28 February 2020

Hon Stephan Knoll MP
Minister for Planning
GPO Box 1533
ADELAIDE SA 5001

RE: Planning and Design Code

Dear Minister,

Please find enclosed the official response from the Property Council of Australia to the draft Planning and Design Code. This submission has been compiled in consultation with our members who represent those 75,000 people directly employed by this sector in South Australia. We thank you for this opportunity to respond to the Government’s consultation.

As you are well aware, the ongoing planning reform process has been a long and complicated undertaking – but it is an undertaking that our members both support and applaud.

With the release of the draft Planning and Design Code for metropolitan Adelaide, the property sector has entered the ‘pointy end’ of the reforms. While we understand that this once-in-a-generation change of our planning system will inevitably have teething issues as we transition to an e-planning system, we implore the Government not to fold to vocal minorities and delay or water down the implementation.

In some ways, this has unfortunately already taken place.

The sector is poised to capitalise on the positive impacts of a streamlined planning system. Transactions are paused in anticipation of a sector which has the handbrake of red tape, multiple development plans and local government bureaucracy removed from the approval process. While teething issues in the online system are to be expected, we believe that it is only through the practical application of the Code that the sector can begin to work with Government to identify and streamline the digital process.

We are acutely aware that the Draft Code released for consultation has also been undergoing re-drafting and updates over the past few months while the sector has been analyzing the new document. For this reason, we have not undertaken a ‘line by line’ analysis of the Code as such, but have instead focused our efforts on the areas which we believe could be adjusted to allow positive development of the sector. You will find these in the attached appendix.
It is our strong belief that getting tied up in irrelevant fights over “typos and mistakes” that have occurred while stitching development plans together will not lead to a timely and beneficial outcome for South Australians. South Australian families and businesses deserve a planning system that presents opportunities to grow our state and enhance our international reputation as a place to invest. We have provided feedback with this underlying principle in mind.

The Property Council is available to assist the government as it transitions to the e-planning system by providing practitioners to ‘test’ the code. If you would like to be connected with planners and developers in the sector to facilitate this, please don’t hesitate to contact us.

We look forward to working with the Government as the South Australian planning regime transitions to a nation-leading system.

We look forward to your response.

Yours sincerely

Daniel Gannon
<table>
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<tr>
<th>Relevant Section</th>
<th>Comments / Issue</th>
<th>Suggested Amendments/ Solution</th>
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<tbody>
<tr>
<td><strong>Design in Urban Areas/ Design in Rural Areas</strong></td>
<td>Under the South Australian Planning Policy Library, the term “supported accommodation” included activities such as nursing homes, hostels, retirement homes, retirement villages, residential care facilities and special accommodation houses. Specific provisions for these kind of land uses were provided in the General Section under the heading “Supported Accommodation, Housing for Aged Persons and People with Disabilities”. Under the proposed Planning and Design Code, similar provisions remain in the “general” section but are found under the headings “Design in Urban Areas” and “Design in Rural Areas”. The new provisions comprise “performance outcomes” only and there are no Deemed to Satisfy/Designated Performance Features that are applicable for supported accommodation. The performance outcomes are generally supported; however, the Planning and Design Code misses an opportunity to be clear on when to depart from prevailing Code policy that relates to more typical residential development given the differences with retirement living. Within retirement villages and residential parks for example, dwellings (in the form of group dwellings or within a residential flat building) often have site areas less than anticipated in the zone. This is because: Dwelling floor areas are generally smaller There is less demand for open space and the associated maintenance requirements Open space is provided in a consolidated and communal arrangement Open space is typically supplemented by leisure facilities where residents can socialise and be active outside of their own home environment, and There is less demand for on-site car parking. Critically, having regard to the above, site areas for dwellings in retirement villages should be less than those for dwellings that are not in a retirement village. While the Code recognises that this is case for Residential Parks, Code policy does not enable the same approach for dwellings in a retirement village. In our view that performance outcomes expressly permit smaller site areas for dwellings within retirement villages.</td>
<td>Use the Regulations rather than the Restricted list to assign SCAP as relevant authority to certain forms of development. Review where 3rd party appeal rights apply for Restricted development.</td>
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## Transport, Access and Parking General Module

