

**Environment Protection Authority**

# **Planning Review Committee Final Report**

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## Planning Review Committee Final Report

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# 1 Introduction to this review

## 1.1 Purpose

In August 2011, the Environment Protection Authority (EPA) Board established the Planning Review Committee (PRC) to:

- clarify the scope and role of the EPA in providing advice and direction to planning authorities and the Department of Planning, Transport and Infrastructure (DPTI)
- review the scope of planning and development application assessment referrals received by the EPA
- examine a sample of EPA planning and development application responses to determine whether such work is of a suitable quality and adequately addresses EPA's statutory obligations, including those contained in section 57 of the *Environment Protection Act 1993*
- review the timeliness of EPA planning and development application responses
- review the extent to which EPA's advice has been taken up by planning authorities and DPTI
- review the current level of EPA resourcing for the statutory planning and development assessment function within the EPA
- review how site contamination considerations can be incorporated into the South Australian planning system.

In fulfilling its remit, the PRC provides this report, recommending reforms that:

- ensure the EPA exercises appropriate influence over the decisions that are being made within the system consistently with its charter
- ensure the EPA is appropriately resourced and operates in an effective and efficient manner to exercise its responsibilities within the system
- provide a rationale to the recommendation that the EPA place greater emphasis on strategic and policy planning, and to streamline and simplifying its responses to development applications.

Drawing on the comprehensive papers presented at each PRC meeting, the report assesses current EPA practices. The PRC makes findings pertaining to each aspect of the planning system, coupled with a summary and recommendations to complete each section.

The report as a whole offers a comprehensive solution to the issues identified by the PRC. The recommendations should therefore be implemented as a package.

## 1.2 Approach

In order to review and provide recommendations as outlined above, the PRC separated the planning system into the following four areas:

- strategic planning – the South Australian Planning Strategy (Planning Strategy) and structure plans
- planning policy – development plans, development plan amendments (DPA) and the South Australian Planning Policy Library (SAPPL)
- assessment of development applications
- assessment of major developments or projects (major development).

Following discussion at initial meetings, the PRC also sought amendment to the Terms of Reference (TOR) to add the consideration of site contamination. This important issue has been included as a separate section within the report (Section 8).

A series of papers was prepared and considered at each PRC meeting. Following articulation of the desired outcomes, a comprehensive review was undertaken to determine gaps (if any) in the EPA achieving these outcomes. The findings of the PRC are presented in this report.

### **1.3 The South Australian planning system and the role of the Environment Protection Authority**

The South Australian planning and development system (the planning system) is based on the principle of all matters relating to new development, or changes in the use of land, being considered under a single policy framework and approval process.

The planning and development system comprises the following components—the Planning Strategy, development plans (including SAPPL), and assessment—of development applications (section 37 and 49) and major developments (section 46 applications). The system is regulated through the *Development Act 1993* and the *Development Regulations 2008*. The object of the Development Act is to provide for proper, orderly and efficient planning and development in the state. A diagrammatic representation of the planning system appears in [Appendix A](#).

The planning system relies on advice and support from multiple government agencies in order to create an integrated system where key issues are considered. Hence, the Development Act provides for the referral of the Planning Strategy, DPAs, certain applications, and aspects of the assessment of major developments to various government departments and agencies, including the EPA. As a result, the EPA is regularly involved in providing input to the planning authorities in this context.

When carrying out its functions, including fulfilling its role within the planning system, the EPA is obliged to have regard to, and seek to further, the objects of the Environment Protection Act 1993 (EP Act). The objects include ensuring that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment, having regard to the principles of ecologically sustainable development as articulated in the EP Act<sup>1</sup>.

The EPA has a defined role within the planning system, particularly as it relates to development applications. The planning system facilitates a referral process for specific development applications to the EPA. Within the referral process, the EPA is required to direct or provide a recommendation on specific aspects of the development application. Similarly, strategy and policy documents are referred to the EPA for advice.

The EPA's responses are made within the context of the planning system as described. The EPA is not the authority responsible for making the ultimate planning decision.

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<sup>1</sup> EP Act section 10(1)(b), subparagraphs 10(1)(b)(i)–(ix) set out other particular objects of the Act within this overarching object.

## 2 The EPA's overarching goal

The PRC has concluded that the EPA's overarching goal for its interaction with the planning system, and in all aspects of that interaction, is to promote ecologically sustainable development (as defined in the EP Act) by ensuring that the EPA's views on the matters within the scope of the Act are heard, understood and taken into account in each area of the planning system, to the degree appropriate to the risk of environmental harm.

### 2.1 EPA current practice

The EPA has an important role to play at all levels of the planning system. Strong, articulated involvement at all levels leads to better environmental outcomes. However, the principal challenge for the EPA is that its formal influence occurs primarily at the last stage of the system—the development assessment stage. If the EPA has not been heard and hence been influential in the earlier policy development stages, its advice at the development assessment stage may conflict with policy positions adopted earlier in the system.

The EPA has participated in the planning and development system without clearly articulating its role and interests. Consequently, there is some confusion within the EPA, and among other government agencies, planning authorities, and the development community about what is to be achieved through the EPA's involvement. There is also confusion as to the EPA's expectations of other participants.

### 2.2 Conclusions and recommendations

In order to participate effectively in the planning system by influencing the uptake of appropriate environmental policy and standards, the EPA needs to identify and articulate its vision and core goals to frame its input to relevant planning matters. This should occur not just for the planning and development system as a whole, but for each aspect of the system.

**Recommendation 1:** That the EPA Board endorses the following goal statement for the EPA's interaction with the planning system:

The EPA's overarching goal for its interaction with the planning system, in relation to all aspects of that interaction, is to promote the principles of ecologically sustainable development (as defined in the Environment Protection Act) by ensuring that the EPA's views on the matters within the scope of the Environment Protection Act are heard, understood and taken into account at each stage of the planning system, to the degree appropriate to the risk of environmental harm.

**Recommendation 2:** That the EPA:

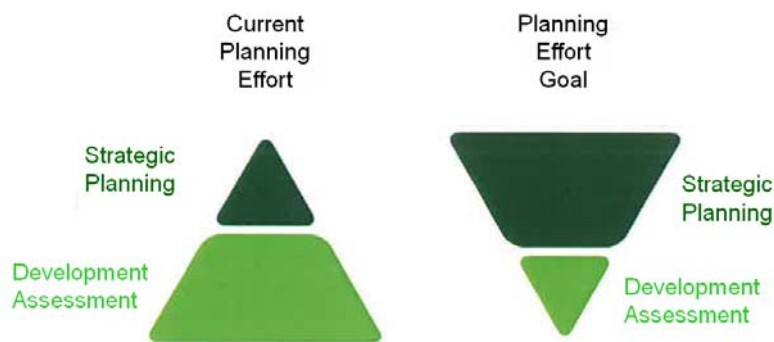
- articulate its role, goals and interest for each aspect of its participation in the planning system
- actively communicate these throughout the organisation and to key stakeholders
- take these into account when engaging in its various interactions within the planning system.

