Ideas for Planning Reform

Submission from the Urban Development Institute of Australia (SA) to South Australia's Expert Panel on Planning Reform

Issue 1, October 2013

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1. Background: The Imperative of Micro-economic Reform

The UDIA(SA) was formed in 1971 to represent the interests of the development industry in South Australia in collaboration with all levels of government. UDIA represents around 200 businesses in South Australia and 4000 on a national basis and is the peak body of the urban development industry. The UDIA is a member-based organization that seeks to represent all sections of the urban development industry – including councils, developers, service providers such as engineers, planners, surveyors, lawyers, bankers, etc.

The important of the development industry to South Australia is demonstrated by the following facts:

- The land and housing industry in SA employs 56,000 people – or 7% of the state's workforce.
- The industry's total output is almost $9 billion annually – or 12% of Gross State Product.
- The industry contributes approximately 12% of total taxation revenue to the State Government.

This paper provides ideas generated by UDIA(SA) [UDIA] members for improvements to the planning system. We have set out the issues by identifying the problem which is being addressed as well as the proposed solution and its benefits.

UDIA believes that the planning system has three key outcome areas - economic, social, and environmental – and must aim to integrate and balance these outcomes. The Expert Panel must give due consideration to each of these outcomes as a well-functioning planning system is fundamental to the economic future and wellbeing of the State.

The State relies upon the planning system to underpin its economic competitiveness. UDIA is aware of calls in some quarters for increased engagement, design review and consultation. Any reforms in this direction cannot be made at the expense of the efficiency of the planning system.

The reforms which are ultimately made to the planning system as a result of the Planning Improvement Project must be evidence based and must be economically sound. To this end we remind the Expert Panel of the extensive

investigations undertaken for the *2008 Planning and Development Review*.

This Review concluded that:

- Regulatory creep had produced a planning system overwhelmed by minor and low-risk matters, creating lengthy delays which stifle economic growth and place unnecessary financial burden on the community.
- 85% of matters handled by the planning system are for residential development and nearly 40% of these are for basic renovations, most of which undergo a full subjective merit assessment unnecessarily.
- South Australia has a very low level of complying development and has more applications per head of population than any State, with the lowest average value of all mainland States.
- There are 17,000 pages of regulations that average citizens and the development industry have to navigate to obtain planning approvals.

UDIA is strongly of the view that these conclusions remain valid. The key issues are the same now as they were in 2008. The need for action is as pressing now as it was then. As a State, we cannot afford to lose sight of the clear vision outlined in 2008.

Further evidence of the need for improvement to the planning system can be found in the Productivity Commissions 2011 report *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, in particular:

- South Australian legislation includes substantial possible extensions (up to 28 weeks) for development assessment timeframes due to referrals.
- While South Australia has the shortest minimum timeframe for development assessment (14 days) it also as the longest maximum timeframe up to 196 days due to referrals and 'stop the clock' provisions.
- The potential for cost savings associated with reducing approval times are significant, in the order of $14,000 for each residential application.
- The average duration of the rezoning process in South Australia is 31 months and one of the highest in the country.
- South Australia has the most referral bodies (19) of all states.

The message here is clear: there is no need to "reinvent the wheel" by attempting to redefine the issues. We know what the issues are. The imperative is to act to rectify them.

UDIA has included in this paper some case study examples of difficulties its members are encountering with the planning system and the impact this has on economic development, in order to demonstrate genuine need for reform in these areas.

2. Context: Expectations of the Planning System

UDIA submits that reform should be crystallised around a clear goal and expectations. Reform that attempts to be all things to all people will only result in confusion, disputes and delay.

Goal of the System:

- To underpin housing affordability and the economic growth and competitiveness of the State by facilitating the use and development of land in a way that is socially just and environmentally sustainable.

Expectations:

- A long-term **strategic** plan that is:
  - Clear, direct and unambiguous about where and how growth will occur
  - Sets measurable performance targets
  - Is developed with appropriate levels of community engagement
  - Guides decisions of Government and investors
  - Is effectively implemented by all State agencies and Councils
- **Rezoning** processes that:
  - Are timely and cost-effective
  - Provide a clear link from the strategy to the legislative framework
  - Are objectively arrived at based on investigations and planning merit
  - Are integrated with efficient and equitable infrastructure planning and funding mechanisms
  - Are led and driven by the State Government where the issue/area is of State significance
  - Provide opportunities for input by all those who are affected
  - Can be triggered by an application by a landowner and are subject to judicial review
- **Rules and codes** for **development** that:
  - Are consistent (with clear parameters and guidance for local variation), clear and streamlined
  - Provide certainty about what <u>will</u> be approved (and not just about what <u>will not</u> be approved)
  - Ensure 15 years stock of zoned and serviced land in all regions and market segments (infill, fringe, towns)
  - Minimise the volume and diversity of regulations and the compliance burden on applicants
  - Minimise the need for referrals and concurrence requirements by providing clear policy
- **Development** assessment **processes** that:
  - Are timely and cost-effective
  - Match the level of assessment and public notification to the complexity, risk and policy-alignment of the proposal
  - Feature a high level of exempt/complying assessment that are clearly defined
  - Feature a low level of full merit assessment
  - Are administered impartially, consistently and apolitically by qualified experts
  - Consider regional and wider (not just local) perspectives
  - Are integrated with other approval processes to give applicants the ability to secure multiple consents with a single application
  - Allow private certification for identified categories of applications
  - Result in “deemed approvals” if timeframes are not met
  - Are adequately resourced
  - In which applicants always have a right of judicial review
  - In which third parties have rights of judicial review only for development that is outside the intent of the zone

3. Directions: Ideas for a Truly Reformed Planning System

3.1 Making the Development Act a positive document

Ensure the wording of the Development Act 1993 is about facilitating development and growth in an orderly and sustainable way.

Problem:

- Too often the Development Act is used in a negative way, to stop or hinder development rather than facilitate appropriate development or to regulate a good idea out of existence.
- The Preamble of the Development Act currently reads (underscore added):
  - *"An Act to provide for planning and to regulate development in the State; to regulate the use and management of land and buildings, and the design and construction of buildings; to make provision for the maintenance and conservation of land and buildings where appropriate; and for other purposes."*
- This language implies that the Act is about control and regulation, and has a "negative" tone to it.

