

26 February 2021

The Hon Vickie Chapman MP
Minister for Planning
Email: bragg@parliament.sa.gov.au

Dear Minister

CASA PRESENTATION ON CONCERNS ABOUT THE PLANNING AND DESIGN CODE

We are delighted to be meeting with you today to continue our discussion and dialogue about the Planning and Design Code (the Code).

Background: Community Alliance SA Inc. (CASA) is an umbrella organisation for resident and community groups from Adelaide and other areas of South Australia, whose aim is *“To Put People back into Planning and Development in SA”*. CASA’s existence has emerged from community concern and desire that ‘a planning system that thinks of both today and tomorrow is built on fairness and equity. It incorporates the concept of sustainable development; guides quality development in the right places; ensures poorly designed developments and those in the wrong place don’t get built; and protects the things that matter; from open spaces, bushland and productive agricultural land to much loved historic town centres and heritage buildings.

Key Issues –

We present to you some key issues on the following pages relating to the Code

1. Complexity of the portal
2. Sappa – SA Property And Planning Atlas
3. Performance standards
4. Heritage and Urban Design
5. Citizens rights to be informed

We greatly appreciate your time and consideration on these matters.

Yours sincerely



Dr Iris Iwanicki, Life Fellow RPIA
President
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Prof Elizabeth Vines OAM, FRAIA
Vice-President

1. SA PLANNING PORTAL – NAVIGATION AND COMPLEXITY

To date the Planning and Design Code, (the Code) on-line has proved complex and difficult to navigate between the many layers of information regarding zones, sub-zones, overlays, TNV's, etc and the extensive development definitions of land use and different types of development for individual addresses. The latter results in extensive printing for owners and enquiries if wanting a hard copy.

Without knowing what reforms will be achieved by the announced activation date in mid-March will the 5 platforms be reviewed to more successfully integrate relevant information?

The consumer/client of the planning system on-line needs to be prepared and trained to understand the way information is accessed.

Significant fee increases will occur with the introduction of on-line application lodgement. This is contrary to the Planning Reform information that advised the Code would deliver a simpler, more economic and accessible system for development.

Will there be training sessions in physical public places (such as libraries) with a human teacher to supplement on-line tutorials (Covid permitting). How will this happen, and will the process also address content and policies within the Code?

An independent audit of the on-line system is recommended, to review portal costs, accessibility, and efficiency of the on-line system initially 6 and 12 months after activation, with results published in a daily newspaper as well as on-line.

Overlays – numerous and complex-not all appear relevant- will the repetitive iteration of all overlays be reviewed?

RECOMMENDATIONS

- The 5 platforms need be reviewed to more successfully integrate relevant information. The repetitive iteration of all overlays should be reviewed.
- The consumer/client of the planning system on line needs to be prepared and trained to understand the way information is accessed.
- Training sessions need to be held in physical public places (such as libraries) with a human teacher to supplement on line tutorials (Covid permitting). An explanation of how will this happen, and the process should also address content and policies within the Code
- An independent audit of the on line system is recommended, to review portal costs, accessibility, and efficiency of the on-line system initially 6 and 12 months after activation, with results published in a daily newspaper as well as on line.
- Significant fee increases should be reviewed

2. SAPP – SA PROPERTY AND PLANNING ATLAS

This mapping system is currently incomplete and in many examples hard to read. The zoning colours are not sufficiently distinctive to be easily read. The Atlas does not identify Aboriginal Reserves or incorporate acknowledgement of indigenous areas within zoning allocations

It is difficult to switch between SAPP and the online Code provisions for the same property making access to relevant planning policy for one property very cumbersome.