### 3 Key common findings and recommendations

The PRC concluded that there are a set of findings and recommendations that apply to all areas of EPA involvement with the planning system, and are central to improving EPA performance. The key common findings and recommendations are set out in this section.

#### 3.1 Greater focus on strategy and policy

The EPA can more effectively influence environmental outcomes via the operation of the planning system by placing a greater focus and effort on early engagement in the strategic and policy area of the system, and ensuring that input into development assessment is streamlined and simplified. Over time, this focus will result in a lessened need for detailed interaction at the development assessment stage as illustrated in Figure 1.



**Figure 1 Proposed change of EPA effort over time following implementation of recommendations<sup>2</sup>**

Increasing focus on input into the strategy area will lead to better, more streamlined decisions at the development application phase. This approach will allow the EPA to raise, flag, and in some cases, resolve issues that are best dealt within the strategic area; issues such as cumulative impacts and non-site specific issues such as the management of corridor development. Early genuine engagement allows the EPA immediately to flag any potential issues or constraints to the strategic plan. This allows the policy makers to be aware of, or even initiate, appropriate investigations on issues that may constrain the potential outcome of proposed land uses.

The Planning Strategy is also a platform for the state to provide policy guidance regarding issues of significance in implementing the planning and development agenda. This enables a particular issue to be readily identified within each area of the planning system—from strategy through to development assessment. The uptake of the EPA’s advice within the strategy and policy area will lead to better environmental decisions across the planning system, not just in relation to the small proportion of development applications that are referred to the EPA.

**Recommendation 3:** That the EPA focus its resources and effort more strongly on early engagement within the planning system at the strategic planning and policy development stages.

#### 3.2 Develop policy on key environmental issues

The EPA must align its policy, people and procedures to enable implementation of the goal articulated in Recommendation 1 and also those that will be articulated as a result of Recommendation 2.

<sup>2</sup> Adapted from *A new planning system for NSW*, Green Paper, July 2012.



To ensure a 'line of sight' of a single policy position from strategy to development assessment, it is recommended that broad policy statements be prepared on key issues to assist the EPA in guiding its input and influence with each area of the system. These policies will also guide EPA officers as they carry out their functions in relation to the planning system.

While the EPA has some position papers as well as legislated Environment Protection Policies (EPPs) that help to define and consolidate its position in certain areas, there is continuous debate at multiple points of the EPA's planning system input with regard to some environmental issues. This debate occurs on an ad-hoc basis (often when an issue arises with a specific document referred by a planning authority for comment) and often without scientific support. Some documented positions used to formulate responses are outdated<sup>3</sup> and are based on positions held with regard to specific locations. The need for documented policy positions is an issue that continuously arose as the PRC reviewed each area of the planning system.

**Recommendation 4:** That the EPA develop policy statements that articulate the EPA position on key environmental issues for each aspect of its participation in the planning system. The statements should be translated into guidelines for EPA staff planners (including planning consultants and planning authorities) and developers.

### 3.3 Build influential relationships

Partnerships are fundamental to influence. They ensure a collaborative approach to planning by enabling easy and frequent information sharing. Trust is built through communication and access to information, particularly information that is easy to understand, simple and in plain English—in other words, empowering. Building key partnerships will also assist the EPA in meeting its objective of placing a greater emphasis on strategic planning and being engaged early. In particular, there is a need for the EPA to have closer partnerships with councils acting in their capacity as planning authorities and with their planning staff.

The EPA's current interaction with councils is limited to responding to development applications, planning policy and associated communication. However, often this communication is one way in that the EPA is seeking information from council or council is seeking a response from the EPA. It is often not supportive or inclusive.

Additionally, the development assessment processes can be iterative, with design changes occurring through negotiation with the applicant as an assessment progresses. However, councils are not always included in these discussions and may have contrary views. This is a source of frustration and results in negative opinions of the EPA.

Finally, if an issue is not understood it is unlikely that it will be properly taken into account by the planning authority. Understanding why an issue is important and the likely environmental impacts assists in the immediate consideration of that issue. To assist the general understanding of issues by planning authorities, the EPA should focus on building capability within those authorities. Education of planning authorities on key environmental issues through seminars and guidance sheets is suggested.

**Recommendation 5:** That the EPA:

- build relationships with, and support, planning authorities and planners to understand and better consider the EPA's stated policy positions on key environmental issues
- regularly review the quality and effectiveness of these relationships.

<sup>3</sup> Based on the EPA intention to review policy and positions every five years.

### 3.4 Monitor outcomes

Monitoring is a crucial part of performance management. Without monitoring, performance improvements cannot be recognised and made. Currently, the EPA generally only monitors its performance in the development assessment area. This is usually related to quantity through reporting the numbers of applications responded to each month, and not by quality through reviewing the nature of the advice provided and its usefulness. Sporadic reviews may be undertaken to review performance in the planning strategy or policy area. The PRC reviewed the EPA's performance in all aspects of the planning system in order to reach its findings and formulate the accompanying recommendations. To manage and monitor the effectiveness of implementation of these recommendations and support continuous improvement, the EPA should build monitoring into its regular business.

**Recommendation 6:** That the EPA regularly monitor and evaluate its performance in the planning system through the development of and reporting on key performance indicators including uptake of advice on:

- Planning Strategy
- Planning Policy (that is development plan amendment, statement of intent or SAPPL)
- development applications.

## 4 Strategic planning

### 4.1 Planning Strategy, structure plans and the government planning and coordination committee

The Development Act (section 22) requires the publication of a South Australian Planning Strategy. The purpose of the Planning Strategy is to provide a dynamic spatial expression of the South Australian Strategic Plan<sup>4</sup> and outlines how South Australia will develop and grow by managing competing land interests. The Planning Strategy also provides high level guidance and targets that inform structure plans and planning policy development.

The Planning Strategy is reviewed every five years and can be altered from time to time. The relevant Minister must consult within government and the community generally in relation to any proposal to alter the Planning Strategy. The Planning Strategy is contained in a number of volumes, covering both the metropolitan area (the 30-Year Plan for Greater Adelaide) and regional areas.

A sound, evidence-based and collaborative Planning Strategy will provide a cornerstone to the entire planning system as it will logically feed into all other processes that follow (including local development plans). Good strategic planning will, ideally, facilitate investment and development opportunities by providing clarity and certainty. Further, the strategic planning process allows government the opportunity to identify and resolve key issues relating to future development. For example, issues such as cumulative impact and air and noise issues associated with transit oriented development (known as TODs) are able to be identified and managed from the strategic level down. The EPA aims to contribute to strategic planning by promoting and considering the principles of ecologically sustainable development at the Planning Strategy development stage and through the plan itself.

Structure plans are non-statutory documents, developed to formulate how growth will occur within designated areas of the State<sup>5</sup>. Structure plans provide a future landuse distribution to accommodate anticipated growth, taking into account infrastructure capacity.

