

**SOUTH AUSTRALIAN GOVERNMENT SUBMISSION**  
**PRODUCTIVITY COMMISSION BENCHMARKING STUDY:**  
**PLANNING, ZONING AND DEVELOPMENT ASSESSMENTS**

**ISSUES PAPER – MAY 2010**

**INTRODUCTION**

The South Australian Government believes that the competitiveness of a jurisdiction's planning system is strongly underpinned by the principles of predictability, certainty and efficiency. These can be provided, to a significant degree, through strategic direction at a State and local government level, the rules and processes governing development assessment, the roles and responsibilities of the institutions of the planning system and strong public participation.

South Australia's future directions and objectives are outlined in South Australia's Strategic Plan (SASP – [www.saplan.net.au](http://www.saplan.net.au)). The SASP was first launched in 2004 and updated in 2007. The State Government is currently in the process of further updating the Plan, with extensive public consultation being conducted between July and November 2010.

The SASP sets out a pathway to future prosperity through important measuring tools, targets and priority actions. It is a whole-of-state Plan against which the South Australian Government bases its policy decision making. All State Government plans, including the Planning Strategy, align with the SASP and all agencies base their plans, budgets and programs on its key directions and strategies.

The planning system is an enabler of critical SASP targets that are aimed at improving South Australia's performance and competitiveness (for further information, refer to the *Planning and Development Review 2008*, page 24 [www.planningreview.sa.gov.au](http://www.planningreview.sa.gov.au)).

Outlined below is:

- an overview of the current status of the planning and development system in South Australia
- details of the reform agenda currently being implemented in the State
- an overview of measures implemented to address anti-competitive 'gaming' in the system.

This information is intended to supplement the Productivity Commission's data gathering process for this Benchmarking Study.

**OVERVIEW OF SOUTH AUSTRALIA'S PLANNING SYSTEM**

South Australia has an integrated planning and development system, with several distinct but interrelated parts. An overview of the key elements of South Australia's planning framework follows.

## Legislation

The *Development Act 1993* (the Act) and the *Development Regulations 2008* (the Regulations) are the two documents which provide the legislative framework for the South Australia planning and development system (available from [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au)).

The Act is the core legislation for the system. The Act sets out many of the system's processes (including processes for assessing development applications), while the Regulations provide more specific detail.

## Planning Strategy

The Planning Strategy details the Government's directions for land use and development. It contains various maps, policies and specific strategies across a range of social, economic and environmental issues.

The Planning Strategy is used by the State Government to guide the planning and delivery of services and infrastructure, such as transport, health, schools and community facilities (Source: "Plan for Greater Adelaide" page 195 [www.dplg.sa.gov.au/plan4adelaide/index.cfm](http://www.dplg.sa.gov.au/plan4adelaide/index.cfm)).

The Strategy is integrated and is intended to be read in conjunction with other specialist plans, including the Strategic Infrastructure Plan for South Australia, the Housing Plan for South Australia and South Australia's Greenhouse Strategy.

There are a number of volumes of the Planning Strategy covering different geographic regions of South Australia. Each volume must be updated by the Government at least every five years. The current volumes are:

- the 30-Year Plan for Greater Adelaide (launched February 2010 – to be updated annually)
- the Planning Strategy for Regional South Australia (January 2003, amended in February 2010)
- the Yorke Peninsula Land Use Framework (December 2007)
- the Greater Mount Gambier Master Plan (February 2008)
- Far North Region Plan (July 2010).

Under a new approach to regional land use planning, the Planning Strategy for Regional South Australia is being updated on a region-by-region basis. By early 2011, the current 'Regional SA' volume will be gradually replaced by stand-alone volumes for the Mid North, Kangaroo Island, the Limestone Coast, the Murray and Mallee, and the Eyre and Western (for further information, refer to the section on Strategic Land Planning on [www.planning.sa.gov.au](http://www.planning.sa.gov.au)).

## Development Plans

Development Plans are key statutory documents in the South Australian planning and development system and a separate plan is in place for each one of the 68 local council areas across the State, plus for a small number of other areas not situated within local councils.

