



Government
of South Australia

The Hon Stephan Knoll MP
Member for Schubert

FOI Ref: SKNOLL181655

Mr Thomas Matthews
PO Box 66
PROSPECT SA 5082

Dear Mr Matthews

I refer to your application to the Office of the Minister for Transport, Infrastructure and Local Government, Minister for Planning made under the *Freedom of Information Act 1991* (the Act) which was received 20 December 2019.

You have requested access to:

"1. All correspondence including emails from the UDIA and the Property Council of Australia SA to the Minister for Transport, Infrastructure and Local Government and Minister for Planning, and his office between 1 April 2018 to the present regarding the Planning and Design Code; and

2. All correspondence including emails from the UDIA and the Property Council of Australia SA to the Minister for Transport, Infrastructure and Local Government and Minister for Planning about contributory items between 1 April 2018 and the present"

A search of documents held by the Office of the Minister for Transport, Infrastructure and Local Government, Minister for Planning was undertaken. I wish to advise that 5 documents have been identified within the scope of your request.

I have determined to grant access to documents 1 - 4.

Document 5 is a submission from the UDIA on the Planning and Design Code (Outback) which is publically available online at:
https://www.saplanningportal.sa.gov.au/have_your_say.

Attached is an explanation of the provisions of the Act which details your rights to review and appeal this determination, and the process to be followed.

Minister for Transport, Infrastructure and Local Government
Minister for Planning

Roma Mitchell House Adelaide SA 5000 | GPO Box 1533 Adelaide SA 5001 DX 171
Tel 08 7109 8430 | Email ministerknoll@sa.gov.au



In accordance with Premier and Cabinet Circular PC045, if you are given access to documents as a result of this FOI application, details of your application, and the documents to which access is given, will be published in the agency's disclosure log within 90 days from the date of this determination. Any private information will be removed. A copy of PC045 can be found at <http://dpc.sa.gov.au/what-we-do/services-for-government/premier-and-cabinet-circulars>. If you have any objection to this publication, please contact us within 30 days of receiving this determination.

If you have any questions in relation to the matter, please contact myself on telephone (08) 7109 4830 or via email at ministerknoll@sa.gov.au.

Yours sincerely



Jenna Phillips-Wilkinson
Accredited FOI Officer

Office of the Minister for Transport, Infrastructure and Local Government
Minister for Planning

10 / 2 / 2020

Encl:
Your rights to review and appeal this determination
Schedule of documents

SCHEDULE OF DOCUMENTS – FREEDOM OF INFORMATION APPLICATION
NUMBER – SKNOLL181655

Document Number	Description	Date	Release Determination	Schedule Clause
1	Email	15/05/2019		
2	Email	27/05/2019		
3	Email	02/01/2020		
4	Email	02/01/2020		
5	Submission	29/3/19	Publically available	

FREEDOM OF INFORMATION ACT 1991

YOUR RIGHTS TO REVIEW

INTERNAL REVIEW

If you are dissatisfied or concerned with the decision of this Agency regarding access to documents or the request for amendment to your personal records, you can apply for an Internal Review of that decision.

To apply for an Internal Review you must write a letter addressed to the Principal Officer or lodge an Internal Review application form with the Principal Officer of this Agency. The legislated application fee must accompany all applications, unless the fee was waived in the original Freedom of Information application, in which case there would be no fee payable for the application. The application must be lodged within 30 days after being notified of the decision.

The Agency will undertake the Internal Review and advise you of its decision within 14 days of receipt of the application.

Where the decision was made by the Minister or Principal Officer of the Agency, you are unable to request an Internal Review but you can apply for an External Review by the Ombudsman, or SACAT.

You are unable to apply for an Internal Review regarding a decision to extend the time limit for dealing with an application but you can apply for an External Review.

EXTERNAL REVIEW BY THE OMBUDSMAN

If the Agency does not deal with your Internal Review application within 14 calendar days (or you remain unhappy with the outcome of the Internal Review) you are entitled to an External Review by the Ombudsman SA.