In order to facilitate the structure planning process, a Government Planning and Coordination Committee (GPCC) was established in November 2009. The GPCC is a high-level, cross-agency body charged with the timely, coordinated and efficient development of structure plans in priority areas.

The GPCC consists of representatives from each state government agency (including the Director of Science and Assessment on behalf of the EPA). The role of the GPCC is to provide clear planning principles and development objectives, identify critical issues that might impede development, coordinate the delivery of human services and infrastructure, streamline decision making in state government and ensure greater transparency and accountability.

### 4.2 EPA current practice

#### 4.2.1 Planning Strategy

##### *The 30-Year Plan for Greater Adelaide*

The EPA successfully influenced development of the 30-Year Plan by through early engagement. Fundamental issues identified by the EPA resulted in a new chapter that includes policies and targets to protect human health and the

<sup>4</sup> Government of South Australia, July 2009, *Planning the Adelaide we all want – progressing the 30-year plan for Greater Adelaide*.

<sup>5</sup> While Structure Plans have no individual status or recognition within the Development Act, the Minister for Planning has been using the Planning Strategy provisions of the Development Act to seek government approval and gazettal, for significant structure plans.

environment. The EPA sought to continue to achieve successful influence through its relationships within DPTI at all levels—from Minister through to officer level.

The 30-Year Plan preparation process, however, did highlight within government the need for further work to occur to integrate some new policies and targets successfully throughout the whole planning system. The EPA identified an issue with high-density living being promoted along major transit corridors (road and rail) due to the potential for quality of living to be impacted by noise and air quality. An inter-agency working group was created, resulting in an agreed process to manage corridor issues at a strategic level, along with some site-specific responses during assessment.

### ***Regional plans***

The EPA has been consulted in relation to all regional plans to date. The process (undertaken by DPTI) has included preliminary consultation on an issues paper for each plan. The issues paper stage has enabled the EPA to table issues for each region at a relatively early stage in the process. The EPA has then reinforced those issues through its formal referral response.

An audit of the uptake of EPA advice shows that all EPA comments have been considered. EPA advice may not have resulted in specific suggested wording, however, the advice is reflected in the final document in some form.

#### **4.2.2 Structure plans**

The EPA's role in assessing structure plans is to ensure that the landuse distribution indicated in the plan can be achieved when all environmental constraints on the land are considered. The EPA has assessed all structure plans to date, generally a number of times for each plan.

EPA has focused on providing input and formal comments on what land uses and activity types would be encouraged or permissible within certain structure plan locations, ie potential growth areas, consistency with the environmental policies outlined in the Planning Strategy, and consistency with the objects of the EP Act.

As structure plans are looking at a greater articulation of landuses on particular sites, EPA influence at this stage is important.

### **4.3 Conclusions and recommendations**

It is clear that early engagement by the EPA in the strategic planning process enables a greater exploration of relevant environmental issues. Earlier involvement also can be of assistance to the EPA when it subsequently receives a formal request for comment, as it will already be aware of all relevant issues and also how it is proposed to address them.

**Recommendation 7:** That the EPA seek early engagement in Planning Strategy and structure plan preparation and review prior to formal engagement and increase emphasis on its engagement in these aspects of the planning system.

## 5 Planning policy

The purpose of planning policy is to articulate the Planning Strategy in detail within individual council areas and locations within those areas. In South Australia, planning policy is presented in local development plans and via the South Australian Planning Policy Library (SAPPL).

### 5.1 Development plans and development plan amendments

While the Planning Strategy is the cornerstone of the policy framework for development, development plans are the principal legal instrument used to assess development applications. One of the objectives of development plans is to facilitate sustainable development and the protection of the environment<sup>6</sup>. This is carried out by detailing specific objectives and principles of development control that may be used to assess a development application. The EPA has a critical role in ensuring that development plan policy accords with sound environmental standards. Effective influence on development plans, the SAPPL and development plan amendments will ensure efficient policy to provide for a balanced assessment at the development application stage.

The South Australian planning system is primarily merit based; that is, development decisions are made on the overall merit of an application. Development plans provide guidance to the planner on assessing key objectives for a location to enable him/her to make a determination. Given the system is merit based, there are no mandatory principles or objectives presented in development plans.

To facilitate the rezoning of an area or to amend policy, a development plan may be altered by preparing a document called a development plan amendment (DPA). A DPA describes the proposed changes to a development plan and outlines how those changes will be made. A DPA must be prepared according to processes set out by the Development Act. A key part of the process is enabling key government agencies to review the proposed changes and make written submissions before the DPA is put out for public consultation.

There are two types of DPAs:

- Council initiated DPAs which are undertaken and coordinated by council upon agreement by the Minister; or
- Ministerial DPAs which are undertaken by DPTI on behalf of the Minister for Planning.

Complementing the DPA process is the South Australian Planning Policy library (SAPPL), developed by DPTI which contains the state's current best practice planning policies (refer Section 5.2).

#### 5.1.1 Council DPAs

Local councils are responsible for preparing a DPA to amend the development plan. They are required to consult all relevant state government agencies. The EPA is one of those agencies and is consulted on all DPAs except those of a heritage nature (and even some of these still get referred to the EPA for assessment).

The first step in preparing a DPA is the signing off by the Minister for Planning on a statement of intent (SOI) to amend a development plan.

The SOI is effectively a 'project brief' prepared by a council and agreed with the Minister, which describes what is being proposed, how it aligns with the Planning Strategy and what investigations will be undertaken to inform the DPA. Ideally, the DPA's proposed scope will be concise and manageable, by addressing a single issue or confining the proposed amendment to a single area.

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<sup>6</sup> Development Act section 3(C)(ii).

SOIs are referred to the EPA for advice by DPTI, on the Minister's behalf, in accordance with the Development Act. It is common procedure for DPTI to refer all SOIs to the EPA unless they are specifically in relation to heritage matters, as mentioned earlier.

### **5.1.2 Ministerial DPAs**

The Minister for Planning can initiate an amendment to a development plan under certain circumstances described in the Development Act (for example, if it is a matter of significant social, economic or environmental importance). The Minister may also bring a DPA into operation on an interim basis where it is considered necessary in the interests of orderly and proper development.

Ministerial DPAs are generally those that involve statewide or state significant issues that require a change to ALL development plans across the state (such as the Windfarm DPA), where a proposed amendment crosses council boundaries and where the Minister for Planning is facilitating the implementation of the Planning Strategy.

An SOI is not required for a Ministerial DPA, an initiation document is created instead; therefore details of proposed investigations are not known and unable to be influenced by the EPA. This can result in important environmental issues being overlooked until formal consultation is undertaken on the DPA.

## **5.2 South Australian Planning Policy Library**

The state's current planning policies are contained in the SAPPL. The SAPPL provides guidance and encourages best practice policy application and a consistent development plan format across the state. It also makes it quicker and easier for councils to update development plans and for government agencies to assess proposed amendments, and provides the link between the strategy and policy areas of planning.