Solution:

- We would propose wording with a more positive feel to convey the purpose of the Act which should be to facilitate appropriate development, such as:
  - *"An Act to facilitate and manage the orderly growth and the development of this State; to encourage a wide range of sustainable well designed buildings and structures, landscapes and infrastructure works; to make provision for the practical and commercially viable maintenance and conservation of land and buildings where appropriate; and for other purposes."*
- The fact that the Act is there to enable development should be communicated clearly to all planners and elected members of Council so that they approach development proposals in a positive manner, as a facilitator not a regulator.

Benefits:

- Helps ensure the Development Act is seen as a tool for creating economic growth and wellbeing.
- Gives support to planning authorities to be facilitators of good development rather than just regulators.

3.2 Reforming Planning Culture

Ensuring existing and future planning practitioners administer the planning system with the right intent, values and behaviours.

Problem:

- Following on from the issue outlined above, there is a need change the culture across the board in the planning profession from one focussing on rules, regulation and risk aversion to one focussed on facilitation and managing change and risk.
- Even the most out-dated planning system will work if those operating it are committed to achieving outcomes and conversely the most contemporary system will fail if those operating it are not committed to achieving outcomes.

Solution:

- Planning education and professional development should focus on shifting the culture of the planning profession in line with the following:

From: Current Planning Values / Focus		To: Reformed Planning Values / Focus
Rules	→	Intent
Compliance	→	Facilitation
Stopping the "wrong" things	→	Unlocking the "right" things
Process	→	Outcomes
Detail first and always	→	Principle first, detail later
Compromise	→	Leadership
Resist change	→	Embrace change
Scope creep	→	Scope limits
Issues	→	Solutions
Social and environmental	→	Economic, with social and environmental
Risk elimination	→	Risk management
Preserving existing urban form and character	→	Transforming urban form and character

Source: used with permission

Benefits:

- If the planning system is operated with the right intent then solutions can be found to many perceived hurdles without the need ongoing regulatory and policy change.

3.3 Mandate regional development assessment with professional membership

Take SA's leading-edge DAP system to the next level by mandating regional DAPs and "professionalising" membership.

Problem:

- Capacity of Council DAPs is variable.
- Many councils have "stacked" their DAPs with members with known political aspirations, with required technical qualifications either not held or not objectively of a sufficient standard.
- Examples include ex-Councillors, members of resident action groups, and so on.
- This means that DAPs are often behaving politically and making decisions subjectively not objectively.
- DAPs are inconsistently used by Councils (type of applications referred varies from Council to Council) and have varying interpretations of the same policies.
- DAPs usually have little time to get familiar with an application (such as a land division that has been in the system for a year or more) and don't have the proper background to make an informed decision.
- An applicant can spend a year and invest significant resources in satisfying Council officers that an application is suitable only to then be vulnerable to a DAP decision.
- DAC currently deals with applications of regional significance which could be considered at the regional level if there were assessment bodies suitably comprised to take this on.

Proposal:

- Mandate Regional DAPs or Regional Sub-Committees of the DAC (say 3-5 for metropolitan Adelaide).
- Require prescribed qualifications for all DAP members.
- Prohibit serving Councillors and ex-Councillors from DAP membership.
- Minister to appoint all members of Regional DAPs.

Benefits:

- Consistency, expertise-based decisions and reduced assessment timelines.
- Would allow for a massive reduction in DAC's workload – ie matters currently dealt with by DAC could be transferred to RDAPs or regional Sub-Committees.

3.4 Mandate Delegation of planning assessments to Council staff

Empower Council staff to do the job they are employed to do by ensuring that applications are delegated to staff for decision (and not DAPs) unless they are contrary to zone policies.

Problem:

- Too many planning matters are referred to DAPs
- Only applications that are contrary to Development Plan policy should be dealt with by DAPs.
- Once DAPs get involved there is a tendency for delay's to occur when additional information is sought inappropriately, local political issues are raised or different interpretations are brought to bear.
- The recent case of the Adelaide City Council DAP decision on a building at the corner of Hutt Street and South Terrace is a case in point.
- Delays in approval times cost proponents thousands of dollars. The Productivity Commission (2011) noted that the potential cost savings from lowering approval times are significant e.g. in Queensland the estimated savings in holdings costs by reducing residential development approval times rom 93 days to 23 days was $14,000 per application.

Proposal:

- Mandate the delegation of all applications to Council staff unless assessed as contrary to zone policies.
- The Development Assessment Forum prepared a Leading Practice Model in 2005 with the aim of decreasing the length of and complexity of the DA process. It concluded that *"most development applications should be assessed and determined by professional staff or private sector experts*".

Benefits:

- Consistency, expertise-based decisions and reduced assessment timelines.

3.5 Expand the Scope of Integrated Assessment – merge additional categories of approval into the planning system

Build on SA's very successful integrated assessment platform by folding additional classes of consent into the planning system.

Problem:

- Notwithstanding SA's well-integrated assessment system (which currently integrates formerly separate permits including environmental licences, building consents and land division consents), there are still some classes of development that require multiple (and often unconnected) approvals for a single building.

  Examples include:
  - liquor licences (involve consideration of planning and building matters better determined at DA stage)
  - gaming machine licences (as above)
  - petroleum retailing licences (as above)
  - native vegetation clearance permits (can invalidate a planning consent because it is unlinked)
- This creates considerable uncertainty and can result in a situation where years of work and considerable investment are nullified by an approval requirement that could have been dealt with upfront.

Proposal:

- Identify currently separate classes of consent for integration into the planning system.
- Achieve integration could be via one or more of:
  - assessment linkages (referrals, concurrence)
  - additional classes of consent
  - Development Plan policy

Give applicants the option of selecting integrated assessment or staged assessment (to avoid excessive detail being demanded upfront, which would bog the system down).

Benefits:

- Certainty, cost savings, red tape reduction

3.6 Staged Approvals – Give the Option of Bankable Certainty early, with Detailed Assessment to Follow

Enable applicants to stage consents (and elements of a consent) so that expenditure on applications can be staged while giving certainty early.

