of the Planning Strategy, the public is informed of proposed DPAs through written notices in newspapers, council websites and at community facilities.

2.1.3. Assessment of Development

In the assessment of development proposals, there are three categories for public consultation purposes as follows:

1. Category 1 development where there is no requirement for notifying the public.
2. Category 2 development where the relevant authority (a council or the Development Assessment Commission) is required to notify the owners or occupiers of land adjacent to the proposed development.
3. Category 3 development where the relevant authority is required to notify:
 - a. owners or occupiers of land adjacent to the proposed development
 - b. any other owner or occupier of land that would be affected to a significant degree if the proposed development were to proceed
 - c. the general public.

In the case of Category 2 and 3 developments, the relevant authority is required to give those notified a period of two weeks to make a written submission on the proposed development. These submissions are then forwarded to the applicant who has a period of two weeks to respond in writing to the issues raised. Members of the public who have made a written submission are also afforded an opportunity to appear personally (or through a representative) and be heard in support of their submission at the relevant Development Assessment Panel or Development Assessment Commission meeting.

2.1.4. Summary

Public engagement in the existing planning system is effectively limited to two options:

1. Written submissions.
2. Public meetings.

These forms of engagement have a long history in the planning process but have come under increasing criticism for their incapacity to meaningfully involve communities in collaborative problem-solving and, in relation to planning, in the development of strategies and policies which shape the neighbourhoods in which they live, work and recreate. Written responses to strategies, policies and development proposals are invariably reactive and adversarial in purpose while public meetings simply provide a forum for these adversarial relationships to be played out and, in many cases, intensified. As a result, these engagement practices generally lead to an “us versus them” scenario with little opportunity for members of the public to be productively and collaboratively involved in the ongoing development of the built environment.

Written submissions and public meetings on planning matters fall under the ‘inform’ and ‘consult’ categories of the International Association for Public Participation (IAP2) Spectrum.

On this measure, informing and consulting the public is seen to have the least impact on decisions as all decision-makers need do is keep people informed of what is happening and perhaps listen to and acknowledge any concerns they raise. There is no attempt to collaborate or work directly with the public to ensure that their concerns and aspirations are understood and considered and there is no recognition of these concerns and aspirations when identifying potential planning solutions and alternatives (IAP2 International Federation 2014).

In the current system, the responsibility for being informed of any proposed development rests firmly with the individual (Jensen Planning and Design 2014). While an individual may be *notified* of a development proposal, that person then has to expend some time and effort to access the plans and supporting development application report in order to be informed of it. Even then, members of the public often find it difficult to read and interpret these plans and so understand the likely impacts of the proposal. In addition, the public hearing process can be extremely intimidating for people with little experience of public speaking, potentially limiting the effectiveness of their submission.

2.2 Proposed Reforms

Recognising the limitations of the current approach to involving citizens in the planning process, the Expert Panel has put forward a number of proposals to enable greater levels of public involvement in the new planning system, as discussed in the following sections.

2.2.1. Charter of Citizen Participation

The proposed Charter of Citizen Participation is one of the key reforms offered by the Panel to address what it sees as “poor citizen engagement and debate on strategy and policy” and an undue emphasis on “providing comments on assessment” (Expert Panel on Planning Reform 2014, p.37). Envisaged as a statutory document enshrined in legislation, the Charter will seek to:

- focus attention on strategy/policy development while ‘streamlining’ engagement on development assessment
- be based on leading engagement principles, such as those put forward by the IAP2 and the South Australian Government’s *Better Together: Principles of Engagement* document (Government of South Australia 2013)
- be less prescriptive and allow for tailored and flexible engagement processes that respond to community needs and the increased popularity of social media platforms
- require councils and government agencies to prepare engagement plans for different planning processes.

