

COMMUNITY AND INTEREST GROUPS WORKING PARTY
COMMENT ON “OUR IDEAS FOR REFORM” PUBLICATION
SEPTEMBER 2014

1. Process for reform

- The Expert Panel, in this publication, has only put forward a series of 27 ideas for reform (containing numerous sub ideas) of the planning system.
- It is essential that specific reform proposals that will be recommended by the Expert Panel in its final report should undergo further public consultation, otherwise no opportunity will have been provided to comment on these proposals before they are submitted to the SA government.
- Further public consultation on the Expert Panel’s Final report should therefore be undertaken at the final draft stage, prior to its presentation to the SA government in December 2014.
- The Expert Panel should also seek an undertaking from the SA government that the government will publish a Formal Response to the Expert Panel’s final report before it introduces new planning legislation into Parliament (as occurred with respect to the “Hawke Review” of the EPBC Act in 2010-11).

2. Goals for the new planning system (see Figure 3, p.19)

- The stated goals for a new planning system, on which the various options advanced are based, are seriously inadequate and reflect an implicit and unquestioned bias in favour of continued growth at the expense of environmental and social goals.
- There is only token reference to environmental goals (“minimise and mitigate avoidable adverse impacts”) rather than a contemplation also of **avoidance** of such impacts as the primary objective of the planning system.
- Note also that this standard is not commensurate with the “avoid, mitigate, offset” hierarchy of principles which underpin the operation of the EPBC Act and would therefore likely preclude accreditation of approval processes under such a system by the Commonwealth.
- Likewise, the goals do not accord sufficient importance to the social objectives of the planning system, e.g., recognition of the social utility of land, gender inclusiveness, community nurturing and the need to promote affordable housing.
- The goals stand in stark contrast to those espoused in 2012 by the UK Planning Minister, Greg Clark, in the *UK National Planning Policy Framework*, where it is stated that: “The purpose of planning is to help achieve sustainable development” and “Sustainable development is about positive growth – making economic, environmental and social progress for this and future generations”.
- The new planning system, to be relevant in the 21st century, must have as its overarching goal, sustainable development which integrates, into every aspect of the planning system, assessment of economic, environmental and social impacts.
- Some core values that should underpin the goals of a new planning system include: people having the right to live and work in an environment which is conducive to good

health and to a good quality of life that enables the development of human and social potential; people having a right to be involved in decision making about the planned interventions that will affect their lives; and recognition that local knowledge and experience are valuable and can be used to enhance planned interventions.

3. **Guiding Principles** (pp.22-24)

- The Panel's Guiding Principles have a highly technical focus; as with the stated goals, the Guiding Principles do not properly balance economic and technical considerations with those of an environmental and social character.
- Specifically, the fifth Principle of "performance and professionalism" reflects an unquestioned assumption that professional expertise is best capable of delivering "effective and efficient processes" and outcomes (reflected, for example, in the proposals for the appointment of fully professional regional assessment panels);
- There needs to be a recognition, within the Guiding Principles, that the planning system is a vehicle for the expression of community aspirations, values and preferences in which technical, expert opinion is merely one component, rather than the sole determinant of outcomes – the failure to understand this dimension of the planning system lies at the heart of the extensive community discontent with the current system and appears to have extended to the Panel's Guiding Principles. The "Partnerships and Participation" principle is acknowledged, but in a technical, expert driven planning system, it is not going to engender community confidence in, and support for, such a system.
- The references in the context of the "Renewal and Resilience" principle to embedding sustainability and supporting economic, social and environmental resilience are tokenistic, given the failure to reflect environmental and social goals adequately or to reflect such goals in the actual ideas presented.
- Whilst the principle of "Partnerships and Participation" is welcomed, as is its reflection in the proposal for a Charter of Citizen Participation, we note that this initiative will apply only in the planning policy context and that there is a general strategy contemplated in various other ideas to seriously reduce the level of community participation in the development assessment context (thus continuing a trend first observed in respect of the SA planning system in the mid 1980's (see Tim Bonyhady, *Places Worth Keeping*).

4. **Other general observations**

At the outset, it must be said that the task of assessing the 27 ideas (and approximately 200 sub-ideas) presented, and deciding which ones are worthy of support or should be rejected, is difficult to perform without further, more detailed elaboration of them by the Expert Panel. It became clear from the Workshops that even the Expert Panel members were unable to explain the rationale behind, and the practicalities of, some of the sub-ideas. In addition, some of the sub-ideas are inconsistent with the "head" idea under which they sit (e.g. 18.4; 14.5). Therefore, before giving a preliminary and highly conditional response to these 27 ideas, a number of general observations will be offered hereunder.