Problem:

- Excessive detail is often required upfront.
- As a result, applicants often spend tens of thousands of dollars on seeking planning consent, only to find the application falls at a hurdle that was obvious from day one.
- Court decisions have constrained the scope of conditions of consent and reserved matters to the extent that their ability to secure staged approvals is now very limited.

Proposal:

- Introduce mechanisms that allow applicants to stage consents, or to stage elements of a particular consent.
- For example, an applicant for a new apartment building might seek land use approval first. This would resolve their right to use the land for apartment purposes. Could then seek design/siting consent, thereby resolving the broad yield parameters. This could be followed by matters of detail such as materials, finishes, carparking layout, etc.
- This is similar to the approach used in other jurisdictions (eg NSW defines permissibility via LEPs, and design via DCPs, while the ACT has "lease purpose clauses" to define land use entitlements, with design and siting consents to determine design parameters).

Benefits:

- Give applicants the opportunity to stage their expenditure on the DA process and secure consents (or elements within a consent) progressively.

3.7 Proponent-Initiated Policy Change - create an impetus for updated zoning

Create a statutory process entitling landowners to apply for zoning changes.

Problem:
- Landowners have no right to initiate zoning change.
- Councils cannot keep up with the challenge of updating zoning rules.
- Most zoning in Greater Adelaide is out of step with the Planning Strategy.
- Landowners are totally at the mercy of Councils to decide whether and how to update zoning.

Proposal:
- Enable landowners to apply for rezoning.
- This could be modelled on mechanisms applying in other jurisdictions.
- Landowners would be entitled to apply to Councils for rezoning and have the application considered on its planning merits.
- If the application is approved, then Council would initiate and progress the DPA (with the option of using a proponent-funded process – *see below*).
- If the application is refused, landowners would have a right to have the decision reviewed by an independent body (Court or other – *see below*).

Benefits:
- More efficient policy change to address market demand.

3.8 Proponent-Funded Policy Change – create a mechanism to boost policy resources

Create a statutory process to encourage proponent-funded DPAs by making the process (with checks and balances) transparent.

Problem:
- Proponent-funded DPAs are currently progressed administratively but without enabling legislation.
- While Court decisions have upheld the validity of proponent-funded policy change, many Councils (and residents groups) are nervous about the probity of these arrangements.
- As a result, Councils are unable to harness landowner resources to progress DPAs.
- Councils cannot keep up with the challenge of updating zoning rules.
- Most zoning in Greater Adelaide is out of step with the Planning Strategy.

Proposal:
- Introduce legislative provisions that specifically enable Councils and the Minister to receive funds and/or in-kind inputs towards a DPA.
- This could be modelled on mechanisms applying in other jurisdictions.
- Purpose would be to make the process (and checks and balances) transparent and "normalise" it as part of the planning system.

Benefits:
- More resources brought to bear on policy updates.
- More relevant and pertinent zoning rules.
- Reduced room for argument/perceptions about the validity/probity of proponent-funded DPAs.

3.9 Depoliticised Policy Change Processes – make zoning a professional/technical exercise, not a political one

Establish mechanisms for independent review and determination of proposals for policy change.

Problem:
- Currently zoning changes are entirely the prerogative of Councils and the Minister.
- While there is a body with limited role of independent hearing and advice (DPAC), this is a "soft" accountability measure, is seldom-used and carries low levels of community confidence.

Proposal:
- Establish a body with capacity to independently assess and determine key categories of proposals for policy change.
- Could be modelled on the Victorian "commission of inquiry" process.
- Would not apply to all proposals, but only those of sufficient significance.

- Could be used to support new mechanisms for proponent-initiated policy change (see above) by providing independent review of key decisions.

Benefits:
- Better decisions (would compel policy makers to make decisions based on planning merit and adopted strategic directions, rather than on political grounds).
- Enhanced community confidence in outcomes.
- Greater equity in the way policy issues are dealt with.

3.10 Effective Codification – create a new class of policy document that will expand the scope of "as of right" categories of development

Create a new category of document to underpin consistent "as of right" entitlements for key categories of development.

Problem:
- South Australia has low levels of "as of right" development (exempt, complying or building rules only) compared to other States (refer Chapter 9 of 2008 Planning and Development Review).
- As a result, our system is overburdened with full-merit assessments and scarce planning resources are being consumed in needless assessment tasks rather than on strategic and policy work.
- ResCode, while a significant step forward, has failed to meet expectations due largely to its statutory expression
  - it is "stitched across" three separate schedules of the *Development Regulations 2008* and therefore cannot be read as a single entity
  - it is expressed in "black letter law" format, relying on words and convoluted
  - expression (double negatives etc) and therefore cannot be expressed or understood as a "planners document" (with diagrams, plain English expression, etc)
  - it is not expressed spatially (users must reference Gazette notices or separate maps to know where it applies)
  - minor failures cannot be corrected by conditions of consent (unless accepted by Councils, minor failures can result in applications defaulting back into full merit assessment).

Proposal:
- Create a new category of policy document ("Code"), development in accordance with which would be "as of right" (ie exempt, complying or building rules only).
- Allow for expression to be by means of diagrams, words, pictures or other means (ie not required to solely consist of text as is currently the case).
- Allow for separate publication (including electronic publication via checklists which can be lodged with the application to demonstrate self-assessment).
- Codes would apply in areas specified by the Minister and would be spatially "called up" via the Government's GIS system.

Benefits:
- Streamlined assessment.
- Reduced need for full-merit assessment frees up planning resources for policy tasks.
- Ease of access and interpretation would enhance take up (would allow all relevant requirements for a particular class of development to be presented in one place and expressed in "plain English").
- Greater flexibility (via use of conditions) to treat more applications as Code-assessable.

3.11 Private Certification – expand the scope and extent of privately certified decisions

Expand the use of private certification for planning matters to free up resources.

Problem:
- A large proportion of applications to Councils are for minor planning matters such as alterations, additions and standard housing types
- A significant amount of resources could be freed up if private certification was expanded to cover a greater range of matters.