The SAPPL offers pre-endorsed wording; ideally, councils can adopt SAPPL policy more easily than individual developed policy that might be subject to numerous rewording attempts. In the past, there have been delays in reviewing environmental objectives and policy within the overall policy framework. However, this has been addressed in recent versions and the suite of environmental policy contained in the SAPPL is of a high standard.

The SAPPL is revised periodically and during that process is forwarded to agencies for consultation. The EPA's interest when commenting on the modules of the SAPPL is that draft objectives or principles of development control (PDCs) are written and able to be applied in a manner that is consistent with current EPA policies, and to identify gaps where no objectives or PDCs exist to appropriately assess an environmental issue at the development application stage and advocate for their inclusion.

## **5.3 EPA current practice**

### **5.3.1 Development plan amendments**

When assessing DPAs, the EPA aims to ensure that appropriate zoning is provided in locations where an assessment, based on sound environmental considerations, has been undertaken, and that adequate environmental provision (through objectives and PDCs) are contained within the development plan to enable a balanced assessment of development applications.

#### ***Council DPAs***

When the EPA considers a proposed SOI for a DPA, it focuses on the investigations proposed by the planning authority to inform the location of any new zone boundaries and policy that may be adopted. Although the EPA assesses each proposed SOI individually and considers the issues that would be particular to that SOI, it has also developed a series of 'standard' investigations that can be applied to each SOI, depending on location.

The use of standard investigations ensures consistency in the investigations required, but allows each response to be tailored as necessary. The EPA may recommend these investigations if they have not been identified in the proposed SOI, or if the wording of the investigation is such that it is not clear what is to be investigated.

Uptake on SOI advice provided by the EPA has been generally low. This could be due to EPA making lengthy suggestions with respect to investigations rather than using simple and short wording preferred by councils and DPTI. In order to support this preferred DPTI style, the EPA could prepare guidance documents to assist councils in understanding the rationale for, and approach to undertaking, specific investigations. For example, when a SOI requires the planning authority to investigate site contamination the EPA would provide guidance on the steps involved, what to look for in a report and how the report can be translated into zone boundaries or planning policy.

To this end, DPTI has been working on a library of standard investigations to be included in SOIs, and the EPA is supporting their endeavour. This use of the SAPPL has merit in that it provides agreed wording and councils can adopt relevant investigations with confidence. It also allows guidance documents to be linked to the library.

There may be times (although this is very rare) where the EPA may oppose the progression of the DPA at the SOI stage. This would be based on the DPA having significant environmental impacts that could not be addressed.

An audit of advice provided in the 2010–11 financial year showed a 55% uptake of EPA recommendations on DPAs<sup>7</sup>. There is no legal obligation for the EPA's advice on DPAs to be accepted, and there are many reasons why the advice may not be taken up including:

- how key issues are articulated within responses
- the advice might seem irrelevant or not applicable to the document being responded to
- the reader's ability to understand the key issues raised in the advice.

The 2010–11 audit found that where a planning consultant was engaged on behalf of a council to coordinate the DPA, all EPA issues were considered. This does not mean they were necessarily adopted, but often a thorough planning report was provided in the DPA which outlined all issues the EPA had raised, and how they were addressed in the final DPA.

It was also found that where the EPA recommended specific PDCs in relation to site contamination, water sensitive urban design and wastewater and interface issues, councils suggested that they would deal with these issues through adopting PDCs from the SAPPL. In some cases this was appropriate. In other sites or locations, however, specific PDCs would have been preferred.

### ***Ministerial DPAs***

The EPA has found genuine, early involvement with Ministerial DPAs from the concept stage through to completion has been the key to successful influence. The EPA examined two completed DPAs in its 2010–11 audit and found 14 of the 15 recommendations made were adopted; a significant improvement from the previous audit undertaken in 2008–09. Early engagement with the Minister for Planning is usually in the form of meetings with those responsible for preparing the DPA—usually DPTI or Renewal SA. Face-to-face communication promotes detailed discussions and increases understanding and acceptance of environmental issues. Ideally the EPA could pursue with DPTI the ability to provide input to the Initiation Document provided to the Minister for Planning when initiating a Ministerial DPA.

### **5.3.2 SAPPL**

To attract and facilitate new development, the state has focused on flexible planning policy. This policy is generally outcome-based in that it describes an outcome and the solution is left to the proponent. Several years ago, the EPA often suggested wording that was solution based rather than outcome based; that is it would suggest a single engineering

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<sup>7</sup> A total of 19 DPAs were reviewed. The EPA had recommended 75 recommendations, and 41 were taken up.

solution rather than detailing the outcome which may be achieved using a number of solutions. Through discussions with DPTI and involvement in several working groups, the EPA focus on outcomes has improved; however there remains a bias towards offering solutions rather than a desired outcome. Evidence shows that actively working with DPTI on policy preparation, particularly through the SAPPL has resulted in policy being adopted.

## 5.4 Conclusions and recommendations

### 5.4.1 DPAs (including SOIs)

The level of assessment undertaken by the EPA should be proportionate to the complexity of the DPA. Currently the EPA involves numerous staff in formulating its response. To save time and effort, in some cases advice could be standardised and improved so as to be more relevant and useful to the reader.

A review of EPA processes and procedures is required to ensure that the EPA responses within the planning policy area meet the EPA's view of the level of environmental risk and complexity of the particular planning policy.

**Recommendation 8:** That the EPA review its DPA (including SOI) assessment and response process to ensure it matches the scope of amendment sought, in terms of:

- the nature of the assessment undertaken by the EPA
- the rationalisation of any investigations requested and/or guidance provided
- the level and detail of response provided
- the form of response (by using a template system where possible).

### *Ministerial DPAs*

Seeking input into the Initiation Document provided to the Minister for Planning outlining the scope for a ministerial DPA will ensure environmental issues will form part of the consideration during preparation.

**Recommendation 9:** That the EPA explore with DPTI mechanisms that allow the EPA to have an effective input to the Initiation Document for Ministerial DPAs.

### 5.4.2 SAPPL

Given the government's focus on the SAPPL, it is important that the EPA focus its effort and attention on supporting it. The SAPPL provides the EPA with the opportunity to take a leadership role on individual environmental issues and make changes to planning policy to ensure it is providing guidance on key environmental issues.

Guidance should be provided to assist planners in assessing the rigour of investigations undertaken in support of policy amendment or rezoning via DPA. Guidance is also needed to assist assessment planners in interpreting and applying key environmental policies to amended development plans.

**Recommendation 10:** That the EPA provide leadership and guidance on environmental issues of significance through more active participation in the review and revision of the SAPPL.



## 6 Development applications

To create a 'one-stop-shop' for development assessment, the Development Act and Regulations provide for referrals to prescribed bodies (such as the EPA) to ensure that issues that can appropriately be the subject of conditions of development consent are addressed through the development approval process. A referral also acts to elevate issues of state significance by placing a requirement on the planning authority to either have regard to the advice, or adhere to a direction, made by the prescribed body.

