COMMUNITY AND INTEREST GROUPS WORKING PARTY

REPORT TO PRRG ON IDEAS IN RELATION TO:

SETTING DIRECTIONS AND COORDINATING OUTCOMES

DEVELOPMENT PATHWAYS AND PROCESSES

ALIGNMENT, INTEGRATION AND CULTURE

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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 (integration), 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

INTEGRATED, STRATEGIC APPROACH TO PLANNING:

A9. Introduce an independent planning commission with responsibility for developing and maintaining the South Australian Planning Strategy and associated planning policy – legislation

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.

125. Require development approvals relating to mining to be dealt within the planning system, rather than under separate legislation – legislation

Why?

   a) This idea would promote the "one stop" shop approach to planning and greater efficiencies in the approval process. In addition, the idea would enhance community confidence in the planning system by removing the perception that mining proposals are not subject to sufficient independent scrutiny.

A17. Develop an ongoing comprehensive, evidence based, strategic planning program – admin.

Why?

   a) A "Whole of Government" approach to strategic planning is an essential first step towards the incorporation of ESD as an overarching objective across government. Those areas of government that are responsible specifically for environmental management/protection (such as the EPA, NV Council, NRM Boards) must be recognised in the Planning Strategy and have a statutory role in the delivery of the Planning Strategy.
   b) Continual monitoring and research would mean that each iteration of the Planning Strategy should flow smoothly from the last – not starting from scratch each time – an essential step in moving towards a "best practice" planning system.

A2. Amend the Act to expand the scope of strategic planning to formally integrate infrastructure, transport and other areas of government - legislation.

Why?

   a) A "Whole of Government" approach to strategic planning is an essential first step towards the incorporation of ESD as an overarching objective across government.
   b) The amendment would formalise the current practice of increasing integration of land use planning and would remove the current uncertainty that is a consequence of relying on practice/political will/relationships across government.

6. Include impact assessment as a basic requirement for strategic planning – legislation/practice

Why?

   a) Strategic planning initiatives of the State government should be subject to formal social and environmental assessment just as are major projects at present. SEA is an emerging form of impact assessment that is completely unrecognised in the Development Act but has been specifically provided for in the EPBC Act. The two systems should be brought into alignment.

b) In supporting SEA it should be emphasized that this must not be regarded as a substitute for EIA at the project level, but rather as an adjunct thereto. .

117. Ensure that planning legislation take account of environmental (and social) policies – legislation

Why?

a) All planning decisions impact upon the environment, including the broader social environment. All planning decisions have social impacts and affect social cohesion.
b) Therefore, to facilitate a more efficient planning system, all aspects of the environmental and social impacts of development need to be assessed as part of the planning assessment process.
c) The most efficient way to do this is to integrate the "environmental" and approval processes and the "planning approval" processes and/or ensure regular review of the Development Act/Regulations referral mechanism to ensure that all aspects of the environmental and social impacts of development are captured by the mechanism.

PUBLIC PARTICIPATION:

75. Introduce new ways of communicating development proposals, such as fixing notices to properties or using online registers – legislation

Why?

a) Improved communication as part of the public participation process will enhance community confidence in the system by making the public participation process more understandable for community members.
b) Plain English simple communication, with a minimum of technical terminology and legalese, in all aspects of the public participation process (from public notices through to appeal notices) is an essential and easy step in building community confidence in the planning system.
c) Notices need to be clearer so that the lay person can clearly understand what the notice is referring to and how they can have a say.
d) A requirement that plain and simple English be used in the plans and the process documents will greatly contribute to meaningful community participation and ownership of the plans and processes.
e) A range of 21st Century notification methods should be used including social networking sites (such as Facebook and Twitter), blogs, video sharing sites, hosted services, and web applications.
f) However, adoption of additional and more modern notification methods must not result in a reduction of public notification coverage across all age and socio economic groups. The outcome should be greater community notification.

78. Representative bodies should be given a role in the notification and consultation process – legislation

Why?

a) An increased role for specialist and community based representative bodies in the notification and consultation process would enable more informed, effective and efficient community involvement, which in turn would make the planning system more efficient.

b) A flow on effect would be that the planning authorities, the courts and development proponents would be able to seek community comment and address community concerns more effectively and efficiently. For example, organisations such as the National Trust, the Conservation Council of SA, the Environmental Defenders Office and the Aboriginal Legal Rights Service could play a representative role – if properly funded.

PROFESSIONALISM IN ASSESSMENT DECISION MAKING:

87. Require prescribed qualifications for all members of assessment bodies – legislation/practice

Why?

a) Increased professionalism in the assessment making process would enable more informed, effective and efficient decision-making and in turn increase community confidence in the planning system.

b) A requirement for professional qualifications would reinforce the general principle that the assessment task should, in large measure, be a technical, not political, process.

IDEAS NOT TO BE PURSUED AS OPTIONS – RED - OPPOSED

FAST TRACKING:

A11. Amend the Development Act requirements for Planning Strategy reviews/amendments by introducing fast track or expedited amendments – legislation

Why is this opposed?

a) The amendment process must be effective and efficient. Therefore, it is desirable to have a "fast-track" process for minor non contentious amendments. However, such a process should only be used in clearly prescribed and limited circumstances.

b) Given the purpose of the Planning Strategy (high level strategic direction for long-term development), amendments that deal with matters of state significance should not be 'fast- tracked". Such an approach would be contrary to the purpose of the Planning Strategy because there would be little opportunity to ensure integration and alignment with other policies and programs.

c) Clear "fast-track" triggers/criteria would be needed to prevent exploitation of the process by government and development proponents, as has occurred with the current major project processes.

A15. Introduce 'Public Priority Infrastructure' (or associated infrastructure) declaration to enable streamlining of declared infrastructure – legislation

Why is this opposed?

a) 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 .