Proposal:
- Massively broaden the scope of private certification.
- Empower accredited assessors to certify compliance with prescribed planning requirements.
- Council/DAC exercise discretion where prescribed criteria not met, or where applicant seeks to depart from these criteria.

- Deal with specialist assessment considerations by means of separate (but linked) approval requirements.
- For example, a significant development may require in addition to a planning consent:
  - design review
  - traffic engineer to sign off on traffic and parking
  - heritage architect to sign off on heritage impacts
- In all cases these approvals **must** be consistent with planning consent.
- Give applicant options/alternatives – can choose to have Council/DAC certify all consents, or can choose to use private certifiers, or combination.

Benefits:

- More standardised assessment would allow for greater use of private certifiers which would remove pressure on existing resources to process applications in a timely manner.

3.12 Streamlined Zoning

Significantly reduce the time and complexity involved in rezoning by mandating adoption (and automatic updating) of a central policy register (subject to local variations within strictly defined parameters).

Problem:

- The 2008 Planning and Development Review found that Council DPA's took on average 32 months to complete. This data is supported by the Productivity Commission (2011) which found the average was 31 months.
- Statement of Investigations reports have become very unwieldy containing a whole raft of information that is not essential. These reports are inaccessible to the general public because of the amount of complex, technical and bureaucratic information included.
- There is an excessive and unreasonable level of complexity and micro-variation in Development Plans, arising from esoteric local views (often highly political).
- The average quality of Development Plan policy is very poor in terms of expression and consistency.

Proposal:

- The rezoning process should take 6-9 months.
- The Regulations should specify what information is required for a Statement of Investigations and it should not be possible to go beyond this.
- Zones should be much more consistent. Local variation should only exist where it is clearly warranted and within tightly defined parameters..
- Instead move to a situation where the Minister maintains a prescribed set of zone policies (that is, a zoning "menu") and specifies how/where they can be used.
- Councils are required to select zone policies from the "menu" and determine where to apply them (consistent with Ministerial requirements).
- Any change the Minister makes to the zoning policies in the "menu" will automatically take effect without the need for a DPA.
- In other words, if an area is zoned residential, and the Minister changes the residential zone template in the "menu", the zoning for that area changes automatically.

Benefits:

- This will dramatically speed up the process of aligning zoning with the strategy, as well as reducing inconsistency and variations in zoning.

3.13 Streamlining of assessment for applications in a master planned development area

Streamline assessment processes where the project "vision" has been endorsed in the form of a masterplan or similar.

Problem:

- Despite receiving sign off to a masterplan (vision, objectives and outcomes) for a specific project, individual development applications are still subject to a full and time consuming assessment process.
- Often the Council planning and engineering officers are not aware that the Council has at a higher level, endorsed the project.

Proposal:

- In situations where land is appropriately zoned and a master plan over the site has been endorsed by Council, DAC or the Minister, subsequent DA's that are consistent with that master plan should be fast tracked

through approval or considered as comply or "as of right".
- Approvals should be delegated to staff not DAPs or DAC.

Benefits:
- Time and cost savings for Council and the developer which ultimately make housing more affordable.

3.14 Reward developments which go through the Design Review process

The assessment of developments which go through a Design Review process should be streamlined.

Problem:
- Other than for $10M+ proposals in the City of Adelaide, at present development proposals which go through a Design Review are not officially recognised for doing so and not rewarded with a streamlining of the development process.
- Development proponents spend time and money going through the Design Review process but a still subject to assessment processes which might throw up minor variances to the plan which in the broader scheme are largely irrelevant.
- Rather than streamlining the development process the Design Review can simply add another layer to it.

Proposal:
- Officially recognise that a development proposal has been through the Design Review process and fast track the assessment process based on the overall quality of design and project outcomes.
- Replicate the model used for $10M+ proposals in the City where Design Review streamlines assessment process and adds certainty to the outcome.

Benefits:
- Time and cost savings for Council and the developer which ultimately make housing more affordable.

3.15 Building Envelope Plans

Introduce the use of building envelope plans to assist in provision of small lot products and give certainty to assessment following land division consent.

Problem:
- Many Councils will not approve small lot land divisions without an application for a built form product as well. This can be a problem where the land developer is not the home builder.

Proposal:
- The use of building envelope plans should be an accepted mechanism for small lot land divisions.
- Under this approach, the applicant nominates building envelopes at land division stage (but is not required to submit full DAs for built form on each lot).
- Once the land division (and envelope plan) is approved, built form that accords with the envelope plan receives streamlined assessment.

Benefit:
- Enables land developers to provide small lots without seeking full approval for a built form product as part of the land division application.

3.16 Reducing Agency Referrals

Streamline development assessment processes by reducing referrals to save time and cost.

Problem:
- The number of referrals from local councils to State agencies (both formal ie statutorily required and informal) causes unnecessary time delays and double handling costs for applications.
- Many referral matters could be avoided if the matters are dealt by appropriate policy being put in place with at the time of rezoning.
- South Australian legislation includes substantial possible extensions (up to 28 weeks) for development assessment timeframes due to referrals.
- While South Australia has the shortest minimum timeframe for development assessment (14 days) it also as the longest maximum timeframe up to 196 days

due to referrals and 'stop the clock' provisions (Productivity Commission, 2011).
- In 2007 EPA have identified 15 categories of development applications that are listed in Schedule 21 but which they do not require referral. The EPA Board has also endorsed their removal but the Schedule is yet to be amended.

Proposal:
- As recommended in Chapter 9 of the 2008 Planning and Development Review (Recommendation 33) actions should be taken to reduce the reliance of local councils on referring applications to State agencies for advice. In particular the following changes should be made:
  - Abolishing informal referrals
  - Reducing statutory timeframes for formal referrals
  - Reviewing and minimising formal referrals
  - Ensure than any new referrals introduced are fully assessed for their impact before they are introduced.
  - Using a deeming approval provision for referral agencies which fail to meet the referral time limit (as adopted in Queensland and the ACT).
- Repeal the provisions of Schedule 21 that the EPA Board has identified as superfluous.

Benefit:
- Streamlining the development assessment process is critical to cutting time and costs to consumers.

