



STATE
PLANNING
COMMISSION

REVIEW OF THE STATE COMMISSION ASSESSMENT PANEL (SCAP) BY THE STATE PLANNING COMMISSION

November 2018

The State Planning Commission has undertaken an internal review of the State Commission Assessment Panel (formerly the Development Assessment Commission) to ensure that it is in the strongest possible position to perform its assessment functions under the *Planning, Development and Infrastructure Act 2016*.

The review drew on interviews with current members of the State Commission Assessment Panel (SCAP) and staff from the Department of Planning, Transport and Infrastructure (the Department) who were highly experienced in SCAP operations and best placed to recommend opportunities for improvement. The review also considered public and media sentiment and the requirement for transparency in the Community Engagement Charter.

This report outlines the rationale, scope and outcomes of this review and the implications of this for South Australia's new planning system.

1. REASON FOR THE REVIEW

The *Planning, Development and Infrastructure Act 2016* (PDI Act) has enabled the delivery of a robust new planning framework for South Australia that aims to be the most effective in the country.

The State Planning Commission (the Commission) is a key vehicle in the success of South Australia's new planning system and the State Commission Assessment Panel (SCAP), as a sub-committee of the Commission, also has a central role to play in the assessment of significant projects across the state.

Following the inauguration of the Commission, SCAP was rapidly established to perform the functions of the former Development Assessment Commission (DAC) and ensure a smooth transition from the old system to the new system. As such, the existing members of DAC were transitioned to SCAP to enable continuity of service.

SCAP has now been in operation for more than one year; the Commission considers it timely to review and enhance its operations and ensure its ongoing synergy with the PDI Act.

This review aimed to achieve the following:

1. strengthened working relationships between SCAP and the Commission
2. enhanced transparency and accountability in decision-making by SCAP
3. improved alignment of expertise between SCAP members and SCAP functions
4. greater clarity around roles and responsibilities across SCAP, the Commission and the Department.

2. SCOPE OF THE REVIEW

The intention of the review was to ensure that the Commission had in place the most appropriate subordinate arrangements to undertake its assessment functions consistent with the PDI Act and its transitional provisions (i.e. assessment functions under the *Development Act 1993*).

The review was to be internal, initial, and “low key”. It was expected the review would generate both immediate and medium-term actions. It was further expected that there would be some findings that would best be actioned when the transitional provisions concluded in 2020.

3. APPROACH TO THE REVIEW

A review panel comprising three Commission members was established to oversee the review process. The panel included Tim Anderson QC as Chair alongside Michael Lennon and Allan Holmes. The panel interviewed all SCAP members and relevant departmental staff with experience with and/or responsibilities for SCAP.

The panel made recommendations to the full Commission, which have now been adopted and are documented in this report.

4. ISSUES AND ACTIONS ARISING FROM THE REVIEW

4.1 Role and function and delegations from the Commission to SCAP and the Department

The Commission is South Australia's principal planning and development assessment and advisory body. The Development Assessment Commission (DAC) was abolished under the PDI Act and the Commission assumed its functions, powers and duties under transitional provisions.

Development assessment provisions of the *Development Act 1993* will remain in place until 2020, when the new Planning and Design Code (the Code) comes into operation.

However, the Commission is required by the PDI Act to establish at least one committee in connection with its functions as a relevant authority (relevant authority is given meaning in other clauses of the PDI Act). The Commission is further required to

delegate its powers and functions with respect to determining whether or not to grant planning consent to one of the following parties:

- a Commission Assessment Panel
- a non-Commission Assessment Panel appointed under Section 82 of the PDI Act
- a person occupying a particular office or position.

SCAP was established to satisfy the first requirement, and delegations made to SCAP and departmental officers to satisfy the first and third. No delegations were made to a non-Commission Assessment Panel.

An intention of the PDI Act is to ensure that the Commission is not distracted from its policy advisory functions by the more technical functions of assessment. As such, the Commission provides oversight of the assessment function, but delegates the responsibility.

Assuming all development assessment functions under the PDI Act are delegated, the question arises as to which of the former DAC non-assessment functions should be held by the Commission and which should be delegated.

A second question pertains to which development assessment functions should be delegated to SCAP and which should be delegated to departmental staff.

The Commission has established SCAP to exercise the most important and contentious of the Commission's development assessment functions, including the provision of specific development assessment advice to the Minister for Planning.

SCAP is currently making decisions and providing advice to the Minister on behalf of the Commission. The Commission is informed of SCAP assessment decisions via the sharing of meeting minutes.

However, there may be circumstances where SCAP should be reporting to the Chair of the Commission in a timely manner about its functions.