Development Plans contain the zones, maps and written rules ('policies') which outline the types of development and land use that are suitable for particular zones (e.g. residential, commercial or industrial) (for further information, refer to the section on Development Plans on [www.planning.sa.gov.au](http://www.planning.sa.gov.au)).

### Development Plan Amendments (DPAs)

Development Plans are regularly amended to reflect updated council or State Government policies for future development. Amendment occurs through the DPA process, which can be initiated by either a local council or by the South Australian Minister for Urban Development and Planning. The DPA process includes mandatory public consultation. The Minister ultimately approves all amendments to Development Plans (for further information, refer to the section on Development Plans on [www.planning.sa.gov.au](http://www.planning.sa.gov.au)).

### Development Applications

There are about 50,000 development applications lodged in South Australia every year. These range from simple extensions to residential homes through to major projects. The processes for making development applications and their assessment are set out in the Act (Sections 32-56A) and the Regulations.

The vast majority of development applications are determined by local councils in their role as assessment authorities. Some specified applications are determined by an independent Development Assessment Commission (DAC). A small number of declared major developments are determined by the Governor, on the advice of Cabinet, after going through the Major Developments process.

The types of projects referred to DAC, as prescribed by the Act, include:

- major projects
- projects that cross the boundaries of multiple local government areas
- projects that require an experienced and suitably resourced body (e.g. large projects located in smaller regional councils or coordination of infrastructure development, such as electricity transmission and transport corridors).

(For further information, refer to the section on Development Plans on [www.planning.sa.gov.au](http://www.planning.sa.gov.au) or [www.dac.sa.gov.au](http://www.dac.sa.gov.au)).

## **REFORM PROGRAM**

### Planning and Development Review

The South Australian Government's view is that the planning and development system is a key tool for driving a balanced approach to competitiveness, economic development and sustainable urban forms.

In 2008, the Government undertook a comprehensive review of the South Australian Planning System. The *Planning and Development Review* introduced a number of changes to improve competitiveness and reduce red tape and costs caused by unnecessary delays within the planning system.

These reforms included:

- changes to the *Development Act 1993* to streamline development assessment by reducing referrals, improving applicant appeal rights, and restricting multiple consultations
- the *Residential Development Code* aimed at relieving minor developments from the need to obtain planning consent
- the *30-year Plan for Greater Adelaide*, launched on 17 February 2010, to introduce more efficient planning instruments in the form of structure plans and precinct plans
- 5 new Regional Plans for country South Australia, which will require structure plans to guide the long-term growth and development of large regional towns and cities, such as Mount Gambier, Port Augusta, Whyalla and Port Pirie.

An analysis undertaken by KPMG identified that these reforms, in addition to other system changes, would provide a micro-economic benefit estimated at approximately \$70 million per annum to applicants (\$16 million for private citizens and \$49 million for developers) and \$5 million for local government (Source: *Report of the Planning and Development Review Steering Committee*, under Planning Reforms at [www.planning.sa.gov.au](http://www.planning.sa.gov.au)).

Further information on the Residential Development Code, the 30 Year Plan and Structure Planning is outlined below.

#### Residential Development Code

A key recommendation of the *Planning and Development Review* was to implement a Residential Development Code (the Code), introduced in March 2009.

Prior to the introduction of the Code, the South Australian planning system had a relatively high number of low-value applications per head of population compared to other jurisdictions. The system also had a degree of variability across local government boundaries' regarding the extent to which development was classed as 'complying'.

The Code was introduced to improve the quality and consistency of decision making, to enable a faster assessment process for minor, low-risk matters and to deliver a greater level of certainty to planning applicants. The Code is also intended to facilitate a re-prioritisation of development assessment resources within the planning system (particularly in local government) towards higher value and more complex projects.

The Code sets out 'tick-box' assessment criteria known as 'Performance Controls'. These cover issues such as location, height, setback and site coverage. If a development proposal meets all the criteria, it will be approved within 10 days.

A 'Code approval' can be obtained for the following:

- carport, verandah, pergola, garage, and other minor structures
- single storey dwelling addition
- new detached and semi-detached dwellings in areas that have been determined by the Minister for Urban Development and Planning.

A map of the areas determined by the Minister where the Code applies is available from [www.dplg.sa.gov.au](http://www.dplg.sa.gov.au) under 'Development Applications - Residential Code'.