Better integration and compatibility with related systems (including local and regional councils) recommended

RECOMMENDATIONS

- Check the zoning colours and ensure these are distinctive, to clarify the different zones
- Correct the incomplete planning atlas and ensure that Aboriginal reserves, and Conservation Parks and Forests are all identified
- Improving switching between Online code provisions and SAPP

3. PERFORMANCE PLANNING

Performance based planning, as proposed by the Code provides flexibility but has little distinction for providing certainty. It has no clear definition but derives from an approach that development should not be hampered by standards or rules, but should be considered on its individual merits. It is the opposite of a system that is prescriptive -such as zoning and definition based regulations where land uses, both desired and undesired were clearly identified. Planning has always strived to achieve a balance between the two with the inclusion of all stakeholders being respected as legitimate partners in shaping the future – expressed in some form or other within the aspirations of why we have a planning system.

While the SA Code is promoted as innovative and novel, elements of the Code, including performance standard guidelines have been invoked already within Australian states and overseas in one form or another, only to be discontinued because of not delivering the following perceived benefits :

1 Integration of planning and development assessment across issues (land use, infrastructure, and valuable features) and across jurisdictions (state, regional and local)

and
2 The system focussed on outcomes and performance (rather than being prescriptive and inflexible)

In practise, performance guidelines, rather than unleashing innovation and rewarding best practice, have failed to provide certainty for the industry or the community in terms of efficiencies, better development outcomes, housing affordability and urban amenities and environmental improvements. Complaints from the industry of complexity and a lack of efficiency, and increasing feedback from the community complaining of confusion over conflicting and obscure Code content.

Jennifer Roughan¹ commenting on the version of performance planning practised in Queensland under the current planning legislation comments:

"On-going tensions remain. In addition to complaints of complexity and a lack of efficiency, there are increasing signals from communities (and elected representatives) that there is confusion, a lack of confidence and, possibly, a sense of injustice. These issues arise from a lack of certainty, inconsistent decision making and (at least perceived) lack of transparency."

Roughan defines the difficulties arising to include

- establishing suitable standards to measure development performance (the need to be clear and precise,
- the need to consider the cumulative effects of different standards; and
- the fact there are different types of planning /urban issues to manage and some are more complex than others;

¹ Performance planning in Queensland , Jennifer Roughan Mar 29, 2016
<https://www.planning.org.au/documents/item/7429>

and indicates that substantive changes to the Code through a second tier of legislative reform may need to occur.

CASA expects stage 3 activation will trigger needs for reviewing and amending regulations and various statutory guidelines . We recommend an independent audit preferably by a professional outside of the SA system and are happy to provide a very experienced suggestion.

RECOMMENDATIONS

The following should be included as part of the audit recommendations :

- 1 Re-evaluating whether all planning/regulatory aspects deserve the same level of flexibility, or whether some aspects or standards of particular importance could be treated with more certainty;
- 2 changing the 'rules' so that these standards can be treated as requirements unless there are special circumstances.
- 3 Identify better policy and better construction and drafting of planning instruments collaboratively with local government
- 4 Ongoing conversations with communities about growth management issues at state or regional levels inclusive of applicability to climate change policies for environmental management
- 5 Shorter, more responsive and inclusive plan making processes
- 6 Ensure that there is an independent audit preferably by a professional outside of the SA system

Refer Attachment A for references and supporting material cited in this section

4. HERITAGE AND URBAN DESIGN ISSUES

4.1 Contributory items listings – POSITIVE - these schedules continue to be effective, and are now scheduled in the revised Code as Representative items.

Example case - in St Peters, this building, while in poor condition, was kept due to being scheduled as a contributory item



before



during



after (current, nearly complete)

ISSUES OF CONCERN

4.2. Ongoing Lack of protection of heritage places – listing as local heritage place does not provide protection, and similarly State listing of Urbrae gatehouse has not provided protection. This is causing considerable community concern.

There are many examples of demolition of Local Heritage Items eg NW corner Whitmore Square, and recent demolition of Local Heritage Place in Pirie Street for new hotel where the historic façade could have been retained.