SCAP has further delegated some of its functions to the Department, based on what had been delegated by DAC. Around 95 per cent of applications to SCAP for planning consent are determined by the Department under delegation. Presumably, this arrangement has been based on balancing administrative efficiency, while leaving the more significant and controversial matters for SCAP.

The way this has been expressed is via a table that assigns matters that require a final decision to specific departmental positions, but that includes qualifications and limitations on the Department's decision-making powers, essentially reserving certain matters for SCAP.

As the Commission has the function of being South Australia's principal assessment body, it ought to determine the delegation arrangements to SCAP and to the Department, rather than SCAP establishing its own delegations. The Commission recognises that the Department and SCAP have a detailed knowledge and experience of the departmental delegations and, as such, should be in a position to recommend the best delegation arrangements.

Action 1: The Commission requests that SCAP and the Department review the current delegation arrangements and recommend a set of revised delegations for the approval of the Commission. These delegations should reflect the following principles:

- Significant and controversial matters are determined by SCAP
- Workloads for SCAP match the capacity and resources available
- The Department undertakes as many assessment and administrative functions as possible
- SCAP and the Department make it clear that all of their decisions are made as a delegate of the Commission
- SCAP provides timely reporting to the Commission on matters that are sensitive or of policy significance.

The recommendation to the Commission on delegations is under active consideration.

4.2 Membership of SCAP and linkages to the Commission

The former Development Assessment Commission (DAC) was constituted as an expert body covering five broad disciplines. Section 10 of the *Development Act 1993* states:

(3) The Development Assessment Commission consists of the following members appointed by the Governor:

- *a Presiding Member*
- *a Deputy Presiding Member*
- *a person with practical knowledge of, and experience in, local government chosen from a panel of three such persons submitted to the Minister by the Local Government Association of South Australia*
- *a person with practical knowledge of, and experience in, urban or regional development, commerce or industry*
- *a person with practical knowledge of, and experience in, environmental conservation or management, or the management of natural resources*
- *a person with practical knowledge of, and experience in, the provision of facilities for the benefit of the community*
- *a person with practical knowledge of, and experience in, urban design, building safety or landscape design.*

(4) The Presiding Member and Deputy Presiding Member must have qualifications and experience in urban and regional planning, building, environmental management, or a related discipline that are, in the opinion of the Governor, appropriate to the Presiding Member's functions and duties under this Act.

There were seven members of DAC at the time that SCAP was established; their expertise appears to be appropriate and members are well regarded.

A seven-member panel requires a quorum of four, giving sufficient breadth of expertise for sound decision-making when the minimum number is present. Advice from SCAP members strongly supports the current number for practical operational reasons.

Remuneration arrangements are not dealt with here (all members are currently paid in line with Cabinet approved remuneration framework). A more detailed analysis may be warranted but is beyond the scope of this review.

The relationship between SCAP and the Commission is important. SCAP is exposed to the implementation of planning policy through assessing development applications and making decisions to approve or reject them. It deals with many significant and controversial matters and, as a result, is in a unique position to understand the strengths and weaknesses of planning policy. Clearly, the Commission could benefit from sharing in this experience. This could be achieved in a number of alternative ways.

For example, agendas and minutes could be provided to the Commission and Commission members could attend SCAP meetings as time permits. Further, the Presiding Member of SCAP could meet with the Commission on a regular basis, to provide specific advice on policy issues that have arisen through the work of SCAP.

Alternatively, there could be some common membership – some Commission members could also be members of SCAP. Under the PDI Act, it is possible for SCAP to include members of the Commission, bearing in mind the two bodies have separate and discrete functions. The Commission is also constituted as an expert body, in a manner that is similar to the way that DAC was established, and some members could be common to both the Commission and SCAP.

The benefit of cross-membership would be that the Commission's deliberations are informed by members with practical experience of having to assess significant developments against current policy settings. The new Planning and Design Code, crucially, could benefit considerably from this expertise. The number of cross-members could be one or two. Any more would risk compromising the separation of roles in regard to both the advice and assessment functions.

The PDI Act allows for four to six members of the Commission with certain expertise plus an ex officio public servant assisting in the administration of the PDI Act. Section 19 of the PDI Act makes special provision for up to two additional members with qualified status, from a list established by the Minister, to assist the Commission in certain circumstances.

The Section 19 provision does not seem to be appropriate for cross-membership. If this is the case, cross-membership could only occur if the Commission decided to appoint some of its members to SCAP.

The question is whether sufficient improvement in cross-fertilisation can be achieved through better communication or whether the stronger linkage of cross-membership should be pursued. If it was feasible from a workload perspective, cross-membership would undoubtedly give a better result.

