***COMMUNITY AND INTEREST GROUPS WORKING PARTY***

***REPORT TO PRRG ON IDEAS IN RELATION TO:***

***COMMUNITY ENGAGEMENT***

***GOVERNANCE***

***MAJOR PROJECTS & INFRASTRUCTURE ASSESMENT MECHANISMS***

***PLANNING RULES & FRAMEWORKS***

***DEVELOPMENT PATHWAYS AND PROCESSES***

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***INTENT***

- *Enhance community confidence in the planning system, an essential component in an effective and efficient system, through having: certainty in the system , appropriate community participation, transparent and accountable decision-making and due regard to environmental and social impacts.*
- *All stakeholders in the planning process - government, industry, development proponents – need to acknowledge that the mushroom approach to community involvement is ineffective, inefficient and impossible in the 21st century. An informed community is a part of the foundations of a forward looking planning system.*

***IDEAS TO BE DEVELOPED AS OPTIONS – GREEN - SUPPORTED***

## *BALANCING STATE, REGIONAL AND LOCAL INTERESTS:*

B1. Establish a regional approach to the planning functions (strategic, policy and assessment) under current governance arrangements or through an independent authority structure

***Why?***

a) More efficient use of administrative & expert resources.
b) Opportunity to establish regional boundaries based on and aligned with the 8 NRM Regions in SA.
c) Facilitate the regional integration of infrastructure, social, economic and environmental considerations in the planning process.
d) A regional approach to planning is a stepping stone towards a "Whole of Government" approach to planning with the incorporation of ESD as an overarching objective across government and with closer links to NRM planning.
e) The regional approach should not rely upon informal mechanisms – dependent upon goodwill and informal networks, that change over time. The approach needs to be

formalised under legislation and be integrated into the independedent planning commission legislative framework.

22. Introduce an independent planning commission in the legislative framework to provide leadership and a less political role over planning, development and infrastructure

***Why?***

a) An independent planning commission will enable the development of a long term ecologically sustainable approach to strategic planning, free from the pressures of the electoral cycle. In order to develop a successful "Whole of Government" approach, it is essential to ensure that both the broader SA community and environment and conservation interests are formally represented on the planning commission.
b) Such a commission could also promote greater integration of government policies and community considerations.

**Note:** In regard to ensuring the independence of the commission, the provisions of the Environment Protection Act 1993 relating to the establishment of the EPA Board should be considered.

## *STATE SIGNIFICANT DEVELOPMENTS AND INFRASTRUCTURE*

217. Set clear statutory criteria for major projects and establish an alternative, politically impartial approval mechanism

**Why?**

a) For a planning system to have community support, it is essential that the community has confidence in the major projects assessment process.
b) A rigorous impartial process with clear objective criteria will build that community support.
c) The assessment process needs to be more transparent with the assessment documentation and reports being publically available.

**Note:** Members of the community find the assessment pathways and development applications (with the accompanying reports etc.) confusing and extremely difficult to follow. In the interests of transparency and accountability, the assessment process needs to be easier to understand.

A shift to the six "track based" development categories (exempt, prohibited, self-assessable, code assessable, merit assessable, impact assessable) in the DAF assessment model will add further complexity and confusion to the planning system.

219. Provide a special infrastructure assessment pathway, based on strategic assessment of infrastructure needs and with longer timeframes for construction

**Why?**

a) For a planning system to have community support, it is essential that the community has confidence in the special infrastructure assessment process, particularly with the increased involvement of the private sector.
b) A rigorous impartial process with clear objective criteria will build that community support.
c) The assessment process needs to be more transparent with the assessment documentation and reports being publically available.
d) The assessment needs to be made by an independent expert panel.
e) More informed decisions will be made by the minister in a transparent system that is guided by independent experts.
f) The process should mirror the EIA process for major projects.

B35. Adopt a two-tiered process for infrastructure assessment separating lower risk public priority infrastructure and private facility development from higher risk development proposals of state significance.

B37. Provide for appeals only in relation to higher-risk infrastructure projects of state significance.

