



A Community Legal Centre specialising  
in public interest environmental law

29 May 2013

Mr Liam Golding  
Advisor to the Hon John Rau MP  
GPO Box 464  
ADELAIDE SA 5001

Dear Mr Golding

**Housing and Urban Development (Administrative Arrangements)(Urban Renewal) Amendment Bill 2013**

The Environmental Defenders Office (SA) Inc. (EDO) is a community legal centre with twenty years experience specialising in public interest environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education. We appreciate the opportunity to consider the *Housing and Urban Development (Administrative Arrangements)(Urban Renewal) Amendment Bill 2013* (the 'Bill').

The Bill proposes to amend both the *Housing and Urban Development (Administrative Arrangements) Act 1995* (SA) ('HUD Act') and the *Development Act 1993* (SA). The amendments provide for the establishment and adoption of "Precincts" that operate "as an alternative to"<sup>1</sup>, and in fact over-ride, existing planning processes within SA.

Recognising the critical need to restrict urban sprawl in SA, and that redevelopment, if based on state-of-the-art environmental design standards and which provides for better integration of public transport networks, can significantly improve the environmental efficiency of our urban centres, the EDO is in principle a strong supporter of legislation that serves to promote urban renewal.

However, as detailed below, the EDO has serious concerns as to potentially unintended consequential effects of the Bill as currently drafted.

*Precincts can be established anywhere and for any development purpose*

The emphasis of the second reading speech,<sup>2</sup> the proposed new short title (cl 5: "Urban Renewal Act"), various other clauses in the Bill, and even use of the term 'Precinct', together

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<sup>1</sup> Second reading speech 2 May 2013

<sup>2</sup> Ibid.

give the impression that the new planning process provided for in the Bill will operate exclusively in urban areas and predominantly to facilitate urban renewal. However this impression is misleading. The Bill neither limits establishment of Precincts to urban areas nor the purpose of urban renewal. In fact there are no words of limitation in the Bill to restrict where a Precinct can be established, and the effect of proposed s 7H(1)(b),(c) and (d) means that Precincts can be established by the Minister to facilitate essentially any type of development. It is our submission that the Bill must be amended, either to restrict establishment of Precincts for the exclusive purpose of urban renewal, or to provide transparency as to the actual operation of the Bill.

### *The Precinct Authority*

At the discretion of the Minister, the Precinct Authority may be the Urban Renewal Authority established under s 7A of the Bill, any other statutory corporation constituted under the HUD Act, or a council (s 7H(4)(c)).

Planning and development within the proposed Precincts are ostensibly controlled by the Precinct Authority. However statutory corporations constituted under the HUD Act are “subject to the control and direction of the Minister”.<sup>3</sup> Furthermore in relation to the Urban Renewal Authority, the Bill effectively seeks to oust the operation of s 8 of the HUD Act which provides specifically for such matters as how a statutory corporation is to be formed, its functions and its limitations<sup>4</sup>. There is also no requirement under the HUD Act to consult in relation to the appointment of members of statutory corporations. Hence unless a council is appointed as the Precinct Authority, it is our submission that the provisions of the Bill that appear to confer a level of independence to the Precinct Authority can be disregarded.

Furthermore, unlike the conflict of interest provisions that council members must adhere to as per the *Local Government Act 1999* (ss 73-75), the Bill makes no provision for disclosure or procedural requirements to manage actual or perceived conflicts of interest that may well arise with respect to statutory corporation members dealing with the subject matter of this Bill. This is a serious concern.

However it is unclear whether a council could legitimately assume the role of Precinct Authority as the Bill contains provisions (e.g. proposed ss 7H(10), 7I(8)(d) and 7J(1)) that act to fetter the discretion that a council is bound to exercise, and in conferring directly, and by regulation, wide ranging powers to a Precinct Authority, the Bill empowers a Precinct Authority to assume many of the functions but not the responsibilities, of a council.

Where the Precinct Authority is not a council, the powers conferred by the Bill also operate to allow the Precinct Authority to prevent a council from undertaking its principal role (*Local Government Act 1999* s 6):

“to provide for the government and management of its area at the local level and, in particular-

(a) to act as a representative, informed and responsible decision-maker in the interests of its community; and

(b) to provide and co-ordinate various public services and facilities and to develop its community and resources in a socially just and ecologically sustainable manner; and...”

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<sup>3</sup> HUD Act s 9

<sup>4</sup> Section 7A(3).