The wording of the car parking rates in the draft Planning and Design Code imply that developments with more than one "development type" (e.g., a warehouse with an associated office) may be unintentionally penalized. The Code sets parking rates for different development types but states that:

> Where a development comprises more than one development type, then the overall car parking rate will be taken to be the sum of the car parking rates for each development type.

The plain wording of this provision suggests that the sum of the parking rates for each development type will be applied to the development as a whole.

## Mainstreets

The key difference between the Planning Design Code and current Development Plans is the conversion of Urban Corridor Zone Policy Areas into a series of new zones. Further, Adelaide (City) Main Street Zones have also been brought under the umbrella of an Urban Corridor (Main Street) Zone (i.e., Sturt and Halifax Streets).

The Planning and Design Code proposes two sub-zones under the Urban Corridor (Boulevard) Zone – a Hard-Edge Built Form Sub Zone and a Soft-Edge Landscaped Sub-Zone. Whilst the intent of such may recognize different characters for different roads or improve pedestrian amenity, the approach doesn’t necessarily take into account context or other policy constraints. For example, a 3 metre setback from a primary street frontage in conjunction with a desire to provide underground car parking will make it almost impossible to achieve deep soil zones in this area, particularly on smaller sites. The need for a landscaped area may be of better use adjoining the residential zone interface to manage impacts. This may then encourage proponents to collaborate with Council to upgrade footpaths (including street trees, landscaping, canopies, etc.) to provide a more comfortable and inviting space along the primary street frontage which we understand the intent of the soft-edge sub zone to be.

The introduction of Significant Development Sites is supported as it will generally encourage site amalgamation and improved urban design outcomes. Deemed to satisfy change of use for existing buildings should also be made easier and is supported. As proposed, should a development exceed the stipulated height limit but be contained within the interface angle, public notification would be required. We would...
argue that public notification should not be required if that development was contained within the interface angle. What purpose or strength would the interface angle then have?

The purpose of the interface angle is to manage the residential zone interface. The primary issue with the angle is that it results in a significant loss of development potential across a single site. There are much better ways to deal with the interface such as the introduction of a transitional zone between the Urban Corridor Zones and the adjoining residential zones. We would strongly encourage the formation of a Transitional Zone which promotes medium density and a low-medium scale. Such a zone should promote three storey development between an existing single and two storey character and the Urban Corridor Zone. The zone would only need to be around 3-4 properties deep to support amalgamation. Theoretically, this should achieve an improved scale transition, achieve greater densities towards the primary corridors and protect existing residential areas of established or desired character.

<table>
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<tr>
<th>Strategic Infrastructure Gas Pipelines Overlay</th>
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<td>Members have raised concerns regarding the impact that Strategic Infrastructure Gas Pipelines Overlay will have on mixed use and residential development in the Mixed Use Centre Policy Area 3 of the Residential (Gawler East) Zone.</td>
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<td>Because easements already exist for the maintenance and safety of the gas pipeline, it is unnecessary to extend the easement beyond the original land set aside for this use. This extension of the easement inhibits the landowner’s redevelopment potential on this site – a site which is zoned for redevelopment and over which the pipeline operator has no right. This reflects a direct financial gain for the gas pipeline industry as the expense of private landowners. Changing the goal posts on private developers in this way is a disincentive to investment and is anti-competitive.</td>
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<th>Site contamination practice direction and referral in Part 9 of Code</th>
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<td>The overuse of consultants or over-prescription of audits in the assessment of site contamination adds considerable cost and delay. The process of referral to the EPA over the assessment as proposed in the Draft Code compounds this issue. Even if remediation and audit is required, the point in the project at which that occurs can in almost all instances be after development approval has been granted. It need not be part of or a precursor to the assessment and approval.</td>
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<td>Remove the Overlay.</td>
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**Draft practice direction**

Clause 5 of the draft Practice Direction is problematic in circumstances where an existing or proposed use is not contained in the Table. The clause does not provide any clear means to address undefined uses (which are quite different to "mixed uses").