PRIVATE CERTIFICATION:

70. Expand the role of private certification as an alternative to council-based assessment – legislation

Why is this opposed?

a) The current limited role of private certification is able to be adequately monitored.
b) An expanded (and properly accountable) private certification role would require comprehensive government oversight and supervision of the training.
c) Government is unlikely to provide sufficient resources to ensure accountability as government would view expanded private certification as an opportunity to reduce government expenditure.
d) The objective of proper, orderly and efficient planning and development would be undermined, as would community confidence in the planning system.

SELF ASSESSMENT:

54. Introduce an ability to self-assess minor matters, subject to planning and design guidelines – legislation

Why is this opposed?

a) An effective self-assessment would require comprehensive government oversight to prevent abuse. Difficulties will arise in defining what "minor" developments are and who should have the right to appeal such determinations.
b) The use of a cost threshold to define "minor" (or any other category of development) development is not appropriate in a 21st century planning system. Such a mechanism is very likely to be subject to widespread abuse (underestimation of cost to fall below threshold). In any event, the cost of a development cannot be a meaningful measure of its desirability or its impact.

c) Government is unlikely to provide sufficient resources to ensure accountability as government would view self-assessment as an opportunity to reduce government expenditure.
d) The objective of proper, orderly and efficient planning and development would be undermined, as would community confidence in the planning system.
e) A basic requirement for any self-assessment process would be that the planning authority is required to undertake a compliance inspection of the development and has a non-reviewable discretion to make orders for the variation of the development or to require a development approval to be sought.

51. Adopt the Development Assessment Forum's best-practice principles for development assessment, including the six 'track-based' development categories – legislation

Why is this opposed?

a) 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.
b) A shift to the six "track based" development categories (exempt, prohibited, self-assessable, code assessable, merit assessable, impact assessable) will add further complexity and confusion to the planning system.
c) In addition, a shift to six categories will mean less community participation in the planning process as opportunities for public notification and appeal will be reduced.
d) Improvements should be made to the naming of the current three tracks to make them simpler to understand – for example: "Appropriate" (for Complying), "On Merit" (for Merit) and "Prohibited" (for Non-complying).

PUBLIC PARTICIPATION RESTRICTIONS:

74. Use a sliding scale—the notification process should be related to the scale and impact of a proposal – legislation

Why is this opposed?

a) A sliding scale already exists under the current 3 public notification categories. The current system works, not perfectly, but a "sliding scale" is simply a euphemism for further reducing existing community involvement in notification, access to information, representation and appeal processes.
b) A sliding scale would introduce a much greater level of subjectivity in determining where a proposed development sits on the sliding scale and therefore what level of public notification is required.
c) Certainty in the planning process would be further undermined, as would community confidence in the planning system

72. Provide incentives or require developers to speak to neighbours before the lodgement of a development application – legislation

Why is this opposed?

a) It is essential that the planning system include appropriate mechanisms in order that developments, which significantly impact on neighbours and on the wider community, be subject to public notification, the right of representation and the right of appeal.
b) Public notification categories need to be clearly articulated with little discretionary power for variation. In order for community confidence in the planning system to be increased, the community needs to clearly understand its role in the approval process and public notification is a critical step in that process.
c) A system that formally recognises developer discussions with neighbours as a formal public notification process is open to intentional and unintentional abuse. The power, knowledge and education imbalance that would exist between many development proponents and residents renders this idea unworkable.
d) Such a discussion process could not be properly monitored and should not be considered as a substitute for (the existing) more robust and accountable public notification processes.

59. Introduce mechanisms that allow applicants to stage consents, or to stage particular elements of a development assessment process – legislation

Why is this opposed?

a) Such a change will facilitate the potential approval of inappropriate development by (staged) stealth.
b) By permitting staged assessment, significant "details" would not be revealed to the community until a development is partially commenced. At that stage, it would, in a practical, economic and political sense, be impossible to prevent the completion of the development.
c) The current planning system which provides for the imposition of conditions that, in effect, extend the prescribed time limits for commencement and substantial completion, is effective in facilitating staged development.
d) The planning and development expectations and needs of the community change over time (for example, with demographic shifts, technology changes and economic cycles). Staged development consents have the potential to lock the SA community into long term developments that may prove to be contrary to the community's longer term best interests.

> **INNOVATIVE IDEA** - "Community Planning and Heritage Advice Fund"

94. Require assessment bodies and staff to provide advisory services in response to public inquiries

Why is this opposed?

a) The provision of advisory services by this means is not independent, lacks sufficient resources, exposes inadequately trained staff, and raises issues re: confidentiality. An alternative approach is proposed hereunder.

Advisory services are essential because:

1. Objects and provisions of Dev. Act and other legislation provide for access to information, community comment on, appeal with respect to and enforcement in relation to various development , planning and environmental activities (i.e. public participation).
2. Enable a more efficient system + increases certainty.
3. Reduce costs to government and industry.
4. Increase community confidence in and support for the planning and environmental legislative schemes.

PROPOSAL: Establishment of "Community Planning and Heritage Advice Fund".

1. Self-funded through a levy on Development Applications (set amount on each DA or sliding scale based on value of development). 50,000 to 70,000 Applications per year.
2. Potentially administered by the Law Society, Justicenet or the Law Foundation?
3. Funding provided to organisations that have the expertise and independence to provide information and advice regarding responsibilities, rights and obligations under planning, environmental and heritage legislation.

INNOVATIVE IDEA - Community Participation Charter

Why?

1. There is an urgent need to incorporate best practice community engagement processes at all stages of our planning cycle.
2. The Community Participation Charter (Charter) proposed in the NSW Planning Bill 2013 could be adopted in South Australia.
3. 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.
4. 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).