You may also request an External Review by the Ombudsman if you have no right to an Internal Review.

The application for review by the Ombudsman should be lodged within 30 days after the date of a determination. The Ombudsman's Office, at their discretion, may extend this time limit.

Investigations by the Ombudsman are free. Further information is available from the Office of the Ombudsman by telephone on 8226 8699 or toll free 1800 182 150 (within SA).

REVIEW BY THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (SACAT)

If you are still dissatisfied with the decision made by this Agency after an Internal Review or after a review by the Ombudsman, you can request a review from SACAT.

You must exercise your right of review to SACAT within 30 calendar days after being advised of the determination or the results of any other Internal or Ombudsman Review. Any costs will be determined by SACAT, where applicable. For more information, contact;

South Australian Civil and Administrative Tribunal (SACAT)

Phone: 1800 723 767

Email: sacat@sacat.sa.gov.au

Heinemann, Katelyn (DPTI)

From: Pat Gerace <geracep@udiasa.com.au>
Sent: Wednesday, 15 May 2019 6:26 PM
To: Henderson, Cameron (DPTI)
Subject: Re: Minister's Liaison Group | 28 May 2019 - Call for papers

Hi Cameron

I've spoken to the other major industry bodies and they all agree that it is a very worthwhile exercise.

I haven't heard from the Department at all yet though. As a start can we identify the times all 4 groups and the Minister are free and work back from there?

Thanks
Pat

On 7 May 2019, at 3:23 pm, Henderson, Cameron (DPTI) <Cameron.Henderson@sa.gov.au> wrote:

Hi Pat

Minister has asked Anita and DPTI to tee up a separate industry discussion, where you will also be able to bring a few extras from your respective organisations.

They should be in touch soon I presume but otherwise let me know if you have any queries.

Kind regards
Cameron

--

Cameron Henderson
Ministerial Adviser to Hon. Stephan Knoll MP
Minister for Transport, Infrastructure and Local Government
Minister for Planning
e - Cameron.Henderson@sa.gov.au
m - +61 477 799 181

Sent from my Google Pixel

On Mon, May 6, 2019 at 6:55 PM +0930, "Pat Gerace" <geracep@udiasa.com.au> wrote:

Hi Cameron

Any idea if we might lock in a separate industry time to discuss the submissions on the P&DC?

Pat

From: "Surace, Jessie (DPTI)" <Jessie.Surace@sa.gov.au>
Date: Friday, 3 May 2019 at 12:31 pm
To: Anita Allen <Anita.Allen@sa.gov.au>, "Birch, Christopher (DPTI)" <Christopher.Birch@sa.gov.au>, "Block, Nikita (DPTI)" <Nikita.Block@sa.gov.au>, "Braxton-Smith, Tony (DPTI)" <Tony.Braxton-Smith@sa.gov.au>, Daniel Gannon <dgannon@propertycouncil.com.au>, David O'loughlin <david.oloughlin@prospect.sa.gov.au>, "Davis, Kimberly (DPTI)" <Kimberly.Davis@sa.gov.au>, "Edwards, Sue (DPTI)" <Sue.Edwards2@sa.gov.au>, "Halacas, Luisa (DEM)" <Luisa.Halacas@sa.gov.au>, "Henderson, Cameron (DPTI)" <Cameron.Henderson@sa.gov.au>, "Lennon, Michael (DPTI)" <Michael.Lennon@sa.gov.au>, "Lisa Teburea LGA (MLG)" <lisa.teburea@lga.sa.gov.au>, "Mandy Scutter HIA (EA to S.Knight)" <m.scutter@hia.com.au>, Monish Bhindi <monish@greenhillaustralia.com.au>, Pat Gerace <geracep@udiasa.com.au>, "Peter Fleming HIA (MLG)" <peter@hotpropertygroup.com.au>, "Richard Bryant Metricon (MLG)" <richardbryant@metricon.com.au>, "Smith, Sally (DPTI)" <Sally.Smith@sa.gov.au>, "Stephen Knight HIA (MLG)" <s.knight@hia.com.au>, "Torie Brown PCA (MLG)" <TBrown@propertycouncil.com.au>, "Will Frogley MBA (MLG)" <wfrogley@mbasa.com.au>, "Holden, Craig (DPTI)" <Craig.Holden@sa.gov.au>
Cc: "Billows, Wiebke (DPTI)" <Wiebke.Billows@sa.gov.au>
Subject: Minister's Liaison Group | 28 May 2019 - Call for papers