The effect of clause 6 of the Practice Direction is to always require a preliminary site investigation (PSI) for sensitive use proposals on less sensitive land where a potentially contaminating activity (PCA) may have occurred. This will require a PSI far more frequently than is necessary at great cost and leading to needless delay. For example, a proposal for a farm stay bed and breakfast on an existing farm would require a PSI if the neighbouring farm was to have been considered as a potential site for the burial of a dead cow.

Similarly, development of a primary school or golf course for residential development where the primary school or golf course had an ASR scheme will require a PSI. So too would a house on land adjacent such a golf course. Clearly a PSI for the land in these circumstances won’t reveal anything useful but will add cost and delay to the process without guiding the assessment of the application in any way.

Clause 7 has the effect that if a potentially contaminating activity suspected (because of the use of the word "may") on the land or (more troublingly) on "adjacent or other land" then a detailed site investigation is required. The planning authority cannot require a detailed site investigation, however, if referral to the EPA is required. Again, the difficulty with this clause is that it is vague and unclear about the status and identification of adjacent or other land. Secondly and more alarmingly, it is bringing forward the need for detailed site investigation as part of the development assessment process when such investigation will have absolutely no bearing whatsoever on whether the development is worthy of consent.

Site contamination is rarely a bar to development. It is rare for land to be contaminated beyond remediation. It is usually just a matter of engineering and cost. Therefore, it does not actually go to any relevant land use question. It is analogous to house footings. In the same way that the design of the footings for a house will differ if it is to be built on highly reactive clay compared to sand— that is an engineering issue, not a
fundamental planning issue about the suitability of the site for a house. Whether remediation is needed, and the method and standard of remediation are engineering issues, not planning issues.

Clause 8, and in particular subclauses (5) and (6), form the genesis of a better model. In their present form they are not appropriate because they all require certain work before approval is granted.

As alluded to above, the definition of adjacent or other land is far too loose to be of any utility.

The referral and the practice direction could be simplified merely by invoking the condition making power in sections 42(2) and (3) and section 127 (1)(a) of the PDI Act. The system should not require any assessment of contamination prior to the grant of approval. Instead the list of circumstances as identified in the practice direction can form the basis for the imposition of a condition (in the nature of that proposed by clause 8(5) and (6)) which provide that prior to occupation of the development approved, the proponent will obtain confirmation of the suitability of the site for that development.

A condition could be imposed by the relevant authority in circumstances identified by the practice direction. The condition could read “prior to the issue of a [certificate of occupancy/certificate under section 51 of the Development Act/ certificate under section 138 of the PDI Act] the nature and extent of any site contamination must be assessed by a suitably qualified expert to ensure that the land is suitable for the development approved herein. Where remediation of contamination is required then prior to the issue of the [certificate of occupancy /certificate under section 138] the relevant remediation must be undertaken and a statement of site suitability must be provided to the relevant authority and the Environment Protection Authority.”

It is remarkable that the EPA has not undertaken its own work to develop a database of sites that contained land uses constituting potentially contaminating activity. The data that is generally developed into a PSI and is readily available using resources such as the Sands and McDougall directory. The EPA could at the very least correlate that data with information on its Register to create a database for an overlay. This would be far more effective than imposing the needless delay and cost on development applicants every time an application is lodged. One would think that such information would be important to the EPA anyway as part of its general management of site contamination within the State especially given that the information is readily publicly available to it.
| Regulations or Code? | Section 122 of the PDI Act provides for referrals to other agencies. Strictly subsection 122(1) states that "the regulations may provide... that where an application for consent... of a prescribed class... the relevant authority must refer the application... to a body prescribed by the regulations...".