3.17 Reducing Internal Council Referrals

Reduce the extent of internal council referrals and requests for unnecessarily detailed information.

Problem:
- Contemporary Councils have numerous departments and the number of internal referrals has increased substantially. This has added to the time and complexity of assessment and requirements for responses by proponents.
- In many cases this goes beyond the expectations of the Development Plan to such an extent that we regularly see requests for detailed engineering design, detailed landscape design etc. This adds significant cost and delays to the assessment process.
- What is happening is that every Council officer is being given a say in the assessment process. Every issue – whether legitimate or not – is being raised for the applicant to wade through.
- Planning officers have become glorified administrators and their decisions are too greatly influenced by internal staff that sees development assessment as an opportunity to leverage a wish list from developers.

Proposal:
- Eliminate certain matters and requests from the planning assessment such that the general suitability of the proposal against the Development Plan requirements can be assessed. Detailed design requests should be eliminated.
- The role of conditions could be reviewed to ensure Council have the powers to issue approval subject to detailed design. This would help move the process along and give proponents confidence to make the necessary investment in detailed design with the knowledge that once the engineering merits (for example) are proven the approval is effective.

Benefit:
- Streamlining the development assessment process is critical to cutting time and costs to consumers.

3.18 E-Planning

Move to an electronic planning system

Problem:
- Inefficiencies and inconsistencies in the administration of the planning system.
- Lack of convenient "keystroke" access to information and services.

Proposal
- The State should move to an electronic lodgement and assessment system which will assist in streamlining development assessment and ensuring consistency in the process (2008 Planning and Development Review Recommendation 37).
- Codes and Development Plans should be delivered electronically via a GIS platform so that by selecting a parcel of land all relevant planning requirements can be viewed at the touch of a button.

Benefit:

- Time and cost savings to government, business and consumers.
- Improve consistency, accountability, public reporting and information collecting/benchmarking.
- Clearer delivery of Code and zoning requirements.

3.19 Performance Monitoring and Consequences for Councils not meeting deadlines

Introduce performance monitoring requirements which compel planning authorities to meet deadlines, with sanctions for underperforming authorities.

Problem:

- There is little motivation for planning authorities to be timely in their responses

Proposal:

- The performance monitoring and reporting recommendations outlined in Chapter 9 of the 2008 Planning and Development Review (Recommendation 38) should be implemented.
- In addition, in order to motivate Councils to meet development assessment timelines there should be consequences for not meeting timelines such as refunding of twice the value of development application fees if statutory timeframes are not met.
- Reliable performance data should be collected and presented for all planning authorities. A quarterly "league table" should be promulgated to "name and shame" those who are not delivering.
- Authorities that are performing should be eligible for preferential grant funding under the P&D Fund and Grants Commission.
- Underperforming Councils should receive sanctions ultimately leading to the loss of planning powers.

Benefit:

- Improve accountability and performance in the development assessment process.

3.20 Prevent "Gold Plating" of DPTI Requirements for External Roads

Reduce excessive design requirements where developers are required to interface with DPTI roads.

Problem:

- Where developments interface with DPTI roads the design requirements become excessive, time consuming and costly.
- Road works involving DPTI roads trigger significant design requirements and a process that involves DPTI project managers (at the developer's expense), enormously extravagant contingency allowances, mandatory use of expensive consulting engineers, veto rights for Council staff and costs associated with the proponent's project manager.
- The design requirements are usually excessive, and create significant delays.
- Significantly the design requirements are typically higher to cover existing shortfalls in infrastructure (ie, pavements depth, width, and lighting at intersections) much of which is to satisfy freight requirements (rather than our domestic vehicles).

Proposal:

- Give applicants the ability to access an independent review by an expert to judge the fairness of this process, the time and cost involved in case studies and the fairness of replacing inadequate infrastructure with highly specified infrastructure to suit freight purposes.

Benefit:

- Reduce time and costs for development making housing more affordable and cost more equitable.

3.21 State Significant Development

Create a clear definition for State Significant Development and confer streamlined assessment and/or rezoning entitlements.

Problem:

- It is currently unclear when the State will intervene in a development proposal and there is uncertainty about the types of development that are State significant.

- The ability of a Minister to "call in" has become a political rather than planning argument.
- There are only very loose principles for deciding what is (and is not) of State significance.

Proposal:
- The improvements outlined in Chapter 10 of the 2008 Planning and Development Review and Recommendations 40 are supported to improve the management of State Significant Development.
- This could involve defining certain triggers (eg employment, investment value, industry type) that would enable the Minister to declare State significance.
- Once declared, assessment and/or rezoning would be streamlined by automatically giving the State Government the leadership role.

Benefit:
- Provide business, investors and the community with a clear direction, certainty and predictability as to how the legislation will apply.
- Ensure important matters receive priority consideration.

3.22 Reform of EPA's relationship to the planning system

Reduce the cost and time delay for councils to resolve environment considerations of land development.

Problem:
- The existing interaction between the planning system and the EPA is inconsistent, unclear and often time consuming.
- Of particular concern is the time and cost of resolving matters related to low risk sites.
- EPA has confused the issue over site contamination and the suitability of sites for development.
- A far broader net than is required is being used to catch genuinely contaminated sites. Many sites that can be readily deemed suitable are being caught by the EPA's unnecessarily broad definition of contaminated sites and causing Council uncertainty over decision making.
- The low threshold of the definition of site contamination is adding time, cost and uncertainty to the process for no benefit.
- The net effect of the problem being incurred is that the system is in fact creating additional costs, time delays and uncertainty for the development industry. This is inconsistent with the EPA's own strategic priorities which include reducing red tape for business, developing innovative and cost-effective solutions to environmental issues and building a pro-active and service-oriented culture.