The 'head power' for development application referrals to various prescribed bodies, including the EPA, is section 37 of the Development Act. Details regarding the types of applications to be referred and within what timeframe, and the status of the response (advice or direction) are set out in schedules of the Development Regulations. Schedule 8 covers referrals generally.

In relation to the EPA's role, Schedule 21 and 22 set out specifically the types of matters that must be referred to the EPA for advice or direction. Schedule 22 (Activities of Major Environmental Significance) essentially mirrors Schedule 1 of the EP Act and enables the EPA to provide binding directions to planning authorities on the relevant types of development activity. Schedule 21 (Activities of Environmental Significance) generally lists the activities covered in Schedule 22, but at lower thresholds, and affords the EPA the opportunity to provide advice to planning authorities rather than direction (refer [Appendix B](#)).

The EPA also receives development applications pursuant to section 49 of the Development Act where development is being undertaken by a state agency. In this case, the EPA only has the ability to 'comment and report'.

The EPA must license all developments that obtain development approval and subsequently require a licence under the EP Act<sup>8</sup> regardless of whether it has provided comment or direction at the application stage.

In addition, the EPA receives land division applications referred to it under Regulation 29 of the Development Regulations. Regulation 29 allows the Development Assessment Commission to consult with any other state agency on any land division application.

### 6.1 EPA current practice

#### 6.1.1 Section 37 applications

The purpose of referrals under section 37 is for the planning authority to seek expert advice on key environmental issues that relate to the subject development. The referral mechanism also allows environmental issues raised by the EPA to have a greater weighting when compared to others matters since the planning authority must have regard to the EPA advice in making its decision and when the EPA has power of direction, it must adopt the conditions directed by the EPA.

The EPA has previously undertaken two reviews of the referral categories in Schedule 21 to ensure it is only undertaking assessment of those activities that need referral to the EPA. The first, during 2005–06, resulted in the removal of six activities from Schedule 21. At the time the EPA Board also resolved to continue discussions with the then Department of Planning and Local Government (DPLG) regarding the complete removal of Schedule 21.

The second review identified another 15 activities that the EPA Board endorsed for removal from Schedule 21 in October 2007. However, given the Planning Review had just been released, the DPLG informed the EPA that the requested amendments to Schedule 21 would not be implemented until a more encompassing review of Schedule 8 was undertaken. The EPA is still awaiting the removal of these activities.

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<sup>8</sup> Environment Protection Act section 47 (2)(a)(iii).

The wording used to articulate the activities referred under Schedule 21 and 22 is complex and there is generally a threshold level. Application of these thresholds is often difficult for planners to determine given their limited experience with the particular activities. The EPA spends a large amount of time negotiating with planning authorities to ensure the correct categories are identified for the purposes of referral. This is unproductive and a waste of resources. A review of all the triggers in terms of their necessity and also their definition may assist in providing clarity to those using the system, and result in better use of the EPA's resources.

### 6.1.2 Regulation 29 land division referrals

The PRC noted the most frequent referrals are development applications referred to the EPA in accordance with Regulation 29(3)<sup>9</sup> of the Development Regulations. The EPA receives many referrals where it is not evident why the EPA has been requested to provide comment. Refinement of this referral category is considered necessary.

The Regulation 29 land division applications are generally low risk because, unlike those land divisions referred under Schedule 21 (land division creating 50 or more allotments) or Schedule 8 (non-complying land division within the Mount Lofty Ranges Water Protection Area), they generally do not involve any construction or infrastructure works; that is they are purely lines on a map. Nonetheless, they can take a significant amount of time to assess. Comprehensive advice is often provided to the DAC. This advice is then used to inform the DAC report to the relevant planning authority. Planning authorities are under no obligation to use such advice and it can be disregarded. Overall, the level of assessment undertaken by the EPA is generally not directly proportional to the likely impact of land division.

### 6.1.3 Development assessment processes

Section 57<sup>10</sup> of the Environment Protection Act provides criteria for decisions by the EPA in relation to development applications referred to it under the Development Act.

Through the PRC's review period, the EPA's understanding of its statutory obligations evolved and was further clarified through advice from the Crown Solicitor.

The advice stated, in relation to the scope of the EPA's response, 'The EPA should only provide advice or direction in relation to the specific activities which triggered the referral rather than the entire development application. To advise or direct otherwise would be inconsistent with the scheme of the Development Act and Development Regulations and potentially invalid'.

The advice went on to say, 'the EPA cannot ignore any environmental concerns relating to other activities that come to its attention in the process of considering a section 37 referral. The EPA can and should raise those issues with the planning authority. It should be made clear, however, that any comments made by the EPA are not direction or advice pursuant to the referral'. This advice requires a change in work practice and also response style and format. This change requires wider communication to EPA staff, and state and local governments.

Development applications are often complex, with a variety of activities involved, and hence there are numerous environmental issues to assess. Currently, the Environment Assessment Branch (EA Branch) is resourced with trained

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<sup>9</sup> Under regulation 29(3), the DAC may consult with any other agency on a proposed land division application.

<sup>10</sup> Section 57—Where an application for development authorisation is referred to the Authority under the *Development Act 1993*, the Authority must, in determining—

- (a) whether or not to concur in the granting of the application for development authorisation; or
- (b) whether or not to direct the refusal of the application or to direct the imposition of conditions of any development authorisation granted on the application and, if so, what conditions should be imposed; or
- (c) what response should be made to the development assessment authority,

have regard to, and seek to further, the objects of this Act and have regard to the general environmental duty, any relevant environment protection policies and the waste strategy for the State adopted under the *Zero Waste SA Act 2004* (if relevant).

planners who act as project managers for each development application. They undertake a 'review and coordination' role by determining the environmental issues that may be applicable. The planner then seeks advice from a number of officers across the organisation. This approach occurs generally for the majority of applications.

The entire development assessment process can be long, complex and involve large amounts of diverse information. Much of the EPA planner's time is used in reviewing aspects of the application such as referral categories, supplied information, making and following up internal advice requests and reviewing decision notifications.

Also, applications are often referred to the EPA with inadequate information to enable an assessment to be undertaken. Schedule 5 of the Development Regulations details the minimum information required and planning authorities should ensure they have all relevant information prior to making the referral to the EPA. This rarely occurs. Receiving applications that are not fully formed leads to time being spent by the EPA chasing additional information.

Additional information can be sought by the EPA either directly from the applicant or through the planning authority. Further information requests can be long, complex and require the provision of certain specific information: at times, such requests are made without providing a rationale for the extra information requested. Any information requested by the EPA should match the complexity of the issues that it needs to assess.

Currently, all development applications are treated by the EPA in the same way, regardless of their environmental risk or other factors affecting their significance. Informally, an EPA planner may 'categorise' an application by perceived environmental risk or even by referral category, however, there is no documented practice to prioritise risks. The assessment provided by the EPA should be proportional to the level of environmental risk, and this should be reflected in turn in the level of detail provided in the EPA response.