The intention here is to enhance levels of public involvement at the ‘up-front’ strategy and policy setting stages of the planning process in ways that will reduce the need (and inclination) for people to only become involved at the assessment stage when proposed developments may directly (and often adversely) impact upon them. The Expert Panel and South Australian Government have also emphasised the need for the charter to be focussed on outcomes “...that are designed to reduce costs, delays and duplication – particularly for local government” (Government of South Australia 2015, p.15). Seen in this way, the charter is clearly aimed at preventing many of the conflicts generated by development proposals at the local level.

However, there remains some uncertainty as to *how* the proposed charter is to be implemented, precisely what criteria will be used to determine and assess ‘effective’ public engagement and whether the charter will deplete opportunities for the public to be involved at the development

assessment stage - a key reason why the New South Wales Government proposed *Community Participation Charter* met with some resistance. Discussions with senior staff of DPTI has failed to shed light on these questions with the detailed mechanisms and implementation of the charter unlikely to be revealed until it is developed by the proposed State Planning Commission.

Without knowing the detailed engagement principles that are to form the basis of the proposed charter, there remain a number of challenges that the charter will need to address in order to enable meaningful public engagement in the new planning system. These challenges include:

- Difficulty in establishing 'one-size-fits-all' approaches to engagement given the diverse characteristics and needs of citizens in their interaction with the planning system. While the Expert Panel correctly draws attention to the need for the charter to allow for flexible and tailored engagement rather than prescriptive approaches, there is still no guarantee that such tailored arrangements will i) encourage people to get involved in the development of planning strategies and policies, ii) reassure people that new development will be of a type that will not adversely impact upon them, iii) reduce the conflicts and ensuing delays in the assessment process and iv) ensure that planning authorities will take community views seriously when making planning decisions.
- The risk of establishing community engagement outcomes without due attention to fair, accessible and inclusive engagement processes. The Local Government Association (LGA) has highlighted the importance of solid engagement processes in its response to the Expert Panel's proposals, arguing that councils are the best 'point of entry' for consulting local communities and that their knowledge of local communities is vital to inform processes used to engage them in order to reach desirable outcomes (Local Government Association of South Australia 2015). Put simply, attention to due process is a necessary precursor to realising good engagement outcomes since good outcomes rarely ensue from flawed or inadequate processes.
- Potential impact on governance arrangements for councils, particularly in facilitating community engagement in planning processes while adequately representing diverse community and stakeholder interests. In its response to the Expert Panel's report, the LGA suggests that the charter should avoid being 'gold plated', recognise resourcing realities and that "...a far reaching community education campaign" will be needed to shift the focus of public involvement in the planning system away from individual development proposals to strategy and policy (Local Government Association of South Australia 2015, pp.5-6). There is a real danger that the responsibility for developing, implementing and paying for leading engagement practice in the new planning system will fall predominantly on local councils with little assistance from the State.
- The additional effort and time required to design and deliver leading public engagement processes. Mention has been made of the LGA's concern about the resource implications of deploying the Expert Panel's proposals and, when considered alongside the Panel's objective to reduce delays in the development assessment process (see Section 2.2.3 below), there is a strong possibility that additional engagement requirements may well slow decision-making timeframes rather than hasten them.

2.2.2. Strategy/Policy Setting

Discussions with DPTI staff confirm that the proposed Charter of Citizen Participation will seek to encourage greater levels of public engagement at the strategy and policy setting stages. Interestingly, the Expert Panel's proposals for strategy and policy development in the new planning system may well see further centralisation of these functions in the proposed State Planning Commission (SPC) and regional planning boards (Reforms 1, 2, 5, 6 and 7).

It is difficult to determine how public engagement processes will operate within the strategic planning and policy development functions of either the SPC or the regional planning boards, and the extent to which local councils will be involved in these processes. Should the Expert Panel's proposals be realised, both the SPC and the boards will need to take on a significant public engagement and educative role if they are to successfully transition the community's primary planning interest away from individual development proposals towards strategic policy development (Local Government Association of South Australia 2015).