Section 122 (2) provides that the Governor must not make regulations under section 122 (1)(a) unless the Governor is satisfied that "provisions about the policy or policies that the body will seek to apply in connection with the operation of this section have been included in the Planning and Design Code...". Alternatively, the subsection provides that the regulation can be made if "the Minister has indicated that the Minister is satisfied that a policy envisaged by paragraph (a) is not necessary or is not appropriate".

Therefore it seems that the regulations not the Code is the relevant instrument where the type of application is identified and the relevant agency is prescribed. The Code needs to be drafted to address subsection 122(2) such that the policies are included and identified within the Code.

Neither Part 9 of the Code nor the tables in the Overlays have been drafted in this manner and they will need to be rewritten. Likewise, the regulations will need to be altered to include this material. By reference to the tables in the Code presently, this means that the regulations will include the information under the headings "referral category" "development type" "referral triggers" and "purpose of referral". The code must include the matters under the heading "policies relevant to the referral".

**Notwithstanding that observation, we make the following comments on the referrals under the Draft Code.** |
| Simplify the referral and practice direction by invoking the condition making power in sections 42(2) and (3) and section 127 (1)(a) of the PDI Act. |

| Code referrals in Part 9 | Rewrite Part 9 of the Code and include "policies relevant to the referral". Alter regulations to include information under the headings "referral category" "development type" "referral triggers" and "purpose of referral". |
| | |
| Energy generation and storage - page 1794 | The purpose is too vague in particular the reference to "and other activities". A preferable wording would be "to provide direction to the relevant authority on measures to prevent or mitigate harm from pollution from the development".

The repeated reference in the EPA referrals to "prescribed factors" is problematic because at no point in the document are any prescribed factors defined. |
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<td>Affordable housing - page 2064</td>
<td>The description of &quot;development for the purposes of affordable housing&quot; is somewhat problematic. So too is the process of referring for direction to Housing SA the purpose of entering into some form of binding agreement. It is no &quot;agreement&quot; if the housing authority has power of direction. Either remove the referral or use the other mechanisms in the Act such as a practice direction to impose a standard condition.</td>
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| Design - page 2081 | The purpose is poorly written. It would be preferable for the purpose to simply refer to section 14(c) of the PDI Act being the high-quality design principles in the Act itself.

The fact that the referral is only for the purpose of giving advice is supported.

With respect, it is difficult to see how a government architect (or any architect) would have any knowledge or expertise in matters of "inclusiveness" or "fit for purpose" or "promoting investment" or "environmentally responsible development". These matters should certainly be struck out from the referral. |
| Road widening - page 2084 | The purpose of referral is in part to enable the application of sections 6 and 7 of the Metropolitan Road Widening Act which may not necessarily prevent development within the area identified for potential future road widening but simply limits the compensation payable to a person because of development within that widening area. |