Good afternoon all

This is just a reminder the next **Minister' Liaison Group** meeting will be held **28 May 2019**. In preparation, please advise if you have any items for the agenda.

For your reference, I have attached the Agenda papers and draft minutes from the meeting held 26 March 2019.

Please send requested agenda items to me by COB Tuesday 14 May. Any papers for agenda items will need to be sent to me by Friday 17 May for distribution to members the following Tuesday.

Many thanks,

Jessie Surace

Senior Governance Officer
Planning and Land Use Services
Department of Planning, Transport and Infrastructure
Direct Line • T 7109 7046 **State Planning Commission** • T 7109 7466
(97466) • jessie.surace@sa.gov.au
Level 5, 50 Flinders Street Adelaide • PO Box 1533 Adelaide SA 5001 • DX
171 • www.dpti.sa.gov.au

<[image001.png](#)> <[image002.png](#)> <[image003.png](#)> <[image004.png](#)>

collaboration . honesty . excellence . enjoyment . respect

*We acknowledge and respect Aboriginal peoples as South Australia's first peoples and nations, we recognise Aboriginal peoples as traditional owners and occupants of land and waters in South Australia and that their spiritual, social, cultural and economic practices come from their traditional lands and waters; and they maintain their cultural and heritage beliefs, languages and laws which are of ongoing importance; We pay our respects to their ancestors and to their Elders.
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Heinemann, Katelyn (DPTI)

From: Pat Gerace <geracep@udiasa.com.au>
Sent: Monday, 27 May 2019 1:50 PM
To: Henderson, Cameron (DPTI)
Subject: Meeting tomorrow

Hi Cameron,

Given there will be a lot to talk about tomorrow, we have outlined the following format so that we can get through as much as possible.

- Introductory remarks (*Pat to start and Will, Daniel, Stephen to make short contribution if required*) **10 mins MAX**
- Assessment Regulations feedback (*James Levinson*) with discussion **30 mins**
- Planning and Design Code feedback (*Stephen Holmes*) and discussion **50 mins**

As discussed earlier, this meeting is to essentially hear back from the Government what the response is to the submissions the private sector lodged.

Some of the key issues we want to address are:

1. Referrals processes to other agencies
2. Inappropriate and excessive timeframes
3. Definitive wording of many provisions
4. Land division approvals processes
5. Onerous upfront documentation (E.g. Site Contamination audit reports)

I don't envisage that from our perspective we will need to cover off any of these things later in the MLG meeting unless we are responding to the LGA's position.

I had flagged with Craig Holden from the Commission that I thought it would be useful that he and Michael come along as well (I also mentioned this to Anita).

Thanks
Pat

Davis, Kimberly (DPTI)

From: Pat Gerace <geracep@udiasa.com.au>
Sent: Wednesday, 18 December 2019 3:42 PM
To: Henderson, Cameron (DPTI); Allen, Anita (DPTI); Helen Dyer
Cc: Jason Green; lael.mayer@estates.com.au; John Stimson; Glenn Hordacre; Craig Holden; Lennon, Michael (DPTI); Gemma Borin; Monish Bhindi; Smith, Sally (DPTI)
Subject: Action Items / Notes from Meeting 16th

Dear Cameron, Anita and Helen,

On behalf of the UDIA thank you for taking the time to meet with the UDIA earlier in the week along with the Minister.