2.2.3. Assessment of Development

Minimising conflict and delays at the development assessment stage of the planning process has clearly been an important objective of the Expert Panel, as evidenced by proposals to:

- Simplify development pathways to allow for 'tick box'-based assessment criteria for what are described as "most routine developments" (Expert Panel for Planning Reform 2014, p.79). This proposal builds on the implementation of the Residential Code where low risk residential developments are currently assessed on the basis of standardised quantifiable criteria (setbacks, heights etc).
- Increase the number and proportion of developments that are complying (and which must be approved) while dramatically decreasing the number and proportion of developments assessed on merit.
- Linking notification, consultation and appeal rights to assessment pathways which will effectively limit the number of development proposals subject to public notification and third-party appeal rights.

In essence, these proposals are designed to provide greater clarity in the assessment system and reduce the sheer bulk of development proposals subject to a full merit assessment and/or public notification. The Expert Panel expressed some concern that planners across South Australia are spending too much time and effort on routine assessment tasks rather than strategic policy development and "...assessment of complex projects with lasting social, environmental and economic significance" (Expert Panel on Planning Reform 2014, p.79).

While the intent of these proposed reforms are in line with recommendations from the Productivity Commission (2011, 2014) and Development Assessment Forum (2005), they are unlikely to enhance public engagement in the planning process. Indeed, such initiatives effectively seek to eliminate or minimise the level of public involvement *as a means of* increasing the speed with which development proposals are dealt with.

2.2.4. Summary

In effect, the Expert Panel's desire to boost community involvement in the planning process is likely to be limited by a number of potential tensions:

1. The implicit assumption that engaging the public at the strategic and policy stages of the planning process will mitigate the need for their involvement at the development assessment stage. This assumption is problematic for two reasons. First, past experience at both local and state government levels has demonstrated the sheer difficulty of getting people meaningfully involved in strategic planning and policy development processes. Second, it is highly unlikely that people will forego their interest in responding to development proposals impacting upon them, even if they had been involved in strategic policy development. As Council's own research has demonstrated, members of the public are more inclined to be engaged at the

assessment stage rather than 'up front' during the strategic policy development stage (Adelaide City Council 2015c).

2. The intention to significantly reduce the number and proportion of development proposals subject to merit assessment and public notification may well see fewer opportunities for the public to be involved in the planning process. However, should the public become more meaningfully engaged in the planning process and resources are committed to that end, there is a strong possibility that decision-making timeframes will be slower rather than faster simply because good engagement takes time.

2.3 Desired Approaches

This section focuses on the benefits of adopting deliberative approaches to engaging the public and includes discussion of how deliberative public engagement assists in developing the public's knowledge of the planning system (which the Expert Panel did not address) and improving their potential contribution to planning outcomes.

2.3.1. Strategy/Policy Setting

The various attempts by state and local government planners to engage the public in the development and formulation of strategic planning policy has met with mixed success. Communities across South Australia have generally shown little interest in strategic planning matters and have only been involved in planning policy matters when future rezoning proposals directly impact upon them. The extent to which this disinterest is a result of the limited requirements for public consultation noted in Section 2.1 above is not known. What is known, however, is that a significant effort is required in order to meaningfully engage people in strategic planning and policy development processes.

Deliberative participatory approaches offer a potential way forward in the way they bring together expert 'top-down' knowledge with local community 'bottom-up' knowledge (Bond and Thompson-Fawcett 2006). Such approaches effectively seek to stimulate a conversation between stakeholders with different interests and give them time to consider and discuss an issue in depth before coming to a considered view (National Consumer Council and Involve 2008). In this way, deliberate engagement is fundamentally different to other models of participation in that it is preference-forming rather than preference affirming.

Applying deliberative engagement approaches to strategic planning and policy setting processes would entail providing opportunities for members of the public to meet with planners to learn about, understand, discuss and contribute to the development of strategic policy objectives. These same planners (and other experts) would similarly learn about, understand and discuss the views and concerns of members of the public and ensure these are considered when formulating strategic policy objectives. In short, providing a forum where people with different values and interests come together to learn about and discuss how to plan for the future development of a local area or the urban environment more generally not only promotes mutual understanding, but also helps resolve difference.