A review of the Code commissioned by the Department of Planning and Local Government (DPLG) has shown that, in the year since it was introduced, \$8 million worth of development has been assessed under it across the 10 councils sampled.

However, the Code has yet to deliver on its full potential, achieving less than a third of the streamlining intended, the bulk of which has been for relatively low value alterations to existing buildings, sheds and outbuildings. This is partly due to the complexity of the Regulations creating the Code and a lack of awareness within councils and by applicants.

As part of the review, DPLG is currently considering measures for improving the Code's take-up. DPLG also intends to revise its content to reduce complexity. It is likely that a prescribed form for applications under the Code would assist applicants and planning authorities.

### Plan for Greater Adelaide

The *30-Year Plan for Greater Adelaide* (the Plan) was launched in February 2010 after extensive public consultation over a six-month period ([www.dplg.sa.gov.au/plan4adelaide](http://www.dplg.sa.gov.au/plan4adelaide)).

The main aim of the Plan is to outline how the South Australian Government proposes to balance population and economic growth with the need to preserve the environment and protect the heritage, history and character of Greater Adelaide. It will be used by the State Government to guide the planning and delivery of services and infrastructure, such as transport, health, schools and community facilities (Source: *Plan for Greater Adelaide* – Summary page 6).

The Plan also reinforces the role and importance of the City of Adelaide as a hub and recommends accelerating strategies to strengthen its role in this regard, including:

- increasing the amount of residential accommodation in the city
- increasing the diversity of cultural and retail activities
- taking advantage of upgraded transport networks such as light rail (Plan for Greater Adelaide – Chapter C page 62).

The Plan has three principal functions:

- it is formally a part of the Planning Strategy under section 22 of the *Development Act 1993* and, as such, provides strategic direction to the planning system
- it is a whole-of-government planning document, guiding infrastructure provision and service delivery
- it translates the targets contained in the SASP into a spatial framework (its role in government planning has been given a higher priority compared to previous editions of the Planning Strategy).

A key element of the Plan is the policies and targets contained therein. This is the first time detailed targets have been included in the Planning Strategy (Refer to Section D of the *30-Year Plan for Greater Adelaide* for further information on targets).

Two key targets relate to the achievement of a 25-year rolling supply of land for residential, commercial and industrial purposes, including a 15-year supply of development ready land zoned for these purposes at any given time.

The Plan also identifies new urban growth areas throughout Greater Adelaide to accommodate projected increases in population, housing and jobs, and the demand for broad-hectare land based on historical rates of consumption. The Plan is based on a projected population increase of 560,000 people over the next 30 years and the delivery of 258,000 additional dwellings to accommodate this growth.

There are five principal mechanisms within the Plan through which its targets will be achieved:

- structure planning of State Significant Areas (SSAs)
- regional forums to develop regional strategies for implementation of Plan targets
- land supply monitoring through the Housing and Land Supply Program (HELSP – further information provided in the Land Supply section below)
- annual monitoring and fine-tuning of the targets in the Plan via an annual report card
- whole of government coordination of planning and development, infrastructure and services through the Government Planning and Coordination Committee (GPCC – refer section on Governance below for further information) and the Major Project Review Cabinet Committee.

### Structure Planning

Structure plans are high level planning documents that set out an overarching vision of the distribution of land uses in a specified growth area or transit corridor.

Structure plans and precinct plans will deliver new land-use policies in transit corridors, growth areas, transit-oriented developments and other key precincts. These new planning instruments will deal with major policy decisions in advance to facilitate the fast tracking of rezoning and development assessment and to provide greater certainty to new development (Source: *Plan for Greater Adelaide* page 189 [www.dplg.sa.gov.au/plan4adelaide/index.cfm](http://www.dplg.sa.gov.au/plan4adelaide/index.cfm)).

Structure planning aims to deliver on the vision and targets of the Plan as well as streamline the planning and development cycle for growth precincts and major sites by:

- accommodating growth targets
- identifying and guiding the provision of key infrastructure
- resolving major land use issues early in the planning cycle
- planning for and rezoning land in an integrated manner
- reducing the need for referrals to Government agencies at each step of the process (rezoning, subdivision, development assessment)
- increasing the possibility of 'as-of-right' approvals for subdivision and development (assuming compliance with the structure plan).