- A key concern is the question of **resourcing** the proposed new system. For example: (a) Regional Boards and Assessment Panels: there is no coherent funding approach provided - the suggestion that “co-contributions” will be provided by the State government and “participating” local councils is unrealistically optimistic and impractical and suggests that there is no coherent view as to how these fundamental reform ideas will be resourced; (b) Charter of Citizen Participation: the development and implementation of engagement plans and the meaningful involvement of the community in the engagement process - the Expert Panel recognises that this will require “effective resourcing”. However, the suggested “offset” of this expense by “savings at other stages in the process” again suggests that there is no coherent view as to how these fundamental reform ideas will be resourced. Indeed, if the lack of resourcing for community engagement in the current planning reform process is any indication, the Charter may end up being little more than “window dressing”.
- The avenues for individual and community **representations** (written and in person) to be made on development proposals are unclear. Is the only avenue to be through elected council representatives being invited to appear before Assessment Panels? Will there be rights of notification and representation at the local council assessment report writing stage for certain categories of development?
- The **composition** of the proposed Commission, Regional Boards and Panels also warrants more detailed explanation before it is possible to reach a firm conclusion as to the merits of these options, in particular as to how the balance between expert versus representative membership of these bodies will be struck.
- Similarly, there is a need for greater clarity and detail with respect to the **division of functions** between the Commission, Regional Boards and Panels and local government, with respect to both planning policy and development assessment roles, including involvement with major projects assessment and approval.
- There is a more specific failure to provide any detailed outline of a revised **major project process** that reflects contemporary, state-of-the art practice in this field – for example, in relation to the use of public inquiries and strategic environmental assessment mechanisms.
- More generally, the treatment of this subject reflects a perception that **environmental impact assessment** (EIA) is an extension of the “normal” development assessment system and fails to reflect an appreciation of its distinct and quite separate function in providing a detailed, scientifically rigorous assessment of the environmental and social impacts of proposals likely to have major impacts.
- The treatment of the subject of “**essential infrastructure**” perpetuates the long-standing assumption that such forms of development deserve privileged treatment via a fast-track approval process (as in the past has been accorded to so-called “public works” prior to the privatisation of many such services).
- These categories of development should be subjected to the same level of process and scrutiny as all other forms of development, and in particular should regularly be subject to the major projects process (e.g., for ports and harbours).
- The idea to **substantially shift community participation from the development assessment process to the policy and strategy development stage** may have theoretical

merit. However, without comprehensive, properly resourced and ongoing cross-generational community education, experience suggests that the legislative shift will not be accompanied by a corresponding community participation shift. In any event, increasing community participation in policy and strategy development does not require community participation in the development assessment process to be reduced. The two options can co-exist and, if the policy and strategy participation approach is successful, it should follow that the community's rights to participate in the development assessment process would be resorted to less frequently.

- The Expert Panel anticipates that **the reform process will be staged**. The Panel suggests that a “carefully designed, staged approach” is needed and is seeking suggestions as to how this should be done. Presumably, various stakeholders will have a variety of suggestions (driven by their priorities). From the community perspective, any reforms that further reduce the very limited avenues for community participation in the current system should not be implemented (if at all) until proposals (such as the Charter), that are purported to increase meaningful community participation, are trialled, monitored and fully resourced.
- Due to very limited resourcing, the Community and Interest Groups Working Party is not in a position to provide detailed suggestions at this time on the questions posed in Part 10 of “Our Ideas For Reform” in regard to **staged delivery, resourcing and the legislative framework**. These are fundamental issues that will impact upon the effectiveness of any reforms and community confidence in, and support for, those reforms. We dearly wish to have the capacity to contribute at a greater depth on these matters, but do not have the resources of some of the other stakeholders in this consultation process to enable us to do so.

5. Regional Boards and Panels

- Finally, we offer some further comment on what appears to be the most central component of the reform ideas canvassed by the Expert Panel, namely the establishment of Regional Boards and Panels.
- Initial reaction to these ideas within community groups and to these particular proposals has been strongly negative, largely due to concerns that decision-making on development proposals will be removed to another level that is more distant from those most affected by the effects of such decisions (contrary to the principle of subsidiarity in environmental decision-making that has wide acceptance across Australian governments).
- On the other hand, it is also recognised that policy formulation at the regional level may provide an avenue for conversations about community needs and expectations that rises above the level of localised interests and may lead to better environmental and social outcomes.
- A consequence of the proposed full “professionalization” of the development assessment process (at the Regional Panel level) should not be the further alienation of the community from the development assessment system by the exclusion of community (i.e. council) membership of the Panels and a reduction in community notification and representation rights.