Proposal:
- EPA must clarify the terminology and classification of site contamination in a manner which Councils can properly assess risks i.e. there is nothing to differentiate buried animals or ashphalt from major industrial waste or chemical contamination. The low threshold trigger of site contamination must be raised to deal with real risks to human health.
- Matters referred or which the EPA has direction over must be reduced.
- Activities that could have caused site contamination must be classified in terms of low, medium and high risk to then determine the merits of a site audit. Low and medium risks could be adequately dealt with by environmental consultant confirmatory testing.
- UDIA has identified a number of specific issues and possible solutions which are outlined as follows:
    - Problem: Request for Environmental Site Audits prior to development approval for land division when the ultimate land use has yet to be determined.
        - Solution: Use of Conditions of Approval.
    - Problem: Request for detailed engineering design prior to land division approval.
        - Solution: Use of Conditions of Approval.
    - Problem: Council requesting a completed Audit report prior to issue of Development Approval but Auditor unable to finalise the report until remediation is complete which includes works requiring Development Approval.
        - Solution: Use of 'Interim Audit Advice' approach which is standard practice in Victoria.
    - Problem: Section 51 clearances have been withheld by Council pending completion of EPA's administrative review.
        - Solution: Section 51 clearances should be

provided upon immediate completion of the Site Contamination Audit Report.

- Problem: Inconsistent requirements for environmental investigations on land with the same land use history.
  - Solution: Establish clear and consistent standards relating to level of investigation required based on site history.
- Problem: Uncontaminated land being held up from development because it is located within the parent title where contamination has been found.
  - Solution: Identify exact location of contamination and then when land divisions are approved only the subsequent title(s) that covers the affected area should be tagged with contamination notification.
- Problem: It is not uncommon for EPA to continually raise new matters over the course of a development application process, creating significant delays and additional costs.
  - Solution: All issues of concern to EPA should be raised in the initial referral.
- Problem: The increasingly risk adverse approach of State and Local Government to land contamination resulting in unnecessary increases in time and cost to deliver projects to the market. There has been a tendency to require greater levels of detail earlier in the application process, with some matters being inappropriately referred to EPA and EPA being willing to engage in a response.
  - Solution: Decisions should be consistent with existing legislation and common sense practises.
- Problem: There is a lack of urgency by EPA in making polluters undertake the necessary investigations to identify the extent of groundwater contamination and identifying the associated risks.
  - Solution: EPA should be more proactive in ensuring investigations are undertaken to clarify risks and should also consider large scale restrictions on ground water extraction in locations with a history of long term industrial use.

Benefit:

- Improvement of consistency, clarity and reasonableness in decisions which therefore provide time and cost savings to government, business and consumers.

3.23 Create Clear Linkages to Infrastructure Funding and Delivery Mechanisms

Adopt a methodology for the equitable, fair and proportionate sharing of funding for key infrastructure and then create linkages to the zoning and assessment system at key process stages

Problem:

- There is currently no system, process, principles or accountabilities for infrastructure planning and coordination.
- In the absence of a system, Councils and State agencies are attempting to force this role onto the planning system.
- This is a case of "square peg in round hole" and is bogging the rezoning process (and sometimes also the assessment process down.
- The trend is to use the planning system to leverage infrastructure charges ("if you don't pay you don't get rezoned") which is disadvantaging new home buyers with the burden of costs for augmentation of core infrastructure that benefits the general community for generations.
- At present, the typical infrastructure cost (both legislated and negotiated costs) for greenfield development in South Australia is around $70,000 per allotment. In addition, the estimated tax burden on a house and land package (based on a package value of $400,000) is a further $80,000.
- Physical and social core infrastructure is a necessary community asset, and not a cost to be borne by 'last on' land/dwelling owners in a specific community. This applies to both 'brownfield' development in existing urban areas (infill) as well as 'greenfield' development on fringe land to Greater Adelaide.
- There is a need for the equitable, fair and proportionate sharing of funding of key infrastructure that underpins the residential development and community building in agreed growth areas. UDIA supports responsible debt-funded infrastructure investment by government, differential rates for areas with defined infrastructure needs within local councils, or use of bond schemes and conditional taxation

concessions. UDIA rejects any cost shifting (e.g. through development taxes) via the development industry to the home purchaser.

Proposal:

- The Government should adopt a model for infrastructure funding, as has been prepared by UDIA, which is based on the equitable sharing of costs across all beneficiaries with payment occurring over time rather than upfront to avoid negative impacts on new home affordability.
- **This model should be separate from, but linked to, the planning and assessment system.**
- Establish a high level, independent body within State Government with the power to assess, plan, co-ordinate, fund and deliver core infrastructure to support the State's growth plans.
- Budget for Governments contribution to roads, power, water and sewer in the current budget cycle and for the next 3-4 years of forward estimates in a rolling program of investment for both existing urban and fringe areas.
- Plan and budget over the longer term to ensure the 15 years supply of land for urban development can be serviced in a timely manner.
- Ensure service authorities provide infrastructure to new developments at least cost and at a price that does not disadvantage new home purchasers.
- Prepare and update a public transport plan in a timely manner for each growth area identified in the 30 Year Plan for Greater Adelaide, so that appropriate transport services can be allocated to support the planned growth and new community requirements.
- Plan and fund social infrastructure in association with Local Government to meet the needs and demands of the changing community.
- Accept both innovative and traditional infrastructure finance models in order to facilitate new projects.
- Identify links to the planning system at key process stages, eg:
  - at Planning Strategy stage: can infrastructure be provided?
  - at rezoning stage: how will infrastructure be provided, by whom, and can delivery be guaranteed in time for development to occur?
  - at assessment stage: is infrastructure in place sufficient to serve the development being approved?
- By contrast, the current trend is to require detailed solutions and binding contractual and funding commitments as prerequisites for rezoning. This is inefficient, impractical and unnecessary.

Benefits:

- The provision of core infrastructure is a critical factor in the urban development and regeneration process and attracts substantial private sector investment for land releases and densification of existing suburbs that results in increased contemporary housing and increased property values.
- A fair and transparent methodology for determining infrastructure planning and funding is critical to the continued supply of land for urban development and maintaining housing affordability.

4. Case Studies: Examples from the Coalface

The following are examples of where the planning system is failing. While each individual circumstance may not be significant, cumulatively they raise very significant reform issues and give "colour and texture" around the reform proposals outlined above.