Also, EPA responses cover a wide range of issues, usually comprehensively. However, the result is that responses can be long, complex and the intent can be lost. In addition, there is no distinction between the key environmental issues and those the EPA has considered but which are not fundamental to the application.

## 6.2 Conclusions and recommendations

### 6.2.1 Review referral requirements

Given the planning system is primarily based on merit assessment, ensuring the EPA has a proper scope of power is critical. The level of assessment the planning system requires of an application should be directly proportional to its likely significance and impact. Hence, the nature of applications referred to the EPA should be reviewed to ensure the EPA's involvement is focused on the appropriate issues.

In addition, the complexity of the description of referred activities (in particular Schedule 21 and 22) leads to inaccurate referral identification. Whilst there is no intention to remove any activities that would be subsequently licensed by the EPA it is important that the legal framework (that is the descriptors in Schedule 21 and 22) clearly explain the responsibilities of the EPA. This provides clarity to all involved parties on the nature of, and reason for, the referral, and helps to ensure that the referral response is correctly focused on those matters.

**Recommendation 11:** That the EPA liaise with DPTI to review the referral triggers in Schedule 8, 21, 22 and Regulation 29 with particular consideration of:

- the EPA's goal for involvement in the planning system
- the degree of environmental risk
- clarification of the reason for referral
- the appropriate status of the EPA response (direction or advice)
- the effect of the recommended review of the referral triggers on the information requirements of Schedule 5.

### 6.2.2 Reform internal assessment processes

Assessments should be carried out within EPA by the officers with the most appropriate skills. In addition, skilled environmental planners should not rely on an undue or unnecessary amount of expertise from technical specialists. Currently, EPA technical officers are undertaking a significant proportion of assessment work which has led to them being overwhelmed with work that could be undertaken by a trained environmental planner.

The level of assessment should match the complexity of the application, ie be based on likely risk of environmental impact.

Assessment, including any additional information requested using section 37 of the Development Act, should match the complexity of the application. A risk matrix approach should be applied to the assessment of applications and information required. Applications may be able to be categorised by risk and this could dictate the level of assessment undertaken (including for example as to the extent to which standard wording can be used, or whether to involve specialist advisors). This would ultimately dictate the level of detail provided in a response.

Responses should clearly state the fundamental issues of interest to the EPA, based on evidence, identified through the assessment of the referred application. These fundamentals should be clearly expressed in a manner that enables the planning authority to easily determine the EPA's recommendation.

In addition, the EPA should not ignore other environmental concerns that may come to its attention when assessing a referred application. It should provide general guiding advice in this regard to other environmental issues where they arise.

To move the EPA's focus towards the strategy and policy level of the planning system, as recommended earlier, it first needs to review its DA processes to make efficiencies in this area to increase staff capacity for inputs at the strategy and policy levels. This is further discussed in Section 9 Resourcing.

**Recommendation 12:** That the EPA streamline and simplify its development assessment process to ensure it matches the level of complexity of each application, in terms of:

- the nature of the assessment undertaken
- any further information requested
- the level of detail provided in a response
- the form of response (by using a template system where possible).

### 6.2.3 Insist on receiving adequate Schedule 5 information

Receiving applications that do not meet Schedule 5 requirements means the EPA spends unproductive time seeking this information. Time and effort spent building capacity of planning authorities would result in more complete applications being received. Additionally, the EPA may refuse to receive any application that does not include enough information to enable an initial assessment<sup>11</sup>.

**Recommendation 13:** That the EPA require all applications to meet the requirements of Schedule 5 of the Development Regulations following a 12-month phase-in period, which will involve development and promotion of an education package (which could include planning advisory notes and online assistance for planners, local government, planning consultants and developers).

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<sup>11</sup> Advice from the Crown Solicitor indicates that the EPA may choose to not accept any application referred to it if it does not meet the requirements of Schedule 5.

#### 6.2.4 Express timeframes in business days

Most areas of business, including other areas of the development industry, use timeframes in days (usually business days). Schedule 8 of the Development Regulations refers to referral timeframes in 'weeks'. The weeks are then usually transferred into equivalent days to allow for the management of time, especially when the assessment time-lapse may be stopped and started numerous times during the process due to further information requests. To be clearer to developers and planning authorities, and to be consistent across the legislation and the industry in general, timeframes should be expressed in business days.

This also aids the EPA as days that are currently lost through public holidays would be allowed for.

**Recommendation 14:** That the EPA seek the replacement of the reference to 'weeks' with the term 'business days' in Schedule 8 and Regulation 29 of the Development Regulations.

## **7 Section 46 major development assessment**

Under the Development Act, the Minister for Planning may declare a proposed development or project to be a major development. Such a declaration may occur when the proposal is considered to be of major environmental, social or economic importance and it is believed that such a declaration is appropriate or necessary for proper assessment.

A major development is assessed through a process that operates under the Development Act and is overseen by the state government by DPTI rather than a local council. Major developments are normally the developments or projects that are not easily assessed by the usual development application process. The EPA believes there are several reasons for declaration of a major development. They are:

- the scale is such that the examination of potential environmental impacts (in the case of a environmental impact statement or EIS) requires a more detailed investigation process than is provided for in relation to a section 37 development application,
- the relevant development plan does not provide for them and there is no applicable policy to enable a proper planning assessment, and/or
- where government is of the opinion greater public consultation is required.

### **7.1 EPA current practice**

The EPA has an excellent reputation in undertaking its role in major development assessment. The DPTI largely relies on the EPA to coordinate a response for the whole Environment and Conservation Portfolio (E&C Portfolio). This response makes up the entire environment assessment in the ecological sustainable development assessment (ie the assessment of environmental, social and economic factors) coordinated by DPTI planning officers.

Once an application is received by DPTI for a major development, a determination is made by the Development Assessment Commission (DAC) of the appropriate level of report required from the proponent. The EPA is occasionally asked for its opinion or advice on the level of report that may be required ie environment impact statement (EIS), public environment report (PER) or development report (DR). This can influence the level of report that the Minister requires of the proponent. In appropriate cases (particularly when there is an activity of environmental significance), the EPA should continue to provide advice and support to DPTI (and the DAC) to assist them in determining an appropriate level of assessment.

#### **7.1.1 Major project responses**

If a major development involves, or is for the purposes of, a prescribed activity of environmental significance, the DAC must consult (section 46 of the Development Act) with the EPA in relation to the formulation of guidelines and its consideration of the assessment report. In addition to this statutory referral, the EPA receives the guidelines and assessment report for all other major developments and formulates comments on them.

Although the assessment guidelines are referred to the EPA when a major development involves, or is for the purposes of, a prescribed activity of environmental significance, the EPA has not in past practice limited its comment on the assessment guidelines to the activity that would be licensed. The EPA has sought to ensure any issues in which the EPA (and the government) has an interest are addressed in the assessment guidelines. The EPA's input at this stage sets up the framework for assessment and input at a later stage. It also assists DPTI in undertaking a comprehensive assessment of the major development.