Rephrase the provision.
| **Hazards (bushfire - high risk) - page 2108** | Amend the present purpose to state "to provide direction to the relevant authority to ensure safety of occupiers of development from bushfire". |
| **Major urban transport routes - Page 2145 (see also non-stop corridors - page 2164, traffic generating development - page 2203 and urban transport routes - page 2206)** | The purpose is too broadly expressed and should be rewritten to state "to provide direction to the relevant authority on the safe and efficient operation of [major urban traffic routes]roads under the control of the Commissioner/non-stop corridors/traffic generating development/urban transport routes".  
Delete the word "management".  
Refer just to "the road" (ie the road in respect of which the referral is triggered) not "all roads relevant". |
| **Mount lofty ranges catchment (Area one) – page 2150 (see also page 2155 relating to Area two)** | The purpose is too loose and not related to the relevant activities. It should be re-expressed to state "to provide direction to the relevant authority on measures to prevent or mitigate harm from pollution from the development". |
| **State significant native vegetation areas - page 2162** | There is presently no provision in the Native Vegetation Act requiring the Native Vegetation Council or its delegate in DEW to issue permission (or grant one of the exemptions in the regulations) in conjunction with the grant of a development application to which referrals been made to the Council. It would be preferable (in the event of a power of direction) that the Native Vegetation Council is compelled then to issue a matching approval under the Native Vegetation Act. In the absence of this legislative change then referral to the Native Vegetation Council should be for regard only.  
The triggers for referral apply when all of the deemed to satisfy elements are met. This is problematic given that the deemed to satisfy provisions are worded for a different purpose. For example, clearance within 20 m |
of the dwelling seems unnecessary when the preamble refers to "any clearance". It may be better to simply say whether development "won't involve any clearance accept low-level clearance [as per a report etc]".

The purpose for referral is loose. It might be better worded to as state "to provide direction to the relevant authority clearance of native vegetation" (subject to the comments about the regime being for regard above).

Ideally the regulations under the Native Vegetation Act would be amended so that a proposal that has been the subject of referral to the Native Vegetation Council and is the subject of a power of direction must be granted an exemption under those regulations.

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<tr>
<th>River Murray floodplain - page 2184</th>
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<tr>
<td>The purpose of the EPA referral is unclear. It is not clear whether this is simply for regard whether it is intended to be a form of direction.</td>
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<tr>
<th>State Heritage area - page 2196</th>
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<td>The purpose is too vague and ought to be rewritten to state &quot;to provide direction to the relevant authority to prevent any adverse effect on the heritage values of the State Heritage area&quot;. There should be further definition (potentially in the administrative definitions section) which sets out what the relevant heritage values are. Alternatively, within an overlay written for each State Heritage area the heritage values could be more clearly described.</td>
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<td>In the column headed &quot;Classes of development&quot; further edits are needed.</td>
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<td>Paragraph (a) is vague as there is no definition of any &quot;identifiable heritage value&quot; this problem arises also in paragraph (c). The phrase &quot;like for like&quot; in paragraph (e) (while understandable in general abstract terms) is ambiguous particularly in the context of detailed work to buildings. Further definition of this phrase would be beneficial in the administrative definitions.</td>
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<td>In addition to the &quot;like for like&quot; reference paragraph (e) should be amended to include &quot;like-for-like maintenance, repair or replacement&quot; to include more than mere maintenance.</td>
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The phrase "like-for-like" in the preamble (ii) and paragraph (e) needs further definition and following that phrase the words "repair or replacement" should be added.

Similarly, to State Heritage areas, the purpose is vague not to be rewritten to state "to provide direction to the relevant authority to prevent any adverse effect on the heritage values of the State Heritage Place".

The notion of materially affecting the context of State Heritage Place (see paragraph (c)) is vague and inappropriate. The context of a place could mean anything from its historic context through to its physical context. At the least this should be reworded to state "materially adversely affect the important historically significant context of the State Heritage Place". It might even be possible to refer to the listing of the place on the State Heritage register to identify those heritage qualities that are nominated on the register.

The word "substantive" (in (c)) is somewhat vague and presumably is a typo ("substantial"?). The notion of involving substantial physical impact to the fabric of significant buildings is misconceived. Surely the matter at hand is substantive work to a state heritage place. This provision should be worded in that fashion.

The reference to new buildings visible from a public street that abuts a state heritage place in (d) is far too imprecise. It has the effect that any new building on the same road (even if it happens to be 2 km along the road) would be captured by this provision. Similarly, it is in no way substantiated that simply because a new building will sit alongside a heritage building that referral is required. In some instances a heritage building has been listed because of its historic importance or its association with a figure of historical significance. In those instances referral to the State Heritage Minister for comment on architecture is completely irrelevant. Any such referral should therefore be limited strictly to State Heritage places that have been listed because of their design or aesthetic qualities under section 16 of the Heritage Places Act.

