



Expert advice,
human approach.

Public participation in the new planning system

EDO 12 April 2017
Alison Brookman, Special Counsel

Summary

- *Planning, Development and Infrastructure Act 2016.*
 - Development assessment
 - What is public participation, involvement
 - ability to make submissions, representations
 - access to information
 - Community Engagement Charter
- [Excluding mining matters.]



Legislation

Planning, Development and Infrastructure Act 2016 (the PDI Act)

- assent 21 April 2016
- partly commenced 1 April 2017 (GG 28.3.17)

Statutes Amendment (Planning, Development and Infrastructure) Act 2017.

- assent 28 February 2017
 - partly commenced 1 April 2017
- Regulations regarding the State Planning Commission, joint planning boards 1 April 2017
 - No statutory instruments – Planning and Design Code, practice directions, guidelines, etc.



Development assessment.

Development will be divided into 3 categories (s103):

- accepted development (s104)
- code assessed development (ss105, 106, 107)
 - deemed-to-satisfy
 - performance assessed
- impact assessed development (ss108 >)
 - restricted
 - other than restricted



Development	Notice, consultation	Appeal, review
Accepted s104	None	None
Deemed-to-satisfy s106	None	Applicant may appeal
Performance assessed s107	<ul style="list-style-type: none"> • adjacent landowners (unless excluded by the PDC) • the public by notice on the land (unless excluded by the PDC) • any person may make a representation 	Applicant may appeal
Impact assessed (not restricted) s109	<ul style="list-style-type: none"> • EIS published online for public comment (as per practice direction) • consultation with prescribed bodies • any person may make a representation 	No appeal rights Only judicial review
Impact assessed - Restricted s110	<ul style="list-style-type: none"> • adjacent landowners • others as determined by SPC to be directly affected to a significant degree • the public, including by notice on the land • any person may make a representation 	Third parties given notice of the decision may appeal Applicant may request SPC review delegates decision, no appeal from review.

Note: this is a rough guide and not gospel.



Submissions / representations

Heritage

An owner of land that is proposed as a local heritage place must be consulted, the charter must make this provision (s67).

If a heritage character or preservation zone is proposed 51% of landowners must approve the amendment to so designate the area (s67(4)).

Amendments to instruments

A *designated entity* proposing to prepare or amend a *designated instrument*, must comply with the charter on consultation (s73(6)).

designated instrument means

a state planning policy

a regional plan

the PDC

a design standard (s70)

NB the definition of *statutory instrument* is wider.



Submissions / representations cont

Essential infrastructure assessment (s130(12))

Where over \$10M in total, public advertisement must invite interested persons to make submissions.

Crown development assessment (s131(13))

Similar provisions as essential infrastructure.



Public access to information

"public notice means notice that complies with regulations made for the purpose of this definition;"

Regulation 4 now in force (1 April 2017):

*For the purposes of the definition of **public notice** in section 3 of the Act, a notice that –*

(a) is published on the SA planning portal; or

(b) is published –

(i) in a newspaper circulating generally in the State; or

(ii) in relation to a notice that relates to a particular place, in a newspaper circulating in the area where the place is situated,

complies with these regulations.



SA planning portal, database, atlas

The SA planning portal is to be established and maintained by the Chief Executive (s48), it must include (not exhaustive):

- the facility to allow the public to make submissions and provide feedback in relation to matters subject to notification or consultation
- documents and instruments as provided by the Act and regulations
- information, documents, materials as specified by the SPC
- the facility to allow members of the public to be notified directly about specified classes of matters or issues that are of interest to them (s48(5))
- an online atlas and search facility (s50).

The SA planning database is to be established and maintained by the Chief Executive (s49), with access to textual and spatial information identifying planning policies, rules, information applying to specific places.

There is already a significant amount of information online. www.saplanningportal.sa.gov.au



Community Engagement Charter (s44)

There must be a charter to be called the *Community Engagement Charter*.

The SPC is responsible for establishing and maintaining the charter.

[Drafting of the charter planned to commence April 2017.]

See s44(3) for the principles to be taken into account in preparation or amendment of the charter;

... reasonable, timely, meaningful and ongoing opportunities to gain access to information about proposals to ... change planning policies and to participate in relevant planning processes;

The charter must not relate to the assessment of development applications in addition to the provisions of the Act which already apply to such assessments (s44(8)).

The charter does not give rise to substantive rights or liabilities (s44(11)).



Community Engagement Charter

The charter itself may

- establish categories of statutory processes to which parts of the charter will apply
- set out mandatory requirements, principles and performance outcomes
- provide guidance on specific measures or techniques by which outcomes may be achieved
- set out measures to help evaluate outcomes

(s44(5))

An entity may achieve compliance with the charter in an alternative way to that prescribed, provided it is at least as effective in achieving public consultation, and the SPC is so satisfied (s44(10)).