A Current issue is at Glenelg Esplanade - current issue, local heritage place proposed for demolition, new development proposed as 13 stories in a 5 storey limit area)



Existing (intact under extension), proposed 13 storeys,



rally 21 February 2021

4.3 Historic Area Statements

Councils have **still not seen any revisions to the Historic Area Statements** beyond what was available for consultation in November – December 2020

: https://consult.code.plan.sa.gov.au/home/browse_the_planning_and_design_code?code=browse

In order for the Statements to more closely align with our current Development Plan policy, they would need to include 'future facing' policy which were previously included as Desired Future Character statements i.e. policy which gives clear instructions about how new development should complement existing character. Unfortunately the Department has insisted that the Statements will be limited to a description of the features of the area e.g. describing the era of buildings. So there will be GREATLY REDUCED control over new development, and much more open to interpretation

Given the system of accreditation for planning assessments and consents, the **inclusion of desired future character statements is strongly supported**, in order to guide applicants, builders and designers regarding appropriate designs that will complement residential amenity. It is of concern that the structure and format of the whole Code policy framework will NOT provide the same level of development guidance as the Development Plan, as much of the Code is policy which is written to be applied generically, rather than being locally specific. Loss of local character will be inevitable.

It is noted that in Tasmania, assessment is managed under the current state planning legislation's State Planning policies and State wide Development policies. However, Council level Residential Development standards are intended to be augmented by Desired Future Character Statements to provide guidance regarding development proposals, for appropriate development.)

4.4 Design Advisory Guidelines (the DAGs). These **have not yet been completed or issued for public comment.** These DAGs are non-statutory documents which sit outside of the Code and are intended to help applicants and assessing planners understand what development may or may not be appropriate in a historic and character areas. It was assumed that the DAGs would fill the gap between the instructive Development Plan policies and the Code + Historic Area Statements. Councils have been given draft DAGs and council staff were given only two days to provide feedback. No substantial changes are likely. It is difficult to get a proper understanding of how all of the new policies and documents will work together when all that councils have seen are bits and pieces at different stages of drafting.

4.5 Ongoing Heritage Protections – many councils have **applied to have additional designation of heritage areas.** The City of Burnside have had no update/ response since October 2020 regarding requested DPA proposing an Historic Area Overlay Code Amendment (eg for consistent heritage housing areas in Dulwich which extends Heritage Conservation Zones in current Development Plan to be captured in a Code amendment to cover all the areas requiring protection. The City of Alexandrina applied for Middleton to have Heritage (Conservation) Zone over the centre of this historic town as a result of their heritage survey (2015) and this was refused by State Government. Since then, and because of lack of protection in appropriate development has eroded this significant historic centre and many historic buildings lack heritage protection.

Dulwich example:



Swift Avenue, Dulwich, consistent housing, before and demolition (LHS) and new large out of scale house

Middleton Example



Inappropriate new development



adjacent building to new development



Nearby buildings in same main Goolwa Road



demolished now as no protection provided without H(Cons)Z



Nearby buildings to new development – Goolwa Road



Middleton - recent new development in previously proposed Heritage (Conservation) Zone which has now irreversibly impacted on the historic character of this town centre. Request for H(C)Z was refused by Planning SA

The reintroduction of State Government **funding for Heritage Advisory Services**, particularly for outer country towns, is strongly urged as this has been found to be extremely effective. Funding and support (including training of advisors) is requested to assist with the protection and management of local and state heritage places and areas.

4.6 Broader Public Realm issues – many recent developments show an absence of contribution by Developers to the public realm – either in lack of landscaping in car parks within the title of the property or more broadly in the public realm immediately adjacent. The following show examples of mostly SCAP approved developments where landscaping is either minimal or entirely absent. Landscaping is an essential component of any development, both visually and environmentally (for cooling purposes in summer, shade for pedestrians etc) and this needs to be considered more than we are currently seeing.