While we have made submissions and written letters on the planning reforms, we firmly believe that the ongoing dialogue between the State Planning Commission, DPTI, the Minister and the UDIA will provide the clearest and most direct pathway to addressing issues with the rollout of a new planning system, which will inevitably have issues given the scale of the task.

From my notes I've summarised the key takeaways from the meeting and I would very much appreciate if you could let me know if you have any different views to the below. Anita, please also let me know when we can meet to progress the next steps.

The first of the key things that we identified and discussed is the difficulty in the new system for developers being able to quickly determine the implications of the new system on their development sites. We discussed that this could be through both a lack of familiarity with the new system which is complex in nature, and/or the different zones and policies being inconsistent or contradictory.

The new system has been designed to be electronic, but our members have strong concerns that the industry is still being asked to provide comment on a paper-based version (which is very cumbersome). We strongly feel that the industry needs to be able to use/test the full electronic system to provide meaningful feedback and suggest that this needs to be made available to industry ASAP (acknowledging that it may be only a beta version). Specifically, we want to test ultimately what developers will use which is as we understand, the ability to select a site and know what specific policies or DTS are relevant, assessment pathway available etc. Currently you have to sift through the 3000 pages and filter out only the relevant provisions (which is made harder with the many incorrect references in the paper version).

The agreed action item was to provide the private sector the opportunity for some enhanced face-to-face training and explanation of how the new interface works. The UDIA will work with Department to facilitate sessions as soon as possible so that genuine feedback as part of the consultation process can be provided.

The second major action item was for a group of developers, together with DPTI and the SPC (and also potentially some local government representatives) to walk through various case studies. These case studies would be those types of development which would performance assessed because of their scale. One of the main aims of a session like this would be to identify where any policy changes that have sought to address some of the infill challenges have been carried over unintentionally to impact broad acre development. Part of this work would also be to identify where approvals are

currently been granted through the Res Code and would now otherwise be subject to more stringent assessment policies. The key thing here is for us to determine which of those changes to assessment are because the Government has a desire to change policy, and where they are unintended and can be addressed as part of matters fixed from the consultation.

As a way forward we strongly suggest that we convene a short meeting again with the SPC and DPTI to highlight and share key areas we want to cover for example stormwater, excavation, orientation, impact of mapping overlays just to name a few. We could then the break up into different case studies which could be (but not limited to):

- Infill development of scale
- New greenfield development (land division)
- New housing in greenfield developments

Some of the other key take-outs from the meeting are:

- Helen Dyer from the SPC suggested that the UDIA could help provide what some of the wording could potentially be around some of the planning and design issues with the assistance of some of our member (lawyers).
- The UDIA were invited to provide the key areas of concern that we had as it related to referrals for the SPC to consider
- We touched on the potential to provide some more details as it relates to structure plans which don't exist under the new system
- DPTI are keen to include DTS for land divisions which were proceeded by a built form approval
- We raised with the Minister the need for a close eye to be kept on fees and charges imposed by local government

CC: Craig Holden, Michael Lennon, Sally Smith

Pat Gerace

Chief Executive Officer
Urban Development Institute of Australia (SA)

Level 7, 81 Flinders Street Adelaide SA 5000

M:

0417 811 621

P:

08 8359 3000

E: geracep@udiasa.com.au

W: www.udiasa.com.au

Phillips-Wilkinson, Jenna (DPTI)

From: Knoll, Stephan (DPTI)
Sent: Thursday, 2 January 2020 2:53 PM
To: Phillips-Wilkinson, Jenna (DPTI)
Subject: FW: Letter and Phase 2 Submission
Attachments: Hon Stephan Knoll MP_Planning & Design Code.pdf

From: Henderson, Cameron (DPTI)
Sent: Wednesday, 18 December 2019 3:16 PM
To: Knoll, Stephan (DPTI) <Stephan.Knoll@sa.gov.au>; Taylor, Sarah (DPTI) <Sarah.Taylor@sa.gov.au>
Subject: FW: Letter and Phase 2 Submission

FYI

From: Pat Gerace [<mailto:geracep@udiasa.com.au>]
Sent: Wednesday, 18 December 2019 11:19 AM
To: Henderson, Cameron (DPTI) <Cameron.Henderson@sa.gov.au>
Subject: Letter and Phase 2 Submission

Hi Cameron

Please see the Phase 2 Submission (link below) and letter to the Minister sent on 26th of November as discussed.

