



WHAT WE HAVE HEARD REPORT

SOUTH AUSTRALIA'S PLANNING AND DESIGN CODE – HOW WILL IT WORK?



Introduction

The Planning and Design Code (the Code) will be a central feature of South Australia's new planning system. It will transform the 72 Development Plans that are currently in use into a single set of planning guidelines for assessing development applications across the state.

This will greatly help ordinary South Australians who are required to navigate the planning system when building a house or developing a business.

Earlier this year the technical discussion paper, *South Australia's Planning and Design Code – How will it Work?*, was released for consultation. Feedback was sought on the structural and functional aspects of the new Planning and Design Code, including the best approach to transitioning policy from the current Development Plans to the new Code.

Forty-nine submissions were received from a wide range of key stakeholders. Many respondents saw the discussion paper as a useful first step in explaining the structural and functional aspects of the Code, the ePlanning dimensions of the Code and the Code's role in South Australia's new planning system.

The following report summarises the feedback we received during consultation and will be used to inform the operational framework of the Code, including the method used to transition policy content from the current Development Plans into the Code format.



Code structure and mechanics

Overview

- Respondents expressed a desire for greater clarity on the purpose and content of overlays, zones and subzones that will be applied across the state.
- Submissions acknowledged that the technical discussion paper was the first introduction to detailed aspects of the Code and, as such, more information regarding this is still to come.
- It was suggested that in addition to definitions, the Code could include an established suite of subheadings (i.e. land use, built form, environmental protection etc.) to delineate various policy issues within all Code layers and modules and provide greater clarity in relation to the outcomes sought by individual policies.
- Notwithstanding that the *Planning, Development and Infrastructure Act 2016* (PDI Act) defines 'planning rules' as the Code, care in using the term 'rules' to describe the policies within the Code was recommended to avoid public misconception that these policies are mandatory.

Overlays

- Respondents queried whether overlays would incorporate policy in addition to mapping (rather than just mapping alone). To clarify, overlays, like zones, subzones and general modules, will incorporate policy. This will come in the form of desired outcomes, performance outcomes and deemed-to-satisfy criteria.
- Respondents also queried whether the policy content of overlays would be mandatory. To clarify, overlay policy will not be mandatory but will, as necessary, prevail over zone, subzone and general module policy.

Zones

- A number of questions regarding the creation of zones within the Code featured in submissions. In particular, respondents queried the specific circumstances that would enable the creation of a new zone (as opposed to a subzone), especially given that many Development Plans feature unique or bespoke zones.



WHAT WE HAVE HEARD REPORT

SOUTH AUSTRALIA'S PLANNING AND DESIGN CODE – HOW WILL IT WORK?



Subzones

- Feedback relating to subzones was mixed, with some submissions favouring the use of subzones as a potential means of maintaining local character.
- Other submissions sought restraint in the use of subzones to avoid setting different expectations for a type of development in different locations (e.g. using different commercial floorspace limits in a single zone where commercial development is envisaged).
- A number of respondents expressed concern that the discussion paper contained a contradiction relating to the use of subzones. At page 20, the discussion paper provided, on the one hand, that while subzones *may incorporate a local variation, or variations (within defined parameters), to reflect a clearly special unique attribute or characteristic*; on the other hand it provided that *subzones will therefore not be applied to create policy to reflect individual local context*. To clarify, where a local context is not unique, but is common to a number of areas or environments, it is envisaged that a zone or a subzone that reflects this context would be applied to these areas or environments.

General modules

- Questions were raised in relation to the non-spatial nature of general modules within the Code.
- Typically, these questions focused on whether general policies within Development Plans would transition to the Code in their current form given that some of these policies are inherently spatial in nature (i.e. building near airfields, sloping land or coastal areas). To clarify, effort will be made to contain policy that is fundamentally spatial in nature in one of the three spatial layers of the Code (being overlays, zones and subzones).

Assessment tables

- A number of respondents supported the concept of assessment tables, as introduced in the discussion paper, as they recognised their potential to support an easy-to-use, digital means of identifying planning policy relevant to a development.
- Respondents queried whether a planning authority and accredited professionals would have discretionary power to draw upon Code policy additional to that identified by an assessment table – particularly early in the life of the Code and the ePlanning system and in the case of complex development.
- The difficulty associated with identifying all possible development scenarios within an area was raised as a barrier to the creation of comprehensive assessment tables.

Organisation of policy types

A range of feedback was sought in relation to the role of desired outcomes, performance outcomes and deemed-to-satisfy criteria, including how policies should be organised within different Code modules.

The main themes of this feedback are summarised below:

- Respondents provided mixed feedback with respect to a greater emphasis on performance-based planning through the introduction of performance outcomes.
- Some respondents were positive about performance outcomes and anticipated that they would open up opportunity for innovation; other respondents were concerned that performance outcomes might lead to uncertainty around expectations and decision-making.
- A number of submissions called for caution in the use of deemed-to-satisfy criteria to avoid generic development outcomes.
- Respondents queried whether desired outcomes would sufficiently reflect the local context of the many different types of areas to which they would be applied.