219. Provide a special infrastructure assessment pathway, based on strategic assessment of infrastructure needs and with longer timeframes for construction

**Why?**

a) Idea 219 is opposed. It countenances the continuation of a separate, parallel system for dealing with infrastructure projects (and also Crown development?) as currently exists under s.49. The s. 49 process is not sufficiently rigorous and is perceived as being less than independent.

b) Idea B35: Infrastructure (and Crown development) projects should be assessed either under a reformed version of the current EIA process or, for lesser scale activities, via the normal planning system.

c) The two tiers for infrastructure assessment should be: (a) a reformed version of the current EIA process for higher risk developments (public and private) or (b) for lesser scale activities, assessment under the normal planning system.

d) For a two-tiered process to have community support, clear objective criteria need to be developed against which the higher risk/lower risk question can be tested and determined.

e) The concern is that infrastructure projects will be categorized as "lower risk" in order to avoid a more rigorous EIA process.

f) The idea that public infrastructure projects have a special status or significance that warrants separate treatment from normal planning approval or EIA processes is anachronistic and unjustified. This is particularly so under the current provisions of the Development Act, which allow a wide range of privately sponsored "infrastructure" projects (e.g. re: energy supply) to escape any form of EIA or planning assessment .

## ASSESSING SIGNIFICANT IMPACTS

### 224. Bring mining environmental impacts under the same umbrella as major projects

***Why?***

a) This idea would promote the "one stop" shop approach to planning and greater efficiencies in the approval process.
b) This idea would enhance community confidence in the planning system by reducing the perception that economic considerations take precedence over environmental and social considerations in the assessment of mining proposals.
c) Currently, mining proposals are not subject to sufficient independent scrutiny.

**Note:** "Mining" should include activities under the Mining Act 1971 and under the Petroleum and Geothermal Act 2000.

### 227. Align state and national environmental impact assessment processes

**Why?**

a) In principle, the alignment of state and national processes is supported and can be achieved through assessment bilateral agreements – provided the processes are properly resourced and remain rigorous, impartial and focused on national (not just regional) impacts.

b) However, the use of such agreements to fast track assessment (through the Commonwealth's "one stop shop – cut green tape" agenda) and, in effect, hand over not just assessment but also approval powers to the states is opposed. A detailed submission by the Australian Network of Environmental Defenders Offices (ANEDO) on the recent draft assessments bilateral agreement, between the Commonwealth and SA, can be viewed at: http://www.edo.org.au/edosa/law-reform

c) Alignment of the processes should be undertaken for the primary purpose of establishing a rigorous impartial process with clear objective criteria not to create a fast track substandard process.

## APPEAL AND REVIEWS

### 238. Legislate to enable parties acting in the public interest to be joined in appeal processes

**Why?**

a) This is a significant policy issue.
b) Recognition of the importance and standing of public interest litigants will increase public confidence in the planning system and facilitate the early recognition and resolution of procedural and merits public interest issues.
c) A number of organisations could be accredited and funded as public interest litigants, with periodic review of their accreditation.
d) Implementation of this idea should not be used to restrict third party appeal rights or prevent non "accredited" third parties from being able to represent and argue on behalf of the public interest.

## PUBLIC PARTICIPATION:

**8. Implement a best-practice system of community rights to participate in planning processes in the legislation, such as the NSW Community Participation Charter**

**Why?**

a) There is an urgent need to incorporate best practice community engagement processes at all stages of our planning cycle.
b) The Community Participation Charter (Charter) proposed in the NSW Planning Bill 2013 could be adopted in South Australia.
c) The Charter would apply to a broad range of planning authorities (bodies which make decisions on strategic plans and development applications), from the Planning Minister down to local councils and other consent authorities.
d) The Charter would establish seven high-level principles:
   1. *Partnership* (opportunities to participate),
   2. *Accessibility* (to understandable information),
   3. *Early involvement* (participation in strategic planning 'as soon as possible before decisions are made'),
   4. *Right to be informed* (about planning decisions that affect the community),
   5. *Proportionate* (participation in decisions is proportionate to a development's significance and impact),
   6. *Inclusiveness* (representative, inclusive and appropriate consultation methods) and
   7. *Transparency* (open and transparent decision-making, reasons for decisions and feedback on the influence of community views).

