

South Australian Planning Review: recommendations for law reform drawing closer

by Victoria Shute*

South Australia's planning system is primarily governed by the *Development Act 1993 (the Act)* and *Development Regulations 2008*. The Act was originally intended to be a "one-stop shop", regulating all forms of development including building work, land use and land division, as well as planning policy, development assessment, building safety issues and compliance.

Since its commencement on 15 January 1994, the Act has been amended 718 times through 45 amendments.¹ The Act currently interacts² with over 30 other pieces of legislation. Further, in recent times, legislation has been introduced which limits or otherwise affects the scope and operation of the Act in particular geographical areas.³

Needless to say, the Act is in need of reform. In 2008, a review of the Act undertaken by a Government-appointed Planning and Development Review Steering Committee culminated in a 320-page report recommending a series of legislative changes. The recommendations of the report did not lead to a new Planning System, but rather lead to a number of amendments to the Act and its Regulations, including the introduction of the Residential Code applying to housing development in declared areas.

In February 2013, the current Minister for Planning, the Honourable John Rau MP, appointed an Expert Panel on Planning Reform to undertake a comprehensive review of the Act and the State's Planning System generally. The Panel is comprised of:

- Brian Hayes QC, a prominent senior counsel who chaired the South Australian Planning Review in 1991-1993 (which review led to the Act);
- Natalya Boujenko, an experienced transport and traffic engineer;
- Stephen Hains, a former CEO of a large Adelaide metropolitan council and an experienced planner;
- Theo Maras AM, the founder and chairman of the Maras Group, a prominent developer in South Australia, and chairperson of the Rundle Mall Management Authority;
- Simone Fogarty, an experienced planner and member of the State's Development Assessment Commission.

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¹ On the author's count as of 20 October 2014

² The Act "interacts" with other legislation in the many different senses including where the Act requires input from a State Government agency or body created under another Act (e.g. the Environment Protection Authority as constituted under the *Environment Protection Act 1993*), that an approval under the Act is required before another form of permit or approval can be obtained (e.g. the *Liquor Licensing Act 1997* which requires all other approvals required for the operation of a licensed premises to be obtained before a liquor licence can be granted) or where a right of appeal to a Court exists (e.g. the *Environment, Resources and Development Court Act 1993*), amongst others.

³ See, eg the *Urban Renewal Act 1995*, the *Character Preservation (Barossa Valley) Act 2012* and the *Character Preservation Act 2012*.

The Review is being undertaken in three key stages:

1. **Establishing Partnerships** - this preliminary stage involved the formation of two key reference groups and a review of all relevant legislation and previous reviews.
2. **Listening and Scoping** – this stage involved comprehensive public consultation. The approach of the Panel was innovative in that participants were invited to attend workshops at which they were asked for *their* input as to *their*:
 - experiences of the planning system;
 - questions which they would like the Panel to consider; and
 - ideas to improve the planning system.

The Panel did not present any particular ideas for reform to participants whatsoever. On 9 December 2013, the Panel released a report entitled “What We Have Heard”⁴. The report summarised the outcome of the consultation process, but did not express any particular views on reforms.

3. **Exploring and Discussing** – during this stage, the Panel considered the outcomes of stage two. On 6 August 2014, the Panel delivered the “Our Ideas for Reform” paper, outlining 27 recommendations for reform across five key areas.⁵

General recommendations

The recommendations made by the Panel have drawn upon feedback received during the “Listening and Scoping” phase and extensive research into planning legislation and systems interstate and overseas.

The recommendations in the report are drafted as “ideas” and are drafted in general terms for the purposes of encouraging discussion and debate prior to the Panel’s final report, expected in December 2014. None of the recommendations have been costed, nor have their benefits and administrative implications been considered in fine detail.

Many of the recommendations propose significant changes to the current Planning System, including:

1. **Regionalisation of planning policy**
 - currently, planning assessment criteria are contained in individual Development Plans for each council area;
 - whilst Development Plans are required to be consistent with the State Planning Strategy,⁶ and amendments to Development Plans must each be initiated with the approval of the Minister for Planning and ultimately approved by the Minister for Planning,⁷ the variation of Development Plans between the 68 council areas in South Australia can be significant;
 - the Panel has recommended that Regional Boards be established which are responsible for maintaining regional planning policy documents and approving local variations to those documents.

⁴ South Australia’s Expert Panel on Planning Reform, *What We Have Heard*, December 2013, www.thinkdesigndeliver.sa.gov.au/data/assets/pdf_file/0018/120816/Expert_Panel_Progress_Report.PDF

⁵ South Australia’s Expert Panel on Planning Reform, *Our Ideas for Reform*, August 2014, www.thinkdesigndeliver.sa.gov.au/report/our_ideas_for_reform

⁶ See *Development Act 1993* section 23(3)

⁷ *Ibid*, section 25(1) and 25(15)

2. Regionalisation of planning assessment

- currently, the default position under the Act is that development applications are assessed and determined by councils, other than in certain circumstances, including:⁸
 - instances where a Minister administering another Act can request that the Minister for Planning appoint the State Development Assessment Commission as the relevant authority for an application;
 - certain developments undertaken by a council;
 - where, in the Minister's opinion, a council has demonstrated a potential conflict of interest;
 - certain developments prescribed by regulation;
- councils are responsible for funding their roles and responsibilities in administering the Act and, with a few exceptions undertake these roles and responsibilities autonomously;

The Panel recommends that:

- Regional Planning Boards (who will be State Government entities and appointed by the Minister) appoint regional assessment panels who will determine particular forms of development applications;
- Regional Planning Boards and regional assessment panels will not be delegates of councils, but will be autonomous bodies with particular roles and responsibilities directly conferred on them by legislation;
- where a development application must be determined by a regional assessment panel, the application must still be lodged with the relevant council and an assessment report on the application must be provided by council staff to the panel for determination;
- that Regional Planning Boards will be funded by local government through an as-yet undetermined funding scheme.

What next?

Any move towards regionalisation of planning policy and development assessment will represent a monumental shift in planning regulation in South Australia. Since planning controls were first legislated through the *Planning and Development Act 1966*, planning decisions have largely been made by councils acting generally autonomously and in accordance with planning policy and assessment criteria relevant to their individual areas.

The Panel's reports to date have stimulated much discussion and debate within South Australia. No matter what the outcome of the final report will be when it is delivered in December, the author is confident that this discussion and debate will continue. In light of the extensive evolution of the Act over its 20-year history, the author is confident that the Panel's work will result in a new Act over the next 3 to 5 years. It remains to be seen however whether the key regionalisation recommendations detailed above will withstand the comprehensive budgetary and administrative scrutiny that is occurring presently.

⁸ *Development Act 1993* section 34(1)(a)