[UDIA Submission - Draft Planning & Design Code \(Phase 2\)](#)

Let me know on the letter re public release.

Pat

e udiasa@udiasa.com.au
t 08 8359 3000
w www.udiasa.com.au

Urban Development Institute of Australia
(South Australia) Inc
Level 7, 81 Flinders Street
Adelaide SA 5000



Hon Stephan Knoll MP
Minister for Planning
Level 12m Roma Mitchell House
136 North Terrace
Adelaide SA 5000

Monday, 25 November 2019

Dear Minister Knoll,

A handwritten signature in blue ink that reads 'Stephan' is written over the 'Dear Minister Knoll,' text.

RE: Draft Planning and Design Code

I write to you in relation to Phase two and Phase three of the Planning and Design Code, which is currently out for consultation.

As you are aware UDIA (SA) has been active participants over the entire length of the planning reform process making submissions, attending workshops, and on occasion raising particular matters of interest with you which have required urgent attention.

Following our initial feedback from members, there has been more concern than ever before with the Planning and Design (PD) Code because of the critical role that it plays in actually determining what the likely impact will be on land, houses, lifestyles, and businesses.

In a spatial sense, a majority of activity by UDIA (SA) members relates to Phase three of the code, however we are aware that most of the policies in Phase two are the same as Phase three, hence our early flagging of these matters.

Through the advice we have received from leading member Adelaide planning firms, one of the key concerns raised has been that the current access arrangements to the PD Codes is making it very difficult to find the relevant information, as well as determining what technical standards are going to apply to a particular scenario.

Another key area of concern is the timing of implementation. Given the Phase two PD Code is due to be implemented in early April 2020, which is only 1 month after the closure of the consultation period of the draft Phase three PD Code, should there be issues that are raised in the Phase three consultation period that are pertinent to policy in the Phase two PD Code, we do not believe that there will be enough time to make adjustments prior to the issue of the final Phase two PD Code.

Some of the real world impacts the reforms will have in terms of process alone, for many types of development the policies and assessment processes in the PD Code are different enough to require changes to some of the details in a builder / developers' business process.

To avoid serious impacts this effectively means the PD Code in its final version needs to be issued to the sector around 6 weeks prior the date of implementation to give everyone time to make necessary adjustments. As an example, if you are a builder / developer and a customer comes in to sign a contract to have a dwelling constructed in say late May / early June 2020, then it will usually take a number of weeks for the selection process to occur, a sales contract signed and then have plans prepared. It is most likely a development application won't be ready to be lodged until after 1 July 2020, meaning it will be assessed against the provisions of the new PD Code.

If the business does not know what the PD Code policies are going to be when the customer comes in then there is going to be a lengthy hiatus in business activity. Understandably this is of major concern to the sector.

Another example would be for a medium or large scale project that is in the early concept design and planning phase which would see planners, architects and other consultants without the PD Code and not being able to do their job. In this scenario, at a meeting in May or June 2020 with the local Council planner as a pre-lodgement exercise will be almost pointless unless the applicant and the Council have the final version of the PD Code.


The above are but just a few issues identified and in addition to them we have also attached an appendix that lists other high-level issues we have already identified, which we will raise directly with the Department.

Minister, with this being such a critical part of the reforms, we very much look forward to your support in enabling us to work together with you and the Government. In order to overcome the lack of time mentioned above we propose the following where we would work together with you and /or key DPTI staff.

1. Have a fortnightly working session with DPTI staff to resolve issues in the draft PD Code found early rather than wait for the consultation process to be complete.
2. Meet with you and the State Planning Commission to discuss issues raised on a monthly (?) basis to track progress of key matters if required (this could be additional MLG meetings).