Examples of broader public realm issues :



“Norwood Green” including Aldi - a large development approved by SCAP, no effective greening on the site

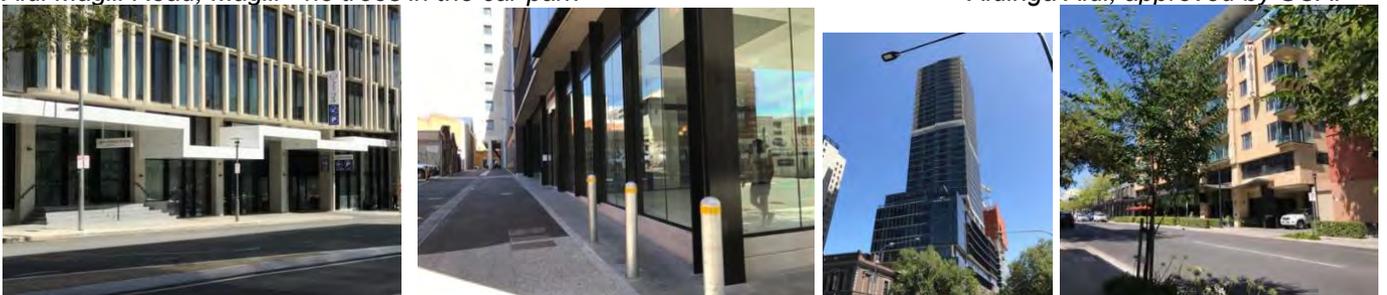


“Norwood Green” large development approved by SCAP, Aldi and Housing - no effective greening on the site



Aldi Magill Road, Magill - no trees in the car park

Aldinga Aldi, approved by SCAP



Crowne Plaza hotel development, Frome Street, no public realm contribution, nearby Majestic Hotel (RHS) greened at the pedestrian level. Why wasn't the Crown Plaza required to contribute to similar landscaping?

HERITAGE AND URBAN DESIGN - SUMMARY RECOMMENDATIONS

- Ensure that **State and Local Heritage Places** are better protected.
- Allow Councils to **fully review Historic Area Statements** and include forward facing policies (ie desired future character statements)
- Complete **Design Advisory Guidelines** urgently and allow for **council and public comment** and input
- Support the introduction of **additional heritage overlays** where these have not previously existed where proposed by local Councils. Reassess those previously refused by Planning SA. (eg Middleton)
- Reintroduce **State Government funding for Heritage Advisory Services**, particularly for outer country towns, is strongly urged as this has been found to be extremely effective. Funding and support (including training of advisors) is requested to assist with the protection and management of local and state heritage places and areas.
- Require / encourage **greater landscape contribution to the public realm** associated with new development to provide greening of the urban environment and necessary response to mitigate heating of the urban environment
- Ensure **appropriate notification** regarding impact of development in vicinity of existing heritage places and within residential areas

5. CITIZENS RIGHTS TO BE INFORMED /PUBLIC NOTIFICATION –

There are cases where neighbours are informed of development but when these developments are amended no right to access to comment on amendments is provided to adjoining owners.

This is on top of less public access to information about what is being proposed and approved, and fewer rights to object to development applications and approvals. Planning and development rules that have been negotiated between councils and local communities for decades have been lost in favour of a “one size fits all” approach.

See Attachments 2 and 3 Case Studies attached to this report.

Attachment 1 – References and further information on Performance Planning

Baker, D Sipe, N & Gleeson, B (2006) *Performance-Based Planning Perspectives from the United States, Australia, and New Zealand*, Journal of Planning Education and Research

Abstract: This article examines the application of performance-based planning at the local level in the United States, Australia, and New Zealand. A review of the literature finds that there have been few evaluations of performance-based planning, despite its being used by many governments. The authors provide a comparative review of the experiences of various jurisdictions in implementing this form of zoning and present observations on its relative strengths and weaknesses. Findings suggest that many of the jurisdictions that adopted performance-based planning subsequently abandoned it because of the heavy administrative burden required, and where performance methods survived, they were typically hybridized with traditional zoning.