The DPTI planners consulted as part of the review stressed they rely heavily on the EPA to provide input into the system as they have no technical experts who would be able to assess the environmental impacts.

The DPTI planners also supported the continuation of the coordinated E&C Portfolio response. By agreement between chief executives of the E&C Portfolio departments, the EPA usually coordinates the joint response to proposed major

developments. The comments provided by each agency do not normally overlap as issues of interest to each agency are not usually shared.

### 7.1.2 Environmental assessment requirements

When a major development involves, or is for the purposes of, a prescribed activity of environmental significance, the report must include a statement of the extent to which the expected effects of the development or project are consistent with:

- the objects of the EP Act
- the general environmental duty under that Act
- relevant EPPs under that Act.

While the objects of the EP Act, the general environmental duty and relevant EPPs are relevant to all major developments, this requirement only applies where a major development involves a prescribed activity of environmental significance.

## 7.2 Conclusions and recommendations

### 7.2.1 Continue EPA's role in section 46 assessment

Given the EPA's valued involvement in major development assessment, the PRC recommends the following.

**Recommendation 15:** That the involvement of the EPA in section 46 applications (major development) continues to:

- be at an early stage through the provision of advice, guidance and assistance to proponents, case managers and DAC on key environmental issues when requested
- advocate an appropriate level of assessment that corresponds to the range of relevant environmental issues requiring investigation (ie EIS, PER or DR)
- highlight the EPA's future role in licensing relevant activities and note possible licence conditions where a section 46 application includes an activity listed in Schedule 1 of the EP Act
- ensure its responses include a detailed assessment against the general environmental duty, the objects of the EP Act and relevant EPPs.

### 7.2.2 Require all proponents to demonstrate compliance with Environment Protection Act

Major development assessment as required by the Development Act only requires a statement of the ability of a project to meet the general environmental duty, the objects of the EP Act and relevant EPPs when a major development involves a prescribed activity of environmental significance. Where a major development is being undertaken, but does not involve a prescribed activity of environmental significance, there is no requirement to include such an assessment. The approach is inconsistent, as all major developments will have some environmental impacts, and all will need to comply with requirements of the EP Act.

**Recommendation 16:** That the EPA advocate for changes to section 46 of the Development Act to require each major development to demonstrate how it can meet the general environmental duty, the objects of the Act and relevant EPPs (not just those that involve an activity listed in Schedule 1 of the EP Act).

## 8 Site contamination

Planning authorities have an important role in managing site contamination as the health and safety of people is one of the objects of the Development Act.

Currently, the only guidance for planning authorities regarding site contamination is Planning Advisory Notice 20 (PAN 20) provided by DPTI. This advisory guideline is out of date, confusing and often not used.

Increasingly, both the DPTI and EPA have been questioned about site contamination and how it fits within the planning system. Planning authorities appear confused about their role in the assessment of site contamination and what are the appropriate processes. They are being challenged by developers about the assessment of site contamination and, without clear, consistent processes and guidelines, site contamination is frequently being overlooked by planning authorities. Should a development be approved that is subsequently found to be a danger to human health or the environment, councils and the government could potentially be held liable.

In March 2012, recognising this issue, and with the support of the PRC, representatives from DPTI and EPA established a Site Contamination Working Group (SCWG) and met for the first time to discuss how site contamination could be integrated into the planning system in a way that is consistent and clear to all planning authorities. The SCWG has continued to meet regularly since then.

The aim of the SCWG is to:

- clarify the extent of site contamination considerations required at different stages of the planning process
- develop criteria for the consideration of these requirements
- establish a process to facilitate consideration and decision-making.

The SCWG identified four key issues which it has worked through to develop the proposed framework:

- timely, appropriate and consistent consideration of site contamination, particularly through the rezoning and development application stages
- clarification of site contamination evaluation criteria for use by planning authorities and site contamination consultants
- need for regulatory changes to the Development Regulations to support the framework developed
- building capacity of development proponents, planning authorities and site contamination consultants.

The proposed framework drafted by the SCWG marries the current National Environment Protection Measure process and the South Australian planning system. It recognises the audit system which is designed to assist planning authorities and government in managing their liability.

With regard to Recommendation 11, many Regulation 29 (land division) referrals could be avoided if key government information that relates to site contamination was shared between agencies. The sharing of site contamination and historical licence data would allow the DAC to view the information held by the EPA without the need for a Regulation 29 referral. This would immediately reduce referrals in this category.

**Recommendation 17:** That the EPA explore approaches with relevant agencies to reduce the number of referrals related to site contamination under Regulation 29 (land division).



## 9 Resourcing

The EPA has 11 staff dedicated to its planning function in the EA Branch. Of those, eight are dedicated solely to the development assessment function and three to the remainder (strategy, policy and major development). The planning function is overseen by a branch manager. The EPA is also involved in other environmental assessments (namely aquaculture). In addition, there are over 50 specialist technical officers in the EPA that the planning staff rely upon to provide advice and input into the assessment of development applications, structure plans, strategies or development plan amendments.

Over time, less assessment has been undertaken by the EA Branch and more reliance is placed on specialist input. This has led, at times, to specialists located elsewhere in the EPA dealing with trivial matters or standardised matters that could have been dealt with by the planner within the EA Branch. The PRC review found the EPA has an appropriate number of people to undertake the planning functions in relation to the planning system, however the skills and capacity of these officers, and also those specialist that provide input, needs further review. It is expected as part of Recommendation 8 and 12 that further clarification of skills is required for each position followed by a review of staff to meet those requirements. Ideally EPA planners should have the capacity to deal with all areas of the planning system, to enable the immediate allocation of an issue or task.

In addition, as the EPA focus moves towards increasing its input into policy within the planning area, resources will also need to move to align with this.

The review of processes needs to be undertaken prior to determining the skills, capacity and allocation of staff.

**Recommendation 18:** That in implementing the outcomes of the DPA and DA processes review (as per Recommendation 8 and 12), the EPA ensure it has sufficient staff in planning and specialist areas with the appropriate skills and capacity.

**Recommendation 19:** That the EPA planners' skills and capacity are developed and Role Statements are reviewed to allow for the movement of officers onto specific issues as and when required.

## 10 Conclusion and implementation

The PRC found the EPA’s performance of its role in relation to the planning system was exemplary, with timeliness on both policy and development application responses being 98%. Even so, the PRC believes there are ways the EPA can increase its influence and be more proactive, rather than reactive.

This review has enabled the EPA to reflect on its role within the planning system and how to make key improvements to ensure that it is responding to requests for comment in an appropriate and tailored way. The review also highlighted the importance of the EPA’s role as an advocate and educator. To increase its influence over the system, the EPA must look at being proactive and strategic, since being heard and understood is critical to increasing its influence. Being trusted and respected are also essential, and this requires key relationships to be built and managed, and clear and consistent messages to be relayed by all.