**Note:** A best-practice system of community rights must include (a) comprehensive access to information; (b) effective public notification (not just "public notices" but proposals must be "brought to the notice of the public"); and (c) the removal of the litigation "costs" disincentive to participation. See attached separate submission.

## IDEAS NOT TO BE PURSUED AS OPTIONS – RED - OPPOSED

## CLEAR RULES THAT PROMOTE CERTAINTY

**103. Recognise planning practice circulars or advisory notices in the legislation to guide the interpretation of planning provisions and keep planners informed of legal decisions**

***Why is this opposed?***

a) Providing these types of documents with some form of statutory recognition will create uncertainty as to their legal status and another layer of statutory planning assessment instructions.
b) The relevant criteria to be applied to any decision should be defined exclusively in the legislation and by reference to relevant development plans.

## MAINTAINING AND UPDATING RULES AND FRAMEWORKS

113. Combine the concepts of a 'non-complying' application and a rezoning in one statutory process

***Why is this opposed?***

a) Even with clear guidance as to when "spot rezoning" should be considered, the combining of these two concepts creates an unacceptable corruption risk.
b) To maintain community confidence in the planning system, rezoning needs to be carefully considered under a separate, transparent and accountable process.

117. Introduce legislative provisions that specifically enable councils and the Minister to receive funds or in kind inputs towards a rezoning

***Why is this opposed?***

a) It is unclear exactly what types of funds or "in kind" inputs are envisaged here. Whilst it is recognised that there may be a potential for such contributions to have a desirable public benefit, this must be weighed against the risk that developers may utilise this mechanism to "buy" re-zonings or development approvals - possibly corruptly, as has been evident in other jurisdictions in the context of "spot" re-zonings.

## MAINTAINING CHARACTER AND HERITAGE

144. Explore innovative financing arrangements, such as building upgrade finance and tradeable development rights, to support heritage and adaptive reuse

***Why is this opposed?***

a) Commercialisation of the heritage planning system will undermine community confidence and increase the potential for corrupt activity.

## *MANAGING DEVELOPMENT OUTCOMES*

212. Identify currently separate classes of consent for integration into the legislation

***Why is this opposed?***

a) The current referrals system for "advice/direction" enable specialised bodies to consider, independently, potential impacts such as environmental harm or liquor licensing.
b) The system works effectively and integration could result in the loss of specialised expertise. Planning authorities would be required to access scientific and technical expertise which is currently provided by agencies such as the EPA. .

## APPEALS AND REVIEWS

### 236. Consider the proposed South Australian Civil and Administrative Tribunal as a body that can hear merit reviews and provide mediation services

***Why is this opposed?***

a) The ERDC is well respected and has the support and confidence of the community, councils and proponents.
b) Members of the ERDC have specialized knowledge that enables planning disputes to be resolved effectively and efficiently.
c) Inevitably, if the ERDC was subsumed into a Tribunal, that expertise would be diluted, if not lost. As a consequence, disputes would take longer to resolve with, potentially more appeals, and the community would lose confidence in the Tribunal.

### B40. Provide for very fast track appeals for some forms of development (eg single residential dwellings)

***Why is this opposed?***

a) Fast track appeals are not an effective or efficient systemic avenue to remedy defective decision-making.
b) Fast track appeals are a costly option that treats the symptom not the cause.
c) The categories of development, the refusal of which can be challenged, would need to be carefully defined and will be open to expansion (through regulation??).
d) Fast track appeals will undermine community confidence in the assessment process.

### B.41 Further limit third party appeals

***Why is this opposed?***

a) Third party appeals are currently restricted to Category 3 developments.
b) Appeals should not be further restricted to only those who have a "direct specific" interest in the development.
c) One of the important functions of third party appeals is to allow litigation to be undertaken to protect the "public interest" in an accountable and properly administered planning system.
d) Every development impacts upon community interests and concerns - such as open space, traffic, noise, pollution, streetscape, amenity and the proper administration of the planning system.
e) To maintain community confidence in the planning system, third party appeal rights must be protected as part of a number of independent and accountable checks and balances which help in ensuring that we have an accountable and properly administered planning system.