2. South East Queensland Alliance spokesperson, Lois Levy, commenting on performance planning said in 2019 that: *“Recent changes to laws facilitating development were designed primarily to suit the property development industry instead of ensuring residents’ amenity and quality of life. The pendulum has swung too far from prescriptive planning which the community could understand to so-called ‘performance based planning’ and it now seems that anything goes,” she said.*

4. Similar problems are being experienced with the performance planning in Melbourne:

“Melbourne is under pressure at a time when trust in planners is low. Planning schemes can be impenetrably complex and jargon-ridden, and approvals for new developments frequently appear to break the rules, especially on height. Victoria’s planning system is founded on performance assessments rather than prescriptions. In theory this is sound: clearly established design and strategic objectives are typically supported by preferred height limits and other controls. Developers are required to demonstrate that their proposal delivers sought-after outcomes rather than necessarily conform to strict specifications.

In practice, this means that a thirty-storey building can legitimately be approved in an area with a fifteen-storey limit if it is demonstrated that the development meets overarching objectives. If a planning control states that a new development “should” be no taller than a specified height that simply means it would ideally be that height but doesn’t have to be. And that means it is often much taller.

While the more everyday meaning of the word “should” creates an expectation that buildings will be delivered up to the maximum nominated height, and no higher, performance-based rules have the advantage of supporting design flexibility and site-by-site assessments. But the lack of certainty can undermine confidence in the planning process and create an unproductive tension between the community, local government decision-makers and the development industry.”

Leanne Hodyl, “Density has to be likeable.” 1 Nov 2019 , *INSIDE STORY*

Leanne Hodyl is Managing Director of Hodyl + Co and a Senior Industry Fellow at RMIT. She is currently providing urban design advice to state and local government in Victoria.

Attachment 2 - Case Study - Local Heritage Place 182 Wright St, Adelaide 5000 Citizens Rights to be informed –

owner Megan Hender, - contact details mobile phone 0401 147176 megan@meganhender.com.au



context



182 Wright St



adjacent Local Heritage Places

Example where rights of neighbours to comment on an amended application have been refused - in 2013 Development Application lodged, Hender had the opportunity to submit objection and view plans, Development did not proceed, Now a new revised development has been proposed but Hender has no right to view plans.

Date	
2001	Bought two storey, three bedroom family home at 182 Wright St, Adelaide. Prior to purchase did some due diligence and recognised that some neighbouring properties were likely to be developed - but was reassured that properties (two bungalows) immediately adjacent our home (174-178 Wright St) were heritage listed and therefore unlikely to be significantly developed. Buildings being used as offices.
2013	Development Plan changed. Area re-zoned to allow much greater heights.
2013	Development Application lodged by Troppo Architects to build 8 storey boutique eco hotel complex on the site. As adjoining owners, allowed to see plans and accorded the right to lodge an objection and be heard. Made an oral and written submission to DAC objecting to the demolition of the heritage houses and the design and size of the proposed hotel (submission attached). After the proposal was approved, entered into constructive conversations with Troppo in relation to overlooking, overshadowing and noise issues. Development failed to go ahead.
2018	Advised by Troppo that they had sold the site on.
2018	Met with new developers to indicate our interest and asked to be kept informed. Advised that Development Application extension had been sought and granted but no immediate plans to develop the site.
2019	Developers moved some short-term, low-paying tenants out of the premises and appointed a letting agent. Property very badly maintained - with homeless people living on the verandah. Some office tenants remained in place but property also being used as waste management site (eg for empty bottles and perhaps food waste) for nearby Sparkke on Whitmore (whose Development Approval apparently made no provision for on site waste management!!!!). Advised by Council that approved use of building is 'office' not 'waste management' but left the issue alone as Sparkke tries to be a good neighbour.
2020	Developers appointed a new letting agent (Colliers) to find longer term tenants. Signage on the site indicates <i>Tenancies to be up-graded</i> . Assumed that Development Approval had lapsed and that new developer would need to lodge new Development Application (after 7 years of no progress!!!!) Property still partly let - being used as office and waste management site.
Jan/Feb 2021	Informed (by article in In Daily) that development going ahead - with plans that are based on the previous Troppo plans, but very significantly amended to (amongst other things) double the number of available rooms (from 26? To 52?)
February 2021	Immediately contacted SCAP to obtain details of the amended plans. Advised that adjoining owners have no right to even see the amended plans. These are not public documents. This despite the fact that the amendments apparently significantly change the impact of the development and it is 9 years since the original development was approved.
5 February 2021	Immediately contacted City of Adelaide. Advised that, as the City of Adelaide is not the decision maker, no-one was prepared to speak to us about the issue. Advised to put request for assistance in writing so <i>it can be considered</i> . Have lodged written request noting Council concerns, including demolition of heritage building and local traffic issues.
February 2021	Met with new developers and asked for copy of the plans. No plans have been forthcoming. Developer advised that the proposal is now for a 'motel' (not the boutique eco hotel approved for Troppo). Property still being used as office and waste management site.