Strategic planning and policy setting functions are particularly suited to a deliberative approach. The timeframes involved in establishing agreed strategic policy objectives afford planners ample opportunity to engage the public in deliberative forums, especially given the potential for pursuing and building on such conversations through social media platforms. But as Bond and Thompson-Fawcett (2006) warn, the benefits of using deliberative processes will only be realised if such processes are i) well facilitated, ii) involve people who are prepared to listen, reflect upon and change their views/practice as a result of their social learning, and iii) allow sufficient time for negotiation and debate to reach final outcomes. It is also important for

political representatives to be engaged in these processes and to sustain their engagement in ways that provide the public with confidence that their views are being taken seriously.

Case Study - Adelaide 5000+ Project - Integrated Design Commission (IDC)

This project focussed on the redesign, renewal and reactivation of inner Adelaide with a view to beginning an open conversation about the future development of the City. Engagement formed a central component of the project with the IDC keen to adopt a deliberative approach in order to highlight the advantages to be gained from social learning through design. Five 'specialist' forums – 'liveable city', 'green city', 'vibrant city', 'moving city', 'leading city' - were held which brought together a diverse range of professional, academic, community and government representatives. Separate 'community' and 'child and youth friendly' forums were also held to provide opportunities for community groups and young people to have more meaningful input into the process. Well facilitated, these forums enabled the IDC to formulate strategic policy proposals that were subsequently adopted to help shape the Vibrant City agenda – one of the South Australian Government's key strategic priorities.

Bond and Thompson-Fawcett (2006) acknowledge that deliberative forums may not necessarily eliminate conflict amongst participants in the way that consensual approaches strive for. This acknowledgement is important as it pays due regard to the increasing diversity of the population and emphasises the significance of understanding as opposed to agreement. Improving the public's understanding of strategic planning and policy development processes is critical if planning authorities are to meaningfully engage them and demonstrate how their views and interests have been reflected in strategic policy outcomes.

2.3.2. Assessment of Development

While there has been little trouble in getting members of the public to engage in the assessment stage of the planning process, as argued in Section 2.1.4 above, their engagement has invariably been reactive to development proposals considered to have adverse impacts upon them. The impetus for the public's negative reaction to development has increased in recent years as the planning system transitions from one based on land use separation to one focused on increasing mixed use development across the City (Adelaide City Council 2013). The significance of this transition cannot be overstated as the community continues to grapple with the notion of having a more diverse range of activities occurring in residential environments.

Case Study – Change of use application – Main Street (O'Connell) Zone

Despite the desired character for the zone explicitly anticipating restaurants, this change of use application from a shop to a restaurant was publicly notified (being adjacent to a residential zone) and attracted 21 representations opposing the proposal. Most representors were concerned with potential patron behaviour resulting from the sale of liquor, which is not a Development Plan issue relevant to the assessment of the proposal. This example attests to the public's lack of understanding about the limits of the planning system and the consequent need for more deliberative engagement approaches that enhance the public's understanding.

Equally important, however, is the fact that many people encounter difficulties responding to development proposals, particularly in reading and interpreting planning policy provisions, reading and interpreting plans of the proposed development and understanding the likely impacts associated with those plans. The 'on-balance' test⁴ used to assess development

⁴ In development assessment, planners will apply the on-balance test to those proposals which invoke several different policies, requiring the planner to make a judgement on which policy is most relevant or important in assessing the merit of the development.

proposals adds a further layer of confusion for members of the public, especially when a planning authority pays less regard to a particular policy provision relevant to a proposal.

Case Study – Application for 2-storey dwelling replacing existing single storey dwelling in zone where overshadowing impacts are deemed important

Overshadowing diagrams were provided by the applicant indicating that an adjacent dwelling did not currently receive sunlight to its private open space area (inferring that the development proposal would cause no impact). On notification, the owners of the adjacent dwelling requested Council staff to meet them on site, which demonstrated that the private open space area did receive sunlight and that the applicant's overshadowing diagrams were incorrect. In this case, public notification of the proposal was essential in revealing a critical flaw with the application.