Under the Plan, structure plans are to be developed for the following priority areas:

- five strategic fixed-line transit corridors identified in the Plan (the Noarlunga train line, Outer Harbor train line, Gawler train line, Glenelg tramline and Obahn busway)
- new growth areas at Roseworthy-Gawler-Concordia and Buckland Park.

The State Government has designated five of these priority areas as SSAs (Refer to map provided at Attachment 1) to undergo structure planning, led by the South Australian Government. The SSA's are:

- North West Corridor
- Southern Rail Corridor
- Northern Economic/Industrial Corridor
- Buckland Park and Surrounds
- Roseworthy, Concordia and Gawler.

These areas have been identified as SSAs as they are within nominated growth precincts and contain major development sites outlined in the Plan.

Structure plans are endorsed by Cabinet and gazetted to form part of the Planning Strategy under section 22 of the Act and will be subject to public consultation.

All structure plans identified in the Plan are to be completed within five years. However, the Southern and North Western rail corridors are to be completed by the end of 2011.

The Plan provides that structure plans may identify specific precincts for more detailed work. These sites may accommodate areas of high density and high intensity development to help meet housing, population and employment targets. Precincts are intended to deliver sustainable, high quality urban design.

## GOVERNANCE

The Minister for Urban Development and Planning has overarching responsibility within the South Australian Government for the *Development Act* and the Planning Strategy.

The State Government has established a high-level Government Planning Coordination Committee (GPCC), reporting to the Minister for Urban Development and Planning, to achieve the whole-of-government coordination required to implement the Plan. The GPCC is chaired by the Chief Executive, DPLG and includes Chief Executives from all other relevant South Australian Government agencies.

The GPCC was established to ensure that State Government decision making is incorporated early into future land development planning processes and to provide greater certainty to industry and the community on the Government's role in urban renewal and development in specific regions. It will streamline the decision making process within the State Government and ensure greater accountability of individual agencies.

More specifically, the GPCC has responsibility for:

- identifying SSAs
- providing clear objectives and policy framework for the future development of the SSAs
- resolving issues between government agencies relating to the achievement of the objectives for the SSAs and ensuring consistency of policy positions from agencies
- securing and coordinating the delivery of human services and infrastructure required for the development of the SSAs
- monitoring the implementation of the Planning Strategy.

The GPCC also reports to the Major Projects Review Cabinet Committee. Minutes of the GPCC's meetings are tabled before this sub-committee of Cabinet.

## **LAND SUPPLY**

### Housing and Employment Land Supply Program (HELSP)

HELSP will replace the existing Metropolitan Development and Industry Land Strategy program reports. The program will be run on an annual basis to ensure that a 15 year supply of development-ready land is available for the life of the Plan.

More specifically HELSP will:

- monitor the implementation of the Planning Strategy to achieve the targets set out in the Plan
- identify the total amount of land needed and set annual rolling targets to reflect changes in the market and to the rate of population growth
- ensure there is land capacity to meet annual housing and employment targets and that capacity is spread equitably to avoid market volatility
- assist infrastructure agencies with planning to ensure that infrastructure and urban development is effectively and efficiently coordinated
- provide a spatial guide to local government to assist with aligning Regional Implementation Strategies with the Planning Strategy (prepared through Regional Implementation Forums)
- trigger further structure plans if additional land supply is required.

To achieve this, DPLG will:

- produce an annual report on region-wide housing and employment land targets
- set an annual dwelling site production target (by sub-region) to provide developers with information about land that has been or is to be rezoned for commercial and residential purposes.

The first HELSP report is currently scheduled for release in late 2010.

### Land assembly

Other states in Australia have set up development corporations and growth area authorities to coordinate and fast-track land release in growth areas or to manage redevelopments of significant sites. These bodies play a role in land assembly (including government owned land), sequencing of land release, structure planning of major sites, coordination of relevant local government planning arrangements and, in some cases, the collection of State Government infrastructure charges.

In South Australia, the role of a development corporation or similar body with extensive powers of land assembly and compulsory acquisition is yet to be considered.