4.1 General Planning Case Studies

Unreasonable Deferral of Application

A land division application for the first stage of a broader development, which was completely consistent with the zone provisions, was deferred on the basis that the open space provision for that particular stage was not 12.5%, despite Council being aware that the broader development would provide more than 12.5% on completion and a Deed had been drafted to that effect.

Barriers to Implementing the 30 Year Plan

With the introduction of the 30 Year Plan for Greater Adelaide and more specifically the discussions around higher densities along arterial roads and rail corridors our client some 3 to 4 years ago entered into the purchase of land on a major mid-suburban arterial road.

A number of circumstances have arisen since the purchase of the land. Firstly, In October 2010 the local Council's Better Development Plan was consolidated which removed the policy that provided no density limit on amalgamated

sites above 1500 square metres on arterial roads. Reducing the densities along corridors would seem at odds with the intent of the 30 Year Plan. Secondly, Council indicated during a number of conversations that their priority for increasing density is centred on the rail corridors rather than the arterial roads. Once again, this appears to have little basis in the 30 Year Plan.

The Council's Strategic Directions Report identifies a number of areas for potential Development Plan Amendments, two of which happen to affect the Residential areas adjacent the rail corridors and the major road corridor. Both have been identified for a potential increase in density and listed as a high priority (10 year plan). Council have indicated that initial structure planning has begun along the transit corridor in partnership with DPTI. At this time initial investigations have not been undertaken with regards to the major road corridor.

Whilst Council have identified that an increase in density along the major road corridor should be investigated, there is nothing to suggest this will actually happen and given the fact the 30 Year Plan identifies arterial roads as potential for higher densities this should be a real priority.

Private investment is being stifled by slow progress with the implementation of the 30 Year Plan.

Time wasting and lack of response by Councils
Staff of a major mid-suburban Council took 12 weeks to advise an applicant that they would not support a medium density infill development due to the proposed density.

This is an unreasonable amount of time and resulted in additional costs which would not have occurred if an early "no" response was received.

4.2 EPA Related Case Studies

Refer to Appendix for a more detailed discussion of EPA experiences.

Parafield Gardens
15 month process for auditor due to illegally dumped material on site which contained a few fibres of asbestos. EPA would not give interim approval or isolate the affected area so the remainder of the project could proceed. Time delay was 11 months.

Costs - $120,000 plus holding costs.

Woodcroft
8 month process (so far) due to underground petrol tank and elevated nitrate levels (even though they were less than future residents will have with potting mix they are likely to bring in for gardens).

Interim audit advice given which has meant Council can deal with DA – a good result.

Costs - $40,000 auditor and $40,000 testing plus holding costs.

Seaford Meadows
Former gun club had lead cleaned up by LMC over a decade ago. PAHs from clay pigeon targets in top 100mm were elevated in specific area. Removed 400mm of soil and disposed to licenced waste facility. Stage 7A approved with balance lot to deal with acoustic and workplace safety issues on adjoining service station / fuel depot. Subsequent land division DAs on balance lot now need's audit (EPA advice to Council) even though balance lot is removed from original area of contamination.
(an example of inconsistent dealing with applications). This has resulted in several months delays and $10,000 additional reporting so far plus holding costs.

Seaford Heights
Former mine (stopped operating in 1952) had some farmer's waste put in upper part of shaft. EPA has landfill gas concerns (even though experts in the industry say gas from putrescible waste dissipates after 35- 30 years). Construction Management Plan prepared as part of farmer's waste being removed and buffer mounds being created.

Each time the CMP has gone to EPA another issue arises. EPA raised issue of planning concern even though DAC have stated the mounds are not development.
Time delays of 2 months or more plus costs of $10,000 have amounted to date.

Munno Para West
Received planning approval for Stage 1 (350 lots) with site history report and initial soil testing over Stages 1 and 2 showing no issues on former almond orchard. Stage 2 DA (300 lots) has received comment from EPA to Council seeking an audit – a totally different approach from that used in Stage 1.

Munno Para West
Project involved two residential allotments in Munno Para West containing a house and outbuilding. The owner grew olives on site and lodged a DA for the creation of 99 new allotments. EPA required full stage two assessments and Auditor.

Two similar assessments across the road on former market gardening land with a different environmental consultant and officer in the EPA. Stage one report only required.

Brompton
Council wants completed Audit report prior to issue of Development Approval but Auditor can't complete until remediation is complete which includes the laying of the slabs.

Council have agreed to accept written advice from the Auditor that site is suitable for proposed development but EPA wanted Auditor to complete an 'Interim Audit Advice' instead. This has been done by our Auditor only to now be advised that the council will not accept the Interim Advice as it does not state that the site is suitable for the proposed use. Auditor has spoken to council directly and advised them that the EPA does not approve of Auditor issuing an advice outside of the full Audit report or the Interim Audit Advice.

According to the Auditor, the letter advising that the site is suitable for its proposed use is a standard practice in VIC. However for some reason EPA in SA is not accepting of this procedure.

Western Suburbs (1)
EPA is holding up development approval for land division with a number of unreasonable requests, such as;

They have requested environmental site audit sign off prior to development approval for land division, which is ridiculous because the site audit depends on the end use, and the end use is not determined until we have planning approval. EPA should be providing clearances with conditions attached. This is holding up progress of the development.

For the construction of our wetland they are chasing detailed engineering designs of the wetlands prior to land division approvals (again which is not relevant for the land division, more for the works approvals).

Western Suburbs (2)
This example raises concern regarding EPA advice to the City of Holdfast Bay and City of Charles Sturt. In both situations Council planning staff responded to EPA advice and imposed standards for noise mitigation considered to be excessive and unjustified, resulting in additional cost of $5-8k for each apartment. Such apartments were very delicately price-matched for the target market; this additional cost changed the opportunity for some buyers.

Mt Barker
Developer spent $40,000 on stage one site assessment with results showing former potato farming area was low risk for contamination. Nevertheless at the end of that process EPA required a full site audit. Developer to now incur further significant costs and time delays to complete audit.

5. Conclusion

Fundamentally, reforming the planning system is about microeconomic reform. It requires a clear and confined role for regulation, and a "light touch" on the private sector. Reforming the system requires clarity of purpose and a commitment to unlocking economic value.