The Expert Panel argues that Development Plans in South Australia are excessively complex documents, with over 2,500 combinations of zones and other spatial layers (many of which are very similar) and 23,000 pages of policy text (Expert Panel 2014, p.60). This complexity not only causes immense confusion for people seeking to engage with the planning rules (either by responding to or initiating a development) it also acts as a strong disincentive to do so. When considered alongside public notification categories that at times appear to bear little relationship with the potential impact of a development, it is hardly surprising that members of the public feel disenfranchised from the planning system.

Case Study – Application for construction of a multi-level mixed use development comprising commercial/retail uses at ground level and residential above.

This development proposal was considered to have significant traffic and overshadowing impacts, and was more than 250% over the maximum height for the zone yet was not subject to public notification owing to recently introduced 'catalyst' provisions in the Development Plan. For members of the public, however, these provisions are not well known and seem illogical given the scale and complexity of the proposal and the severity of the impacts on neighbouring activities (including nearby residential uses).

Adopting a deliberative approach to the development assessment process poses a challenge to the planning system, especially in the context of proposed reforms to significantly reduce the amount of development proposals subject to public notification. Nonetheless, the evidence suggests that the difficulties experienced in reading and interpreting plans and planning policies could be addressed through processes aimed at educating the public to increase their awareness of the development process. Interviews with leading developers working in the City indicate that many respondents to development proposals do not fully understand the characteristics of a development or its likely impacts. And it is this lack of understanding that often leads to highly emotive and negative responses. These same developers support the idea of forums where applicants can enter into a conversation with people concerned about a development proposal to clarify and explain how the proposal came to be designed in the way it was while responding to the issues raised by members of the public.

Case Study – Application for construction of a mixed use development comprising retail, office, residential and tourist accommodation, with basement car parking and ground level loading dock.

This proposal was publicly notified (category 2). Given the extent of public concern likely to occur with the proposed development, the applicant/developer decided to hold a public meeting and open day on the site prior to the official notification of the proposal to provide an opportunity for interested people to voice their concerns and ask questions of the development. Over 160 people responded, raising issues that led the developer to amend a number of elements of the proposal. As a result of this informal engagement, only a handful of people made formal representations to the category 2 notification with less than half of these opposed to the proposal.

A deliberative approach to the assessment of development proposals places greater responsibility on developers to justify the merit of their developments and allay the concerns of interested members of the public about the likely impacts of the development. Perhaps of greater benefit is the opportunity for developers and members of the public to come together and learn from each other, thereby establishing a less adversarial environment far more conducive to involving and engaging the public in the planning system in a more positive and proactive fashion.

3. Effective Engagement Practice

There is universal agreement that engaging with the community is an essential part of the planning process. The Planning Institute of Australia (PIA) extols the virtues of maximising public participation in all areas of planning practice through:

- Diversifying ways in which people can take part in planning.
- Encouraging and enabling participation by members of the public that are hard to reach.
- Making formal provision for the interests of particular (usually marginalised) groups, especially future generations, to be adequately represented.

(Planning Institute of Australia 2011)

In highlighting the importance of involving groups that are both hard to reach and rarely engaged, PIA recognises the tendency for planning participatory processes to be dominated by particular, usually well educated, social groups. In order to encourage a broader cross-section of the public to engage in the planning system, PIA puts forward a number of high level engagement principles that planners should follow. These principles are founded on the IAP2 values and have much in common with engagement principles found across the literature on public participation more generally.

The following sections draw on this literature, as well as Council's own *Community Engagement Strategy*, to identify high-level engagement principles of particular relevance to planning processes. The application of these principles to the areas of strategic policy making and development assessment are then discussed with options for effective implementation of these principles in South Australia's new planning system presented.