WHAT WE HAVE HEARD REPORT

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Local policy variation

- The benefits associated with adopting the Code as a 'single book of rules' for planning in South Australia, particularly in terms of greater certainty and consistency in policy and the classification of land uses and assessment pathways, were acknowledged.
- Respondents highlighted the importance of ensuring that the transition from 72 Development Plans to the Code did not result in 'sameness' in development outcomes across the state. Respondents also noted the importance of ensuring that the Code could accommodate local context.
- The extent of local variation policy in the Code was a recurring theme in submissions. Questions typically arose in relation to Section 66 of the PDI Act, which states that the Code may include provisions for the adaptation of the rules that apply in relation to a specified zone or subzone or as an overlay to provide for necessary and appropriate local variations in specified circumstances.
- Clarification of the circumstances that will justify the inclusion of local variation policy was sought, including where elements of existing Development Plans (i.e. concept plans) could be transitioned into the Code. Numerous submissions argued for meaningful local government input into the process of determining the local variation policy that will be permitted to be transitioned into the Code.
- A number of respondents expressed the view that, given the Code represented a completely new approach to planning in South Australia, the level of actual change that will result from the transition to the Code remained to be seen and may not, therefore, be largely 'like-for-like', 'policy-neutral' or '90 percent the same'.

ePlanning

- Submissions largely recognised and accepted that changes needed be made to the way in which many planning processes were undertaken in order to fully realise the intent and functions of ePlanning.

- Potential challenges associated with the implementation of ePlanning were raised, namely how the ePlanning system would:
 - » retrieve the policies used in the assessment of a particular development on a particular day – specifically where policy had been amended during the period between an approval being granted and a development taking place
 - » successfully manage discrepancies between how an applicant defines or describes the nature of a proposal and how the ePlanning solution records this
 - » successfully manage the quality of information supplied as part of an application
 - » account for scenarios where technical issues resulted in email delivery failure and late provision of Decision Notification Forms or other important correspondence between planning authorities and applicants.
- Respondents queried whether the ePlanning solution would support the provision of preliminary comment in respect to a proposed development (i.e. some indication of whether a proposed development would be approved or not without the payment of assessment fees).

Other related matters

Amendments to the Code

- Noting the PDI Act's expansion of the range of parties who can initiate a proposal to amend the Code, clarification was sought as to which party or entity was able to bring an amendment to the Code into effect. Clarification was further sought on what role local government would have in respect to an amendment to the Code proposed by a private party.

Implementation and spatial application

- Respondents sought additional clarity in relation to the process of spatial application of the Code – specifically whether this would be undertaken by the State Planning Commission or local government.



WHAT WE HAVE HEARD REPORT

SOUTH AUSTRALIA'S PLANNING AND DESIGN CODE – HOW WILL IT WORK?



Interaction with other policy instruments

- Further information was sought regarding how the Code would interact with Design Standards, Design Review, Infrastructure Schemes and other planning instruments under the PDI Act.

Supporting materials

- Respondents queried how the Code would speak to additional guides and instruments that are external to the planning system but that are often drawn upon to assist in development assessment. It was recommended that more nimble ways of updating references to such guides and instruments be implemented, such as through the use of simple links in the Code.

General

- Many submissions expressed a desire for additional information regarding many aspects of the Code. This was evident in many submissions raising matters that were not the focus of the discussion paper.
- Numerous respondents also raised matters concerning policy settings within the Code. The State Planning Commission's series of policy discussion papers are focused on these settings and described in the *Blueprint for South Australia's Planning and Design Code*. Two of these papers, *Integrated Movement Systems* and *Transport and Natural Resources and Environment* were released in August 2018. Two subsequent papers, *Productive Economy and Design in the New Planning System* are due to be released prior to the end of 2018. A final policy discussion paper, *People and Neighbourhoods*, will be released in the early part of 2019.
- Respondents also raised matters related to assessment pathways such as when, where and under what conditions the deemed-to-satisfy assessment pathway would be available to address procedural matters concerning public notification, referrals, decision notifications and appeals. These themes are addressed in the technical discussion paper, *Assessment Pathways: How will they Work?*, which was released in August 2018.

Next steps

Further information regarding matters raised in submissions will be forthcoming in the draft *Planning, Development and Infrastructure Regulations* and via continued collaboration on the development of Code policy (encompassing, in particular, partnership with local government undertaken by the Department's transition team).

Yet more information will follow once an ePlanning solution provider has been appointed.

The State Planning Commission will use the feedback received on the technical discussion paper, *South Australia's Planning and Design Code – How will it Work?*, to further refine the structure and functionality of the Code and the method by which existing Development Plan policy content is transitioned into the Code.

More information about South Australia's new planning system is available at

www.saplanningportal.sa.gov.au

www.saplanningcommission.sa.gov.au

