24 August 2009

Dear Mr Howes,

The Property Council of Australia (SA Division) is pleased to be able to provide a submission to the State Government on the technical review of the Residential Code of Development.

The Property Council of Australia is the peak body representing property owners and developers spanning all asset classes including commercial, industrial, retail and residential. In total, the Property Council represents the interests of more than $33 billion invested in property in South Australia.

In developing our submission, the Property Council has canvassed the opinions of our members, in particular those operating in the residential development and planning sectors.

We would be happy to meet with the Department to elaborate on any areas covered in our submission. If you would like to discuss any aspects of our submission, please do not hesitate to contact my office on 8236 0900 to arrange a meeting.

Yours sincerely,

Nathan Paine
Executive Director
Property Council of Australia (SA Division)
Recommendations

1. Commit to a full and comprehensive review of the Residential Code after 12 months of functional operation.

2. Expand application of the Rescode to at least 70 per cent of the metropolitan area.

3. Ensure Councils apply the Rescode to minor alterations in ‘Character Areas’ by way of codification.

4. Review the Rescode to replace subjective elements with objective criteria.

5. Review the Rescode to resolve the issues identified in this submission as identified in dot points 1-10.
Introduction
The Property Council congratulates the Government on delivering planning and development reforms that will provide significant benefits for all South Australians.

Our comments in response to the technical review of the Residential Development Code (Rescode) have been drafted in the context of Planning and Development Review Steering Group Report (the Report). Specifically that:

For the full benefits of the proposed reforms to be realized, the development assessment process must be streamlined. By removing minor low-risk matters and unnecessary delays and referrals from the system, it will clear backlogs and free State and local government planners to focus on the strategic performance of the planning system.

The following reforms to the development assessment process are proposed:

- Increasing the amount of matters classified as exempt from development approval;
- Dramatically increasing the amount of matters assessed as complying development;
- Introduce a new Residential Development Code for South Australia to improve the quality and consistency of decision making; [and]
- Streamlining the merit assessment process to focus on a more effective use of “stop-the-clock” provisions and a reduction of referrals.

(P117)

This excerpt from the Report is instructive as it goes to the heart of the reforms and ultimately to the targets the reforms intended to achieve.

General Comments
The Property Council is pleased that the Government is undertaking a technical review of the Rescode, however given the complexity and importance of the material at consideration, coupled with the short timeframe provided for initial implementation and the failure of Councils to embrace the Rescode, the Property Council is of the view the Code has not been given an effective testing period.
We therefore recommend the Government to commit to a full and comprehensive review of the Rescode after one full year of effective operation.

The Property Council recognizes the significant achievements of the Government to date in improving the efficiency of the planning and development system though Schedule 1A (Acts and Activities not requiring Planning Consent), Schedule 3 (Acts and Activities that are not Development) and Schedule 4 (Complying Development).

However, the fact that the areas to which the Rescode applies (Schedule 4 – Complying Development, Clause 2(B)) were only identified and effected on 02 July 2009 (by way of Gazette notice on 15 June 2009) has afforded very little time to ‘road test’ the effectiveness and take up of the new Rescode provisions.

Delays in the gazettal of areas to which the complying development portion of the Code applies have seriously undermined the effective implementation of this component of the Rescode.

The Property Council is concerned that such difficulties in the Code’s implementation have resulted in its dilution. A weakened Code will fail to meet the intent of the Planning and Development Review Steering Group and the Government’s commitment to streamlining approvals process and reducing red-tape.

In fact, with respect to the new dwelling component of the Recode, the extent of its applicability in both Metropolitan Adelaide and across the State is minimal (see attached map of Metropolitan Adelaide). The map clearly demonstrates that the Rescode, at this time, only applies to approximately 20% of Metropolitan Adelaide.

However, we do note that Clause 2A, relating to alterations and additions to detached and semi-detached dwellings forms part of the Rescode, applies to a much greater area and is not restricted to the gazetted of the non-character areas.

In respect to Clause 2A, the Property Council reaffirms its view that there is no clear rationale for excluding battle axe allotments for alterations and additions.
It is also apparent from the attached map that the Rescode does not apply to many inner and middle suburbs of Adelaide, nor does it apply to key existing growth areas such as Onkaparinga and Gawler. The Rescode only appears to holistically apply to those Councils that already have a good track record in facilitating appropriate development (such as Salisbury and Playford).

The Rescode was introduced following Recommendation 25, 27, 28, 29, 30 and 31 of the Planning Review which focus on streamlining approval processes for low-risk development. The Property Council is of the view that there is limited benefit from implementation of the Code if it only applies to 20% of Metropolitan Adelaide.

The Property Council believes that the Government must enforce the Rescode more fully to ensure that it meets the recommendations outlined in the Planning Review. For example, Recommendation 30 discusses exemptions to Rescode for ‘Character Areas’ and suggests that no Council should fall below a 50% to 70% ratio of matters listed as complying development. This recommendation clearly has not been adopted.