3.1 Engagement Principles

Principles for effective deliberative public engagement in the planning system are:

1. The process is **inclusive** - those who are affected by a decision have a right to be involved. This includes seeking out and encouraging a diversity of views and the involvement of people who may not always participate in planning processes.
2. The process is **transparent** – participants should have access to complete and open information during all stages of the engagement process with records kept.
3. The process is **flexible and tailored** to suit the particular engagement – there is no universal way of engaging the public in planning processes. The purpose for engaging people and the desired outcomes (e.g., formulating strategic policy objectives) should be clear to all participants and this should shape the engagement process.
4. The process **makes a difference** – there is clear evidence that i) decision-makers have actively listened and taken account of views before any decision is made, and ii) members of the public have learnt about planning processes and want to continue being involved in and contribute to planning decisions.
5. The process is **respectful** – where participants feel supported and their views and interests are valued.

6. The process **prioritises participants' discussions** – and provides participants with a variety of ways to express their views in order to make it easy and enjoyable for them to take part, and encourages their ongoing participation.
7. The process is **reviewed and evaluated** – with a view to continually improving engagement practice to encourage greater levels of public involvement.
8. The process **keeps participants informed** – so participants are aware of how their inputs have been incorporated into decision-making processes and final planning outcomes.

In order for these principles to be effectively deployed when engaging the public, it is imperative that deliberative forums are well facilitated in a way that engenders trust amongst participants. This is especially important given community distrust with a planning process that has historically positioned members of the public in opposition to both developers and to Council's planning staff.

3.2 Application to Strategy and Policy Setting

Since members of the public are less inclined to be involved in strategy and policy setting initiatives, the challenge for Council is to create imaginative ways of encouraging and enabling the public to deliberate about strategic planning and planning policy issues. Events and forums which *attract* people to participate in discussions about the City's future development, and provide these people with opportunities to learn about the planning system and the central role of strategic policy setting in shaping development outcomes, provide a way of engaging the public using the principles above.

It should be noted that Council has a fine record of engaging with its constituents, most recently through the *Picture Adelaide* project. This consultative initiative was undertaken to inform the development of a number of plans (including the City's *Strategic Plan*) and attracted large numbers of participants offering mostly positive and constructive ideas and stories.

3.2.1. Options

Options for conducting deliberative forums in a strategic planning and policy setting context include:

- Providing opportunities for people to engage in a variety of ways through both traditional face-to-face meetings/workshops as well as social media platforms.
- Ensuring that forums are carefully planned, executed, facilitated and 'fit for purpose'.
- Using local venues across all areas of the City so that people can learn about, discuss and consider how strategic and policy planning outcomes might shape the development of local neighbourhoods.
- Targeting established community groups *in their own space* so participants feel supported in putting forward their views about the development of the City.
- Including Council decision-makers and other experts as participants so they can hear first-hand of people's concerns and views about City development and discuss with them how these views might be incorporated in strategic planning policy.
- Using visual tools to show members of the public how particular planning strategies and policies are reflected in built form outcomes.

- Ensuring that the record and outcomes of the forums are readily communicated to forum participants.
- Demonstrating how the views of members of the public are incorporated into final planning strategy/policy outcomes.

Taken together, these options would go some way to ensuring the application of the engagement principles noted in Section 3.1 above. By providing a variety of ways for people to engage at locations across the City and/or through social media, the process would be inclusive and invite a diversity of views. Making the effort to engage groups in their space not only prioritises participant needs, it also indicates a level of respect for these groups. Including Council decision-makers and other experts at such forums would provide some surety that the process would make a difference, while providing a record of outcomes and demonstrating how public views have been incorporated into the final outcomes meets the principles of transparency and keeping participants informed.

The way in which such forums are planned, executed and facilitated can only be assessed on a case-by-case basis, but remain critical in enabling a deliberative engagement approach.

3.3 Application to Development Assessment Practice

In development assessment, the challenge for Council to meaningfully engage the public is quite different. Attracting people to respond to development proposals as a means of incorporating their views in development outcomes is not the issue here. Rather, the challenge is to get people to respond in positive and less adversarial ways.