- We also note concerns that have been raised in the course of initial responses to the ideas presented about the need for a new, substantially revised plan for the whole of metropolitan Adelaide and the deficiencies of the proposed three regional boards structure in this context; we suggest that the Expert Panel must give this particular matter much more careful thought in the course of preparing its final recommendations to the SA government.

COMMUNITY WORKING PARTY VIEW OF REFORM IDEAS		
NOTE: THIS IS A PRELIMINARY GENERAL INDICATION, PENDING PROVISION OF MORE DETAILS IN REGARD TO: HOW THE REFORMS WILL BE RESOURCED; SPECIFIC SUB REFORM IDEAS; WHICH REFORMS MUST BE IMPLIMENTED AS A PACKAGE.		
REFORM IDEA NUMBER	SUPPORTED – YES/NO/?	SHORT COMMENT
1	Yes	Independent, stand alone. Subject to clarification re resourcing and exact composition
2	?	Would Boards be needed if regional plans (good) separated from assessment Need clarification re resourcing and composition of both boards and panels; Need further thought re metropolitan Adelaide arrangements
3	Yes	Must be properly resourced, enforceable and apply to policy & DA (seek anti-SLAPP provisions) Need further provision for public engagement in development assessment
4	Yes	Must be properly resourced. Need to expressly incorporate also into major projects process
5	Yes	Needs teeth
6	Yes	Must be properly resourced. Provided directions approved by parliament (or disallowable) and required by legislation to include social and environmental concerns Further thought required on ability of simplified state directions to effectively cover all aspects of current Planning Strategy; Q how these can be implemented normally by Councils, when council functions will be largely transferred to regional Boards and panels? Surely should be through regional strategic plans?

7	?	Must be properly resourced. Interested in idea of separating regional plans (good) from assessment - depends on whether regional boards structure is pursued, but has merit from perspective of ecologically based regional planning.
8	Yes	Must be properly resourced.
9	?	Enviro & social impact integration. Need far clearer and more detailed explanation of what is involved in “form-based” planning.
10	Yes	Must be properly resourced. Concern re: private consultants. No watering down of protections.
11	No	Must be properly resourced community consult. What is wrong with them now? Substantially better community engagement pursuant to charter must be provided. Q? re call-in power for Minister?
12	?	Envisages a vast reduction in merits approvals in favour of more consent-based categories and more restrictive definitions of “development”; the detail needs to be seen . There is lack of clarity also around the major projects assessment pathway.
13	?	Must be properly resourced community consult. How does assessment proceed? Whilst attractive in principle, at what stage does a project acquire a status in which refusal is no longer an option for the assessment body? Also, what level of community input will be permitted at each assessment stage?

14	?	Any further limitation on consultation and third party merit appeal rights is highly undesirable; again, details are needed before making a final decision on this option.
15	?/No	RAP – loss of community participation. The de facto privatisation of the development assessment process and its removal from the local to the regional level are not supported.
16	?	Some alarm bells re mining and enviro protection. Transparency in the triggering of the major projects process is only one of many aspects of this process requiring substantial reform (e.g., scoping guidelines, independent assessment, public inquiries, strategic EIA etc.); the options paper has failed to address these aspects sufficiently.
17	No	No special pathway for infra. The rationale for “streamlining” the approval of “essential infrastructure” perpetuates the myth that “public works” deserve privileged treatment and should not be subject to the same standard of assessment as private works. Essential infrastructure should be subject to the normal major projects or DA processes, as appropriate.
18	No	Reduces appeal rights. Most of these proposals are regressive and not justified in terms of the current effectiveness of the appeals process.
19	Yes	

20	No	This concept was opposed by community groups when the Urban Renewal Bill was passed in 2013; why should not the usual planning amendment mechanisms be used in this context?
21	Yes	
22	Yes	Need penalties for non-use of sites which impact on community Need to consider this option in relation to re-use of contaminated land – that is via “brownfields” policies based on incentives of various kinds.
23	?	Essential infrastructure should still be subject to normal development assessment processes, not streamlined fast-track approvals.
24	?	Query whether expertise on matters subject to referral resides within planning sections or development assessment panels in many instances; need to see details of where referrals may be limited beyond current range to decide on this option.
25	Yes	
26	Yes	
27	Yes	Cultural change needs also to focus on a changed perception of the nature and function of planning, in particular to accord much greater weight to environmental sustainability and social dimensions, and also to genuine and meaningful citizen engagement.