We look forward to your support in working through matters quickly and expeditiously so that we can get the best outcome not only for our sector, but for all South Australians.

Regards



Monish Bhindi

PRESIDENT

Key Issues of concern:

- We are fundamentally opposed to the introduction of planning policy that seeks to impose outcomes that are above and beyond Australian Standards and the Building Code of Australia. There are many instances of this in the draft PD Codes. This is of particular concern given the potential impact on housing affordability which seems to be of secondary concern in a number of policies. We suggest a more rigorous assessment with that lens to determine the true costs vs benefits.
- The loss of many Structure Plans and Concept Plans that are in the Development Plans is considered to have poor consequences in most instances. Such plans provide guidance as to how land is developed spatially. Often elements of such plans have been carefully negotiated by land owners/developers with State and Local Governments and sometimes with the community to provide some certainty in terms of outcomes. It is acknowledged that some of these plans are out of date and should be amended. That is a fault with the current planning system and is no reason to have so many of these plans deleted. Without them and with planning policy being more somewhat generic we are very concerned the planning authorities will take a conservative approach for fear of not being able to manage the desired outcome.
- It is considered the PD Code should enable development that is envisaged to be processed expeditiously. In a number of instances, the new system and PD Code will make this happen. However, it makes no sense that you can have a common built form application type (such as two or three dwellings on one existing allotment) being able to be approved on a Deemed To Satisfy basis in many residential type zones, yet the land division application to create the titles needs to go through a protracted Performance Assessment process. The land division should be dealt with on a Deemed To Satisfy basis.
- There are a number of definitions in Parts 7 and 8 of the draft PD Codes that need amendment due to lack of clarity as well as certain aspects that are typically part of the element missing from the definition. As an example, the definition for 'Private Open Space' does not discuss alfrescos, front yards or verandahs. Yet in the 'Design in Urban Areas' General Development Policies, these elements are discussed. The definition should be amended to recognise these elements.
- It appears that there has not been a thorough analysis of the combined impacts of the policies on typical development typologies. For example, the new policy relating to 'soft landscaping' in the 'Design in Urban Areas' General Development Policies has metrics that will have a significant negative impact on the underlying value of standard sized residential allotments. In many instances the amount of soft landscaping required will be greater than the amount of front yard and private open space that is required. As such, the size of the dwelling will need to be reduced (in many instances by more than one room) which means the value of the allotment is reduced.

- We consider that a large number of 'Performance Assessed' development applications will require public notification. For example, under the new PDI Act, 'Adjacent Land' is defined as follows:

adjacent land in relation to other land, means land that is no more than 60 metres from the other land;

Accordingly, where the P&D Code identifies that public notification is required where 'the site of the development is adjacent land to land in a different zone', the application will require public notification. This occurs in 44 of the 55 new Zones introduced by the PD Code (80%) with some notable exceptions including the Capital City Zone and Activity Centre Zones.

The spatial configuration of many zones (particularly narrow Urban Corridor Zones etc) will result in a significant increase in the number of development applications that will require public notification. Further, any person can lodge a representation against a development that is subject to public notification, irrespective of whether the representor is an owner or occupier of 'adjacent land'. We are therefore very concerned that the new PD Code will significantly increase both the number of development applications that will require public notification and the number of representations that are likely to be received in response to the public notification of development applications.

- Under the Development Regulations there are currently 36 referral triggers to State Agencies, where 25 of these referral triggers allow the Agency to have the power of 'Direction'. There are 11 referral triggers where the Agency can only provide advice to the Relevant Authority who must have 'Regard' to this advice. Under the current system there is a lack of guidance and direction on what Referral Agencies can comment on and the Relevant Authority (i.e. Council / SCAP) is accountable for defending an appeal against the decision.