Attachment 3 - Case Study – 6 Ebor Avenue, Mile End

Example where rights of neighbours to comment were refused – no information provided on amended application from 4 to 5 storeys in 4 storey height limit



Proposed Development



to replace this house

In May 2020 a four storey apartment building comprising 22 dwellings was approved by CAP, for 6 Ebor Avenue Mile End. This dwelling - inappropriately - is within an urban corridor high street zone. The dwelling is on the corner of Norma Street and Ebor Avenue Mile End. The northern side of Norma Street is high street and the southern side is an established neighbourhood character policy area. Norma Street will be impacted terribly by this development, particularly as the carpark entry is in Norma Street.

Originally the developers wished to build a 5 storey building with 25 apartments, but this application was put on hold and the 4 storey/ 22 apartment application was approved by a CAP in May 2020.

On 16th December the developers re-submitted their application to SCAP and now a 5 storey 25 apartment building has been approved instead. This is despite the area having a four storey limit. Please see underlined excerpt below from City of West Torrens' fact sheet URBAN CORRIDOR ZONE POLICY AREA HIGH STREET 35. :

"The maximum building height of dwellings west of Marion Road will be up to 3 storeys. Allotments between South and Marion Road will be 4 storeys and those east of South Road will be 6 storeys."

It was also understood that the development must include a certain amount of open space/greenery and the rooftop garden was fulfilling this role. However, in the developers' own words the rooftop is now 'filled in' with the additional three apartments. In other words, the applicants got exactly what they originally wanted. From a lay person's point of view this seems as though the developers are 'playing' the system - to the detriment of the residents who are completely powerless to prevent this from happening.

Being a category 1 no neighbours were required to be informed of the latest application. It is difficult to see how the planning authority could reasonably determine this change to be minor and therefore Category 1.

This issue has caused a great deal of distress amongst the close-knit section of Norma Street. Three families have moved. Based on the way the zone is interpreted there is nothing to stop someone living on the northern side of Norma Street being surrounded on three sides by 4-5 storey buildings; buildings which are zoned to fill their boundaries. Moreover, since the zone encourages new buildings filling their own boundaries, there is nothing to stop new apartment buildings being built right up close to each other, thereby windows etc will be blocked from light and air. This is high density living which is not appropriate on a side street. There is no provision for any meaningful greenery which is problematic given the reality of climate change.

In summary -

- Why was a 5 storey building approved where 4 storeys is the limit – without neighbour notification when 4 storey application was amended to five storeys?
- It also is very inappropriate for a residential side street such as Norma street to be zoned high street urban corridor.