It is not apparent why land division in paragraph (g) must in all instances be referred. This provision should be limited to "division of an allotment constituting or containing a state heritage place".

The comments about paragraph (d) apply to an extent to paragraph (h) in that referral of anything on the same road again is far too broad. Surely it is only necessary for a referral for "…fencing (a) forming part of the State Heritage Place or (b) on land containing or constituting a state heritage place which is visible…"

Paragraph (i) is vague. In any event the removal of a tree is not development.
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<tr>
<th><strong>Water protection area - page 2208</strong></th>
<th>The purpose needs to be edited to read &quot;direction to the relevant authority to prevent harm from pollution and waste arising from the development to the water protection area.&quot;</th>
</tr>
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</table>
| **Public notice "adjacent land" trigger** | The use of the trigger "unless the site of the development is adjacent land to land in a different zone" is unnecessary and imprecise. Surely not all development adjacent a zone boundary requires notice. For example, there are different types of residential zones where residential development occurring in one residential zone adjacent a zone boundary for another residential zone could not be considered problematic. Likewise, an employment zone adjacent to a suburban activity centre should not be a cause for referral of commercial developments.

The segregation of such zones could be dealt with by administrative definitions such as "residential zones" and "non-residential zones" so that the referral trigger only requires notification where development occurs on land adjacent a zone in the opposing classification. |
| **Restricted Development** | The majority of Code Zones list one or more (but not usually more than 2-3) forms of Restricted development. It has been stated that the listing of a development as Restricted is not an indicator of policy suitability but that is simply a tool to determine that SCAP is the relevant authority for the application’s assessment.

However Restricted means ‘limited’ ‘constrained’ etc so it is most certainly being viewed outside of the department as an indicator of policy suitability. It also results in a more onerous assessment process, including an early ‘no’ and full appeal rights for representors.

We note that 25 of the proposed 55 new Code Zones (almost 50%) list ‘Shop’ as a Restricted form of development, subject to certain GLA retail floor area limits. It would appear that in addition to using Restricted to assign SCAP as the relevant authority, it is also a measure to manage retail floor area and therefore the State’s retail hierarchy. |

Use the Regulations rather than the Restricted list to assign SCAP as relevant authority to certain forms of development. Review where 3rd party appeal rights apply for Restricted development.
In this regard, there are concerns that a planning policy ‘gap’ exists between the retail floor cap envisaged in many Zones and the Restricted ‘shop’ trigger.

For example, the Housing Diversity Neighborhood Zone supports shops in the order of 200m²; however the Restricted trigger is 1000m². What policy exists in the Code to assist a Council Planner to undertake a Performance Assessed application proposing a shop/s with a GLA of 900m²? It is unclear what Code policies the Planner would turn their mind to in this circumstance that would ensure an on-balance assessment.

In other circumstances, the use of Restricted trigger to enable SCAP as the authority appear logical (e.g. Public Infrastructure in the City Park Lands Zone); however, as mentioned, utilising the Restricted pathway to ensure SCAP assessment for certain forms of development also enables full appeal rights for third party representators. This would seem an unintended consequence (in some circumstances at least).

It seems illogical that a shop measuring 220m² in the Residential Neighborhood Zone would be treated as Restricted whereas an application lodged for a waste treatment facility in the same zone would undergo a Performance Assessed process. The conflicting message this sends to the wider community may undermine confidence in the State Planning system.

In summary, the role of Restricted remains unclear – is it an opportunity or a limiting function – or both. Where it is used to ensure SCAP as the assessing authority, this could be achieved in the Regulations rather than the Code. Rather than all Restricted development enabling full appeal rights, this should be reviewed and apply only in certain identified circumstances.