In this sense it appears that local political interests have misused the ‘Character Area’ elements of the Rescode to remove from Rescode consideration development in areas of dubious character merit. Not only does limiting the applicability of the Code dampen the effectiveness of planning reforms but it also threatens to further mire planning and development decisions in petty politics.

However, we do support the view that areas such as master-planned projects and areas subject to Ministerial DPAs or designated Zones of State Significance should be exempted from the Rescode where they already have additional layers of control such as building setback or envelope plans. The reality is that these processes should reduce the need to undertake planning assessment as a whole.

Furthermore, the Report identified that even ‘Character Areas’ require codification with objective and quantifiable requirements that could be applied for dwellings in these areas to be assessed as complying development. It has become clear that many inner city councils such as Unley are using the ‘Character Areas’ nomenclature to add a further layer of protection that is thwarting the intent of these reforms.
Finally, pursuant to Recommendation 39 (Performance Standards) of the Report, a development assessment monitor should be established for Local Government to keep a record of the number of applications determined using Rescode and the number of applications that were approved or deemed refused using Rescode. This data should be made public once collected.

**Specific Comments on the Rescode**

In addition to the comments relating to implementation above, the Property Council believes that there remain areas of the Rescode that must be resolved for the Code to operate effectively.

As a general statement, we are of the view that the Rescode contains a number of areas that are subjective as opposed to objective. The result of this will reduce the intended ‘black and white’ nature of the code and encourage reversion to subjective assessment of complying criteria.

Below are some additional specific comments on the Rescode hanging over from comments provided to Government in December 2008 that we believe still need to be resolved:

1. Outbuildings, carports, verandahs, swimming pools will not require development consent only if a dwelling is existing on site – irrespective of whether a dwelling would be a complying development on the site.

2. There are now many onerous and overly prescriptive criteria adopted with respect to the length of construction of outbuildings and shade sails on boundaries which do not reflect the standard construction of such structures (for example, a sail structure to obtain shape and form will in the majority of circumstance exceed 3 metres in at least one location).

3. The Code introduces onerous provisions regarding outbuildings to be used as carports or garages which are unnecessary and in some cases subjective. It also introduces a requirement to obtain a separate approval for access before a garage or carport can be classified as exempt from approval - thereby effectively removing the ‘as of right’ status of a carport of garage.
This does not appear to acknowledge the fact that under the *Local Government Act* S.221 ss.3(b) an authorization is not required if:

...the purpose of the alteration is to permit vehicular access to and from land adjoining the road and the alteration is approved as part of a development authorisation under the Development Act 1993;

4. The Rescode includes subjective clauses regarding the colour treatment to outbuildings. For example, is a light grey sheet metal shed exempt or complying?

5. The Regulations for the Residential Code includes definitions peppered throughout. These would be better placed in Schedule 1 of the Regulations to enhance clarity, certainty and legibility of the legislation.

6. The Residential Code appears silent with respect to outbuildings in the Hills Face Zone as well as decks and roller doors. We seek clarification on this issue.

7. Complying Development for alterations and additions now includes an onerous and complex setback provision to replace the 5 metre setback previously envisaged.

8. The Regulations introduce highly prescriptive and onerous provisions with respect to construction on boundaries, building setbacks, building heights and open space for new dwellings (& additions and alterations) to be complying.

9. A highly subjective clause is introduced (Clause 2A(n)) with respect to new alterations and additions not altering the external appearance of a façade of the building to a substantial degree. The intention of the Rescode was to be highly objective and to provide certainty to assessment criteria and decisions. A subjective clause of this nature can be utilized by conservative Councils to effectively obstruct ‘as of right’ or complying development.
10. The Rescode appears to introduce contradictions in assessment and evaluation criteria between components of new dwellings (ie Garage or Carports) and the criteria established for alterations and additions to existing dwellings. For example, a garage can be considered to be complying development if accessed from an alley, lane or right of way that is at least 6.2 metres wide. However, a garage in association with a new dwelling would make the application for the new dwelling a ‘consent use’ if the garage relied on access from an alley, lane or right of way (irrespective of the width of the alley, lane way or right of way).

**Concluding Remarks**
Whilst the Rescode has the ability to streamline, fast track and provide certainty to planning approvals for a large percentage of applications, in its current form it is highly complex, overly prescriptive and in many cases ‘subjective’ clauses. When viewed in conjunction with its lack of application to the majority of the metropolitan area, this has significantly watered down its impact and effectiveness.
ATTACHMENT 1: Map of Rescode New Development Areas
AREAS WHERE CODE APPLIES TO NEW DWELLINGS

LEGEND

- Metropolitan Urban Growth Boundary
- Local Government Area Boundary
- Area where code applies to new dwellings

*Areas within the UGB determined by the Minister that New Dwellings will now be considered Complying Development (pursuant to Schedule 4, Clause 2B (1) of the Development Regulations 2008 and as of 2 July 2009)