UDIA would be pleased to enlarge on any aspect of this submission at the convenience of the Expert Panel.

APPENDIX – ARTICLE FROM REMEDIATION AUSTRALIA MAGAZINE September 2013

The following is an article prepared by a UDIA member and published recently in Remediation Australasia magazine.

This column – the first in Remediation Australasia's *new opinion section,* From the fringe – *takes a slightly tongue-in-cheek look at the processes to gain development planning consent, and the impact of these on the property developer or investor.*

To start with: the title of this piece could easily have seen 'low' replaced with 'no', as we shall see as the story unfolds. Second: to protect the innocent, and even the not-so-innocent, the names of people, places and organisations have been changed to keep the main players anonymous, – not so they can continue on this path but so we all might learn a better way ahead. Thus, what may seem like a pessimistic story will end on a note of hope for better outcomes in the near future.

It was a steamy hot day in the inner western suburbs of Adelaide as a developer began to negotiate through the vendor's agent for the purchase of a now closed commercial site (let's call it a former pot centre). The developer took advice from a fairly well-established urban infill company, which advised that a contract be drawn up with a reasonable due diligence period to enable enquiries to be made as to previous use.

The council advised that a site history report should be sought and thus a contract was drawn up after lengthy negotiation with a vendor who assumed that this process to gain planning approval could not take more than a few months. A contract was drawn up and a six-week due diligence period commenced during which a site history report was completed (cost $2500). The information on previous use prompted council to ask for soil testing. The contract was signed subject to the dwelling approval, but with a backstop date, to be fair to both the vendor and the purchaser, and as suggested by the urban infill developer.

Another six weeks passed and another invoice for $11,500 was produced. This report showed that a small amount of ash existed in two areas that would be taken care of when setting the site level and confirmed the already known fact that the development plan contains a map of known subsurface water-table contamination by trichloroethene (TCE). From here it really does start to get irritating for all concerned. This area of potential groundwater contamination is so well known that it already has its own map in the development plan – you might think that a couple of steps could have been leapfrogged, instead of starting from scratch.

We move along to groundwater testing – another six weeks and $18,000. The cost is high because the developer is required to determine the depth at which contamination begins and must use equipment that can bore down to 30 metres. Despite this, the TCE was found at 6 metres, though this wasn't thought to be a problem, given there was no intention to draw bore water and the vast majority of the site will have a 1-metre concrete slab and parking for a three-storey apartment building between the ground and the occupants. Naïve thoughts indeed.

Now we must ask why the council planner would not take the word of a comprehensive written report that cost an arm and a leg. At this time, we also note that all backstop dates for planning conditions with the vendor have expired and the purchaser must back his development instinct and go unconditional after only a slight price adjustment to claw back some of the impending costs. The planner wants an Environment Protection Authority (EPA)-licensed auditor to check the work of the well-qualified, highly regarded environmental consultant who wrote the report that states that the land is fit for residential use. And we should remember that this consultant has liability insurance.

Now, liability. This is the word that leaps to the top of the pile from this point on. We now have an environmental consultant who is willing to put his reputation on the line and even proffer to council a legal document stating that there is no legislation in the development plan that compels an audit. Despite this and despite the EPA having qualified planning staff willing and able to give an opinion, council decides that only way to satisfy themselves legally is via an audit request. (Refreshingly, a level-headed auditor told me recently that he would be happy to meet with the EPA once a month to sign off such low-level sites.)

It is quite possible that planning consent would never have been obtained if it wasn't for the tenacity of the developers, who insisted that the contamination could be reserved as a matter to be dealt with prior to development approval. Consent was provided as long as the developer

had an 'interim advice' letter from an EPA-licensed auditor. In the best part of the process so far, this was obtained – for only $550 – and consent was granted.

At this stage the developer still hoped council would allow the consultant to provide his own reference report and liability. It was a courageous, but ultimately futile attempt; council made planning consent conditional either on an audit. Alternatively, the consultant could issue a legal letter to which council would respond at the cost of thousands of dollars of taxpayers' money.

The obvious idea would be to appoint the level-headed EPA -licensed auditor to get on with it, as by now everybody is punch-drunk from the whole process. But…it turns out that the auditor, having written the interim advice letter, had precluded himself from being recognised independent – despite being familiar with the report and thus the most economic choice.

Now, I don't want to cast too many aspersions but, at the risk of treading on a toe or two, I will take the hit for the development industry and state that some auditors have given the game a bad name. Fact. Not pretty to read, but fact. This can be seen in what transpired next.

Three EPA-licensed auditors offered three vastly different quotes, none of which were fixed. Fee generation is open to a lot of conjecture and for now I will leave it at that. The cheapest quote was $22,000 to read the consultant's report – a report for which the consultant charged $14,000 to write.

As the audit nears its end and all parties limp towards the – rather obvious – conclusion of 'don't go near the groundwater' and 'fit for residential use', the tally comes to 27 weeks of reports plus about 8 weeks of wrangling, all the negotiating in between, and some $54,500 in costs (plus time), on top of holding costs of around $6750 per month for the developer. This last figure reminds me of a certain MP who asked the question, "but isn't this all just the cost of doing business", to which the answer is, "only if you make it so**".**

In other words the red tape has simply increased the cost of affordable housing. It has put this developer off venturing his private capital into this industry again. It has made it ever more difficult to provide affordable housing, because, like every other cost, it will be passed on to the end user.

So what have we learned? Well, for one, education of urban planners is paramount. It is not their fault. How can we ask them to take responsibility? We must find better ways to resolve these issues, with public safety paramount. Planners need direction, not guidance, from the EPA, and I believe that EPA South Australia, at least, is moving in that direction.

I can hear some of you issuing forth with some cynicism, but if Adelaide is to become a vibrant city, less reliant on high-carbon-footprint commutes, then we must approach with foresight the issues of low-level potentially contaminated sites. If we fail to do this, huge swathes of suburban mixed-use zones will remain fallow, unable to contribute to quality affordable housing in the way that they should.

Postscript: the auditor has requested a further test to check direction of the flow of the water at 6 metres below…the developer continues to spend, argue and resign themselves to further delays in development approval.