Action 2: The Commission recommends that:

- **the Presiding Member of SCAP attend Commission meetings on a regular basis to brief the Commission on SCAP matters that are relevant to the deliberations of the Commission**
- **the Chair of the Commission discuss the subject of “assessment informing policy” with the Minister for Planning and determine if the Minister has any advice for the Commission on this matter**
- **the review panel consider the membership of SCAP, including the feasibility and merit of cross-membership**
- **the membership of SCAP is finalised as soon as practicable, to give the current members reasonable notice.**

4.3 SCAP procedures

The Development Assessment Commission (DAC) had adopted operating procedures that were last revised in April 2017. SCAP has continued to operate under these procedures in the absence of any direction from the Commission.

Revised procedures have been prepared but not yet considered by the Commission.

There are two parts to the procedures. The first relates to how SCAP operates. The second relates to the services provided to SCAP by the Department.

4.3.1 SCAP procedures – meetings and assessments

The majority of stakeholders interviewed as part of this review believed that public access to information and transparency of process were priorities that should be addressed and improved. The consensus was that, with few exceptions, all the information before SCAP should be made publicly available before assessment decisions were made.

As a general principle, unless there are legal reasons not to do so, all assessment documentation should be made available on SCAP website before an application is considered so that all affected parties have an opportunity to access it. This also applies to Crown developments, except that any recommendations to the Minister should remain confidential until the Minister’s decision is made public.

Action 3: The Commission requests that the Department draft a set of procedures for the operation of SCAP for consideration and endorsement by SCAP, and for subsequent consideration and approval by the Commission.

These procedure should address the matters below:

- Meetings should be open except for the deliberation and decision-making which will be ‘in camera’
- Decisions should be based on written submissions, which may be clarified by verbal representation
- No cameras or recording devices should be permitted during meetings
- All matters should be listed on the public agenda even if some are dealt with confidentially
- An accessible public register should be maintained of all formal development applications and associated documentation.

4.3.2 SCAP procedures – departmental support and services

While assessment documentation and support arrangements appear to be satisfactory at the moment, advice was received that this has not always been the case. Management arrangements need to be in place to ensure standards are met and there is a level of consistency in approach. Concern was also expressed that standard conditions of development approval were sometimes inappropriate or unnecessary. This is a technical matter that should be remedied by guidelines or instructions.

Action 4: The Commission requests that the Department prepare guidelines on the delivery of service arrangements to SCAP, including clear instructions on the standard contents and layout of documentation (including guidance on standard conditions) required for assessment decisions. These guidelines should be submitted to SCAP for approval.

4.3.3 SCAP procedures – involvement of other agencies

Concerns were raised about the potential for lack of clarity and the role of Renewal SA in the assessment process. Renewal SA must be considered in the same way as any other proponent.

The Office of Design and Architecture South Australia (ODASA) has a special role in Design Review and ODASA's interaction with SCAP needs to be managed with care.

When SCAP deliberates and makes its decisions, it must do so on its own, without the presence of other parties, with the exception of any approved support staff.

Action 5: The Commission recommends that the formal procedures of SCAP under Action 3 must also provide clarity about the involvement of other agencies in providing input to assessment deliberations.

4.4 Reporting

Accountability for performance is an essential part of any delegated function. Currently, the Commission sees agendas and minutes which provide a valuable insight into SCAP's activity. SCAP also receives reports from the Department on its work as a delegate of SCAP.

Action 6: The Commission requests that the Department prepare a comprehensive reporting guide for SCAP to enable it to report to the Commission on decisions made under delegation.

4.5 Matters for subsequent consideration

A number of other matters were raised during the course of the review. Some were of a policy nature and others were of an administrative nature. These matters require further investigation before being fully addressed.

They relate to the following:

- ODASA and the efficiency of Design Review in the assessment process
- non-complying matters for concurrence
- administrative improvements regarding Crown developments
- statutory improvements regarding Crown developments.

No findings are recorded for the above matters at this time.

Action 7: The Commission recommends that the review panel provide further advice on a range of policy matters that were beyond the scope of this initial review but that warrant subsequent consideration by the Commission.

Next steps

As a result of this review, the Commission will work with the Department and SCAP to implement the seven action areas outlined above.

Action areas will be progressively addressed over a six-month period.

A key priority will be to improve transparency and accountability of SCAP decision-making.

Some action has already been undertaken in relation to Crown development applications. Since October 2018, Crown development applications are no longer considered in confidence as the Department's assessment reports have been made publicly available with the agenda.



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