### Land Holding

Governments sometimes reserve land for future transport corridors and intermodal hubs (as well as future residential, commercial and industrial development). The short



term costs of doing this are justified by the long term economic, social and environmental benefits of orderly and well designed development.

## OTHER INITIATIVES

### Development Plan Amendment Process

DPLG, in collaboration with local councils, has been examining ways in which the development plan amendment process can be significantly streamlined to achieve faster approval times. Significant changes have been identified and include:

- changes to the Statement of Intent format to ensure alignment with the Planning Strategy
- a system of prioritising DPAs according to their capacity to deliver the targets set out in the Planning Strategy
- a process for recognising structure plans as part of the DPA process
- streamlined consultation requirements for DPAs
- proactive resolution of whole-of-government issues, that have historically persistently held up DPAs through the GPCC process.

The *Planning and Development Review* also called for a significant streamlining of the system through:

- a reduction in the number of zones to 25 (there are more than 220 zones at present and many more policy areas within each zone)
- standardising and simplifying zoning rules
- minimising variation of zoning rules in each council development plan.

DPLG is currently investigating ways of ensuring greater consistency of standard zoning across development plans. The aim is to reduce red tape and ensure greater certainty to attract development.

Red tape has also been reduced in the application process through legislative change to mandate that the informal notice of a development application cannot be given to adjoining property owners or interested parties where no such right to notification exists under the categories of notification.

### Better Development Plans

The Government has initiated the Better Development Plans project in association with councils in order to increase the standardisation of development plan policies in local councils.

This project is ongoing and its goals are to:

- increase the clarity, consistency and ease of understanding of the policies in Development Plans
- reduce the costs and time taken to prepare DPAs by providing leading practice planning policy modules and enabling councils to propose additional local policies for unique local circumstances
- establish a format that promotes the inclusion of desired character policies into Development Plans

- assist councils in identifying those policies required in order to be consistent with the Planning Strategy
- provide clear development assessment policies and delete non development references (Source: [www.planning.sa.gov.au](http://www.planning.sa.gov.au)).

### Development Assessment Panels

In 2007, the Act was amended to introduce new measures dealing with the composition of Development Assessment Panels (DAP). As a result panels must now include:

- a specialist independent presiding member (who is not a member of council or council staff)
- at least three other specialist independent members (who are not members of council or council staff)
- up to three elected council members or council staff.

Anecdotal evidence suggests that DAP processes in South Australia are operating relatively smoothly and have improved efficiency in the decision making process on applications. Also, there appears to be reduced local political interference which previously resulted in the inconsistent decision making on applications.

### Online Services

The *Electronic Development Application Lodgement and Assessment System* (EDALA) provides on-line access and business process management for the development industry (applicants, developers, surveyors, councils, referral agencies) for development applications seeking land division approval.

EDALA has significantly improved processes and delivered benefits to the industry in the areas of:

- application lodgement (on-line lodgement, document attachment, fee payments, and process control)
- application assessment (automated routing and status tracking)
- timeliness through electronic referral responses, decisions and certificates.

EDALA has replaced the paper based land division process with an internet based system which enables:

- the electronic lodgement and payment of fees by applicants and surveyors at any time of the day
- automated email notification of key milestone events for applications
- referral to and reporting by State Government agencies (push button referral process with immediate availability to councils and referral agencies)
- council and DAC decision notification
- lodgement of final plans
- final DAC Certificate of Approval and Lands Titles Office verification (e.g. the time taken for the issue of the final Certificate has been reduced from 15 to 3 days)
- application progress reporting for applicants and industry
- register and reporting facility of applications for the public.

EDALA has been well adopted by the industry and its usage covers 98% of land division applications lodged. Feedback from users, particularly the surveying industry, has been very positive. The remaining 2% of applications received (by one-off private citizens) are entered into EDALA by DPLG.

The first stage of EDALA (initial lodgement to Planning Decision) commenced in April 2002 and the second stage of EDALA (final plan lodgement to Certificate of Approval) commenced in May 2005.