This review confirms that while the EPA’s role within the planning system has evolved since the inception of the system in the 1990s, the aim is still the same as envisaged by the *Vision 2020 report*. That is ‘to ensure that potential environment problems, eg pollution (air, noise and water quality) and waste, are addressed at the outset’. It is important that the EPA focus on education of its stakeholders (including planning authorities) and reinforcing its role—within and outside the EPA. In addition, a refocus of effort on early engagement in the strategic and policy aspects will assist it in having greater influence over these areas of planning and in turn, influence successful environmental outcomes.

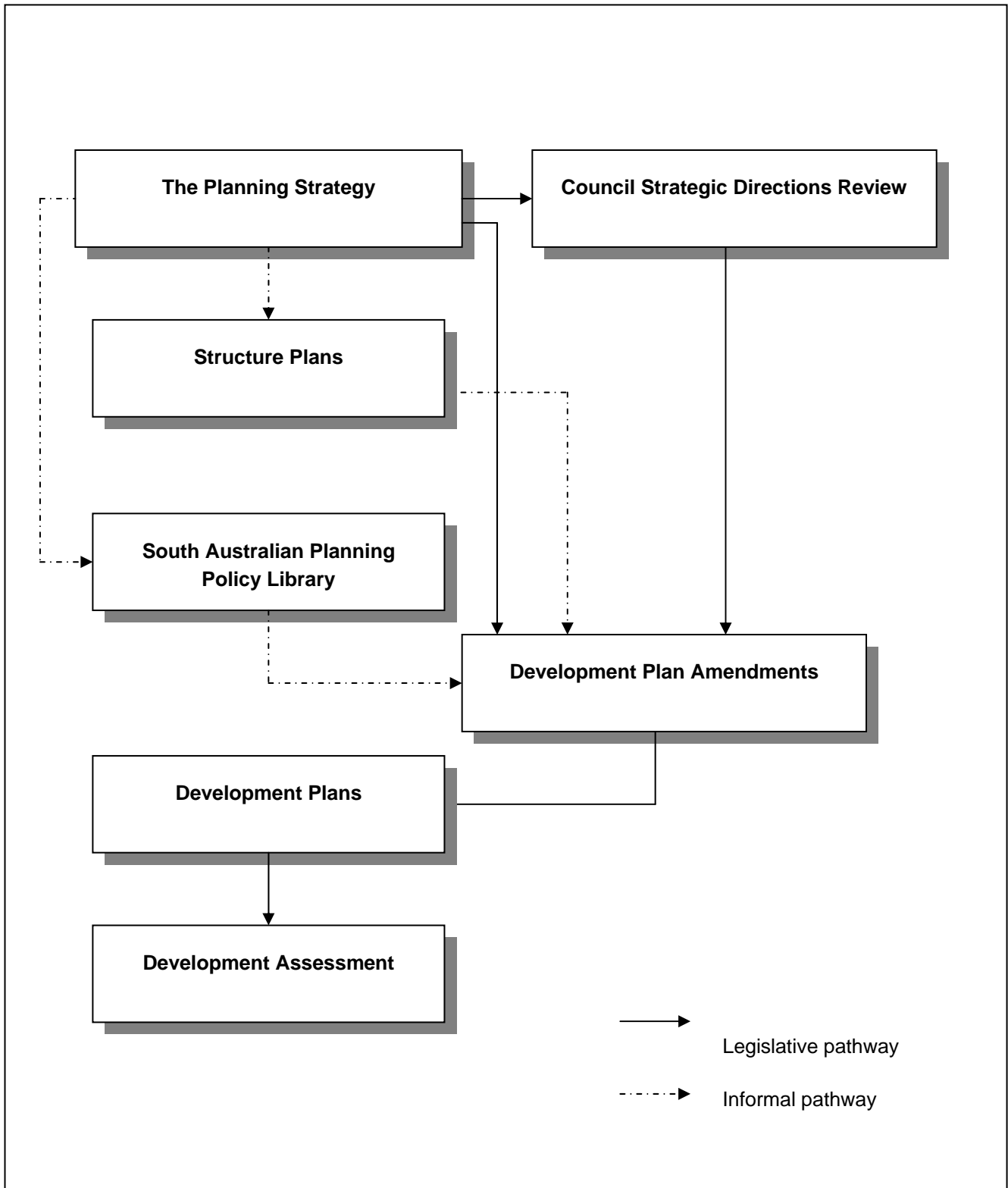
The PRC has formulated each recommendation considering its overall intent. To this end, recommendations should be considered as part of a total package and not read in isolation. The PRC believes that considering the recommendations in a thematic grouping (Figure1) will assist their implementation as a package.

**Table 1      Blueprint for implementation**

Strategic Influence and engagement	People and organisational development	Operations and processes
Clear goal	Sufficient and appropriately skilled staff	Assessment matches the complexity and scope
Greater emphasis on strategy	Flexible resourcing	Appropriately referred applications
Early engagement	Well supported and guided staff	Streamlined and simplified processes
Clearly articulated role, goals and interests and policy positions	Clear roles and expectations	
Build partnerships and capability	Monitor and evaluate	

The implementation of the recommendations resides with the Chief Executive and the staff of the EPA. Therefore, the PRC recommends that the EPA Board provide this report to the Chief Executive for implementation.

## Appendix A Diagrammatic representation of the planning system



## Appendix B Summary of the referrals to the EPA pursuant to the Development Regulations

The 'head power' for development application referrals to various prescribed bodies, including the EPA, is section 37 of the *Development Act 1993*. The legal requirements for responding to referred applications are set out in section 37(4) of the Development Act, regulation 24 and schedule 8 of the *Development Regulations 2008*. The table below details the details contained with Schedule 8.

The EPA receives development applications pursuant to section 49 of the Development Act where development is being undertaken by a state agency. The same Schedule 8 trigger is used however in this case the EPA only has the ability to 'comment and report'. The same referrals and timeframes mentioned in the table apply.

The EPA receives land division applications referred to it under regulation 29 which allows the Development Assessment Commission (DAC) to consult with any other agency on any land division it deems necessary and impose a timeframe of four weeks.

Referral identifier	Time	Advice type
Schedule 8, item 9A (wind farms)	6 weeks	Regard
Schedule 8, item 10 (non-complying in the Mount Lofty Ranges (MLRWPA) or River Murray Water Protection Area (RMWPA))	4 weeks	Regard (for MLRWPA) Direction (for RMWPA)
Schedule 8, item 10b (Schedule 21 – Activities of environmental significance)	4 weeks	Regard
Schedule 8, item 11 (Schedule 22 – Activities of major environmental significance <sup>12</sup> )	6 weeks	Direction

<sup>12</sup> Schedule 22 replicates Schedule 1 of the Environment Protection Act (activities that require a licence by the EPA). In addition it lists certain aquaculture or fish farming applications as a referral.