3.3.1. Options

There are a number of options that could be adopted to facilitate a more deliberative approach to development assessment processes, such as:

- Providing opportunities for developers/applicants to present their project to interested members of the public in face-to-face meetings. The intent here would be to encourage productive dialogue amongst participants to enhance the public's understanding of the proposed development and its likely impacts and enable developers/applicants to respond to their concerns. Such an approach would go some way to resolving many of the fears about City development held by members of the public who do not have the skills to read and interpret plans and/or planning policies.
- Ensuring these forums are properly facilitated with Council planners or other professionals playing a mediatory role (which may require Council to provide training and professional development opportunities for planning staff).
- Allowing developers/applicants to change the plans of the development proposal to address the public's concerns without incurring additional lodgement/assessment fees or slowing the assessment process.
- Including decision-makers (members of Council's Development Assessment Panel) so that the final development decision is more likely to reflect the discussion and deliberations at these forums.
- Using visual tools to enhance the public's (and decision-makers') understanding of a proposed development and of the rationale for and impacts of particular design treatments.

These options, if properly planned, executed and facilitated, would similarly reflect the desired engagement principles noted in Section 3.1. Some effort would be needed to ensure such forums would be inclusive, but aside from this, these forums could easily be tailored to suit particular development proposals, they would certainly make a difference for both developers and members of the public, they would be respectful of participants' needs and prioritise their discussions, they could easily be reviewed and evaluated to improve practice, and it would be easy to keep participants informed.

3.3.2. Notification

An additional consideration relevant to development assessment is the role of notification in informing members of the public of upcoming development proposals. There are a number of shortcomings with existing notification processes, not least of which are the inconsistent triggers for notifying people of particular applications. A scan of recent development proposals in the City shows that many proposals likely to have significant impacts on neighbouring activities are not subject to notification whereas other relatively innocuous developments (particularly change of use proposals) are required to be notified.

Facilitating more deliberative approaches to involving/notifying the public about development will require some change to existing practices. Without knowing whether the State Government will look to change notification processes in the new planning system, a workshop with the City's planning staff was held to discuss notification issues. The following options were developed in the light of this discussion:

- Developments likely to have *direct* impacts on neighbours should be notified, in the context of what is considered to be acceptable impacts in the relevant zone.
- Residents likely to be directly affected should be notified by letter or email rather than through public notices in the newspaper.
- Notices on the site of a development proposal should be required to inform members of the general public and indicate how people can respond/get involved.
- Boundary issues and disputes should be taken out of the planning system and addressed through the South Australian Civil Administrative Tribunal (SACAT).

These options, and the problems they seek to address, point to the need for a wholesale revision and re-write of the triggers and mechanisms for notifying development proposals in the Development Plan. In undertaking such a revision, Council will need to be cognisant of the (currently unknown) details of the new planning legislation when this is eventually released to ensure clarity of process for members of the public and the development sector.

4. Conclusion

While details of South Australia's new planning system are yet to be confirmed, Adelaide City Council nonetheless remain committed to enhancing public engagement in the City's planning processes in order to realise better planning outcomes that have broad community support. To this end, this study has interrogated the Expert Panel's proposals to boost public engagement 'up-front' in the strategic planning and policy setting stages of the planning process and reduce the need for people to be engaged in low-risk, routine development proposals.

The study findings confirm the problematic nature of the Expert Panel's position, in particular the difficulties experienced in getting people engaged in strategic policy matters and the fact that people will always be concerned about the potential impacts of individual developments on them and the environment in which they live. The Expert Panel's proposals to reduce the number and proportion of development proposals subject to public notification is unlikely to allay the public's concerns.

Deliberative approaches to engaging the public on planning matters offer a productive way forward to both stimulate public interest in and contribution to development outcomes. The study demonstrates how deliberative forums could be deployed in strategic planning and policy development processes as well as in the assessment of development to yield better planning outcomes that are more likely to be supported by the City community.

In order to make best use of deliberative approaches, the study presents a set of high-level engagement principles and options for their implementation for Council to consider when engaging members of the public. Attention to these principles and options is likely to improve Council's capacity to meaningfully engage the public in City development matters and lead to better planning outcomes as a result.