The Land Services Group in the Department for Transport, Energy and Infrastructure also provides an Electronic Plan Lodgment (EPL) system, which facilitates the electronic lodgement of Division Plans, Community Plans and Filed Plans for Depositing in the Lands Titles Office by surveying and lodging organisations (Refer [www.landservices.sa.gov.au](http://www.landservices.sa.gov.au)).

### Case Management

Case Management is a South Australian Government service that ensures project proponents have an effective single point of contact within Government to progress complex, multi-agency licensing, regulatory, planning and operational requirements.

A dedicated case manager provides a single point of contact for the investor as they interact with Government on various aspects of their project. The case manager works to balance the imperative and urgency of the commercial world with required Government processes. They provide high level departmental access, support and guidance and ensure that key projects maintain their priority status across Government.

Projects eligible to be assigned a case manager are generally those where a private sector investor wants to initiate a major project in South Australia valued at more than \$10 million.

### Smarter Business Regulation

The South Australian Government has also initiated a Smarter Business Regulation Project to identify ways by which regulatory processes (including development assessments) can be better coordinated. This will include the potential to unify some of the common actions that are shared across different regulatory processes and to remove duplication and overlap on specific issues.

The regulatory and administrative frameworks that govern marine aquaculture, and petroleum and geothermal activities have served as models of 'best practice' for regulatory assessment processes. The project draws on these models to identify improvement measures for other sectors.

## **PLANNING AND COMPETITION**

### Development Act

The South Australian system recognises the High Court's decision in *Kentucky Fried Chicken Pty Ltd v Gantidis and Anor*<sup>1</sup> where the Court ruled that competition is not a valid planning consideration and that State planning systems can not discriminate on the

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<sup>1</sup> (1979) 140 CLR 675

grounds of competition. In particular, planning systems cannot refuse consent to a development on the grounds that it will compete with other businesses.

This approach was reinforced by changes in 2001 to the Act (see Sec 88A-88C) which introduced provisions to reducing 'gaming', or the extent to which competing businesses use consultation, appeal and judicial review processes to frustrate or unduly delay development approvals.

These provisions require competitors to identify themselves during consultation, appeals and judicial review processes. If a Court ultimately finds that proceedings were initiated primarily to restrict competition, then they may award costs, including for economic loss, against the party initiating proceedings.

Prior to this amendment to the Act, anecdotal evidence suggested that 'gaming', or using the appeals process in the planning system for anti-competitive purposes, was a significant issue. Many of the anti-competitive appeals on development approvals related to retail based commercial competition, such as supermarkets. As the majority of these appeals were against decisions made by local councils, the State Government does not maintain specific data on the application of these provisions.

However, one case involved a planning decision of DAC where an existing supermarket made 4 separate appeals against the approval of a new competing supermarket, all of which were unsuccessful. This case was key to the State Government's decision to amend the Act.

There has been only one court case addressing these new provisions since their enactment (see [2004] SAERDC 111 – ABC Development Learning Centres P/L v City of Tea Tree Gully & Ors, which ruled in favour of the City of Tea Tree Gully & Ors). In this instance the City of Tea Tree Gully and Ors was entitled to compensation for costs against ABC who sought to resist the establishment of a competing child care centre. A copy of the court decision is provided at Attachment 2.

#### Land use zoning





The land use zoning framework tends to be prescriptive and favours the separation of incompatible land uses to provide greater certainty for developers and the community.

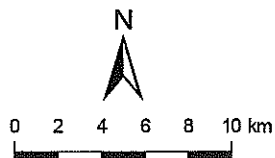
The structure planning process adopted in South Australia under the Plan will streamline existing processes by resolving all significant land use issues up-front. Structure plans will also undergo a period of public consultation before being finalised.

#### Developers 'partnering' with Government

Differential treatment under development assessment processes for Crown Developments and Public Infrastructure (Section 49, *Development Act 1993*) provides streamlined processes for development of public infrastructure (as defined by Section 49 to include public infrastructure, roads, facilities etc) of state and/or national significance and community benefit. It is streamlined in recognition of extensive consultation and scrutiny by Cabinet in identifying the need for the project. This ensures timely delivery of critical social and economic infrastructure.

# **Proposed State Significant Areas within the Greater Adelaide Region**

-  Proposed State Significant Area
-  Urban Areas
-  Main road
-  Railway



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