The *Constitution Act 1934* (SA) gives a “Constitutional guarantee of continuance of local government in this State” (s 64A). It could be argued that this Bill, which establishes Precincts that may be managed by an unelected body that can usurp and inhibit the primary powers and functions of councils, and that does not provide any limitation as to where a Precinct can be established, is a Bill that breaks this constitutional guarantee. Such a Bill is not necessarily invalid, but to be validly enacted, it must be passed by an absolute majority of both Houses of Parliament (*Constitution Act 1934* s 64A(3)). However it is our submission that if it is the intention of this Bill to oust local government then the doctrine of responsible government would dictate that this be made transparent. If this is not the intention of this Bill, then substantial changes are required to limit the powers and functions of the Precinct Authority and/or to restrict where Precincts can be established.

### *Scrutiny and Consultation in Relation to Precinct Planning*

The Bill makes it possible for the Minister, after consulting with the Planning Minister and affected councils, and considering the extent to which the establishment of the precinct would be consistent with the Planning Strategy, to define an area of land as a Precinct without any further consultation whatsoever<sup>5</sup>. Additionally, the Minister may also refer the matter to the DAC for advice<sup>6</sup>. If so referred, the DAC is required to prepare a report taking into account a range of important criteria and this report is required to be made publicly available<sup>7</sup>. Defining an area as a Precinct triggers engagement of a Precinct Authority and thus has the practical effect of starting the momentum for what has the potential to be a completely alternative planning regime. We submit that the advice required from the DAC is critical to sound planning and seeking that advice and making it publicly available should not be optional.

Precinct Master Plans are adopted by the Governor and are thus subject to a certain level of Parliamentary scrutiny<sup>8</sup>. However the Bill does not specify any required content of a Precinct Master Plan<sup>9</sup>, hence it is quite plausible that a Precinct Master Plan could simply contain broad ‘feel-good’ platitudes and be designed to avoid controversy.

In contrast, the real substance of this Bill is the Precinct Implementation Plan (PIP). PIPs can make provision for any matter which a Development Plan can provide for. The Bill is explicit that PIPs can apply to all or part of a Precinct<sup>10</sup>, hence an individual PIP may even be prepared to determine development at the scale of a single allotment. Once adopted, PIPs over-ride any existing Development Plans and council by-laws to the extent of the inconsistency with the PIP<sup>11</sup>. They are thus extremely powerful instruments. PIPs need only be adopted by the Minister to take effect.

A significant problem with this PIP model is the potential for there to be a multitude of PIPs seeking to be adopted at any one time. This would make it logistically impossible to require referral of individual PIPs for better Parliamentary scrutiny prior to adoption. It may also be

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<sup>5</sup> Section 7H(2).

<sup>6</sup> Section 7H(5).

<sup>7</sup> Section 7H(6) and (8)(b).

<sup>8</sup> Section 7I(13)(a)(i) and (b).

<sup>9</sup> Section 7I(2): the wording of this provision is “A precinct master plan *should* seek to promote the provisions of the Planning Strategy and *may...*” set out certain other matters (emphasis added).

<sup>10</sup> Section 7I(3).

<sup>11</sup> Sections 7J and 7M.

logistically impossible for the Minister to keep on top of the PIPs that he/she is being asked to adopt. We submit that without amendment to better define what may constitute a PIP, the PIP model provided for by the Bill is unworkable. If the PIP model is to be retained, it is absolutely essential that there be a direct path for community engagement in determining the contents of a PIP and that there are clear rights to appeal a decision to adopt a PIP to prevent rogue PIPs slipping through the logistical cracks.

Neither the Bill nor the HUD Act make any specific provision for appeals, and only the minimum of public consultation (e.g. making copies of the proposed PIP publicly available and allowing written representations: s 71(14)(b)) in relation to PIPs is specifically required by the Bill.

Of further concern is the 'loop-hole' provided for by the proposed clause to amend s 29 of the *Development Act 1993*<sup>12</sup>. This amendment allows, upon revocation of a Precinct Plan, the Minister to make any provision they think fit in relation to planning or development within the precinct without any consultation or Parliamentary scrutiny whatsoever.

A final significant concern is the Transitional Provision which allows, during the first year after commencement of the amended Act, a Precinct Plan to be adopted without any consultation with anybody (including relevant Government Departments or affected councils) or any publication of the plan where the Governor by regulation exempts Precinct Authority from these requirements<sup>13</sup>. The only rationale to include such a provision would appear to be to allow the current Government to commence, without any restraint or public oversight, whatever development it sees fit.

Please do not hesitate to contact Melissa Ballantyne of this office should you have any queries in relation to this submission.

**Environmental Defenders Office (SA) Inc.**

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<sup>12</sup> Schedule 1, clause 1.

<sup>13</sup> Schedule 1, clause 3(1).