The recent presentation by the Department to the UDIA on 17 October 2019 noted that under the new PDI Act, there are a total of only 24 Referral Triggers and 22 of these allow Referral Agencies to have the power of 'Direction' (i.e. the Agency can direct a decision). There are two (2) referral triggers under the new system where the Agency can only provide advice to the Relevant Authority who must have 'Regard' to this advice. Comments of Referral Agencies must be contained to 'matters for which a referral was made' and the referral Agency will be accountable to defend an appeal against a decision directed by that Agency.

Whilst we support the Referral Authority limiting their comments to matters for which the referral was made and we support referral authorities being accountable to defend determinations that have been directed by that authority, we are concerned with both the potential increase in the number of referrals that will be required under the new system and the 'veto' power of Referral Authorities that now have the power of 'Direction' for the expanded referral matters.

Whilst the number of referral triggers in the new Regulations has been reduced, the PD Code also identifies the circumstances that a referral is required to an Agency. The PD Code incorporates a large number of 'Overlays' with a significant spatial extent requiring an expanded number of referral triggers.

For example, the new 'Traffic Generating Overlay' has a significant spatial extent and includes a large number of triggers for referral to the Commissioner of Highways for a variety of different land uses of varying size and composition. This is expected to significantly increase the actual number of referrals required to Agencies, who now have the power to 'Direct' a Relevant Authority in relation to a determination on the application.

Part Nine (9) of the new Code also introduces required referrals to Agencies including the Environment Protection Authority (EPA). This part of the Code incorporates a referral to the EPA for a change in use of land to a sensitive use or more sensitive use as follows:

"A change to a more sensitive use of land (including following its subdivision) at which site contamination exists or may exist as a result of a class 1 potentially contaminating activity listed in a Practice Direction (including site contamination caused by such an activity conducted on adjacent land, or on other land identified on the SA Planning Portal that is known to impact the subject site)."

And

"A change from:

(a) a non-sensitive use to a sensitive use; or

(b) from a sensitive use to a more sensitive use on land at which site contamination exists or may exist as a result of a class 2 potentially contaminating activity listed in a Practice Direction (including site contamination caused by such an activity conducted on adjacent land, or on other land identified on the SA Planning Portal that is known to impact the subject site)."

A referral is not required if a site contamination audit report under Part 10A of the *Environment Protection Act, 1993* has, within 5 years of the application, been prepared in relation to the land.

Accordingly, unless a site contamination audit has been prepared, any application involving a change in use to a sensitive land use where Class 1 or 2 contamination may exist on or within 60 metres of the site (adjacent land) will require referral to the EPA. This has the potential to significantly increase the number of referrals to the EPA beyond prevailing arrangements. Further, given the EPA will have power of 'Direction' as a Referral Agency it is anticipated that the EPA may direct a relevant authority to refuse an application unless a site contamination audit is prepared demonstrating that the site is suitable for its intended purpose. This has the potential to add considerable time and cost to the development assessment process for applications for a more sensitive land use.

Finally, we are concerned that the power of 'Direction' afforded to referral Agencies will effectively make an Agency a 'quasi' planning authority with the power to veto any determination of the Relevant Authority. Each Agency will therefore effectively act as a separate authority – effectively requiring multiple approvals from multiple authorities for the one development application. The power of 'Direction' also provides significant power to Agencies to 'leverage' their authority to achieve outcomes beyond the purview of the referral. To challenge a referral Agency would also involve considerable time (6-12 months) and money (\$50K- \$100K) for an applicant to initiate an appeal through the Courts.

In most cases, this time and cost imposition would be beyond the threshold of feasibility of most development projects which would limit the real opportunity for an applicant to appeal and overturn a determination of a Referral Agency.

Further, an applicant appealing to the Environment Resource and Development (ERD) Court would be challenging the weight of evidence and authority of a State Agency, which is likely to also limit an applicant's appetite to seek a successful resolution through the courts. This seems completely at odds with the reason for the introduction of the Development Act in 1993, which was about having to only gain one approval and the decision maker was the planning authority.