5. Reference List

- Adelaide City Council, 201?: *Community Engagement Strategy: More Inclusive. Better Outcomes*, Adelaide City Council, Adelaide.
- Adelaide City Council, 2013: *Research and Observations Paper: Future Statutory Planning Systems*, Adelaide City Council, Adelaide.
- Adelaide City Council, 2014: *Submission to Expert Panel on 'Ideas for Reform'*, Adelaide City Council, Adelaide.
- Adelaide City Council, 2015a: *Key Development Applications*, Adelaide City Council, Adelaide.
- Adelaide City Council, 2015b: *Public Notification in the City*, Adelaide City Council, Adelaide.
- Adelaide City Council, 2015c: *Situation Report*, Adelaide City Council, Adelaide.
- Bond, Sophie and Thompson-Fawcett, Michelle, 2006: "Design-Led Participatory Planning", in Thompson-Fawcett, Michelle and Freeman, Claire (eds), *Living Together: Towards Inclusive Communities*, Otago University Press, Dunedin.
- Colmar Brunton, 2014: *Adelaide City Council Planning Rules Reform*, Report to the Adelaide City Council, Adelaide.
- Development Assessment Forum, 2005: *A Leading Practice Model for Development Assessment in Australia*, Department of Transport and Regional Services, Canberra.
- Expert Panel on Planning Reform, 2014: *The Planning System We Want*, Department of Planning, Transport and Infrastructure, Adelaide.
- Government of South Australia, 2013: *Better Together: Principles of Engagement*, Department of Premier and Cabinet, Adelaide.
- Government of South Australia, 2015: *Transforming our Planning System: Response of the South Australian Government to the final report and recommendations of the Expert Panel on Planning Reform*, Department of Planning, Transport and Infrastructure, Adelaide.
- http://www.publicagenda.org/files/public_engagement_primer.pdf - accessed 20 July, 2015.
- <https://www.ucl.ac.uk/public-engagement/documents/evaluationtoolkits/Guidingprinciplesforpublicengagement> - accessed 20 July, 2015.
- IAP2 International Federation, 2014: *IAP2's Public Participation Spectrum*, International Association for Public Participation.
- Institute for Local Government – California, <http://blog.placespeak.com/public-consultation-2/10-principles-local-government-public-engagement> - accessed 20 July, 2015.
- Jensen Planning and Design, 2014: *Planning Reform Issues Paper: Engagement, Paper Prepared for the Local Government Association of SA*, Jensen Planning and Design, Adelaide.

- Local Government Association of South Australia, 2015: *Response to the Expert Panel on Planning Reform's Report – 'The Planning System We Want'*, Local Government Association, Adelaide.
- National Coalition for Dialogue and Deliberation, International Association for Public Engagement and Co-Intelligence Institute, 2009: *Core Principles for Public Engagement*, National Coalition for Dialogue and Deliberation, USA.
- National Consumer Council and Involve, 2008: *Deliberative Public Engagement: Nine Principles*, National Consumer Council, UK.
- New South Wales Government, 2014: *City of Sydney*,
http://www.cityofsydney.nsw.gov.au/data/assets/pdf_file/0004/217075/CEStrategy2014FINAL.pdf - accessed 20 July, 2015.
- Participation Cymru, 2011: *National Principles for Public Engagement in Wales*, Welsh Government, Cardiff, <http://www.cavs.org.uk/wp-content/uploads/2013/05/10-National-Principles.pdf> - accessed 20 July, 2015.
- Planning Institute of Australia, 2011: *Public Participation, Policy Position Statement*, Planning Institute of Australia, Canberra.
- Productivity Commission, 2011: *Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, Research Report, Canberra.
- Productivity Commission, 2014: *Relative Costs of Doing Business in Australia: Retail Trade*, Research Report, Canberra.
- Queensland Government, no date: *Engagement Principles*,
<http://www.qld.gov.au/web/community-engagement/guides-factsheets/business-government/principles.html> - accessed 20 July, 2015.