ARTICLES

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LEGAL STRUCTURE FOR LAND-USE DECISIONS RELATING TO TRANSPORT IN SOUTH AUSTRALIA+

Introduction

The system of land-use planning attempts to shape and control urban and rural land-use. Much has been written about the system's impact upon land development by private corporations and persons. However a great deal of land development is carried out not by these private corporations and individuals but by public instrumentalities. Not only is the development by public authorities significant by itself in amount but that development substantially dictates private development – private land-use is heavily dependent upon the provision of facilities for which these public authorities are responsible. Moreover some private development, notably mining, has been subject to a control system administered by a public authority separate from the planning system.

In Australia, prior to the establishment of government land-use planning departments, the undertaking and control of development was a principal function of State governments. In 1955 in South Australia of nineteen government Ministries, six had responsibilities principally for undertaking land development (Railways, Roads, Works (including the Engineering and Water Supply Department), Forests, Irrigation and Marine); two included significant land development responsibilities (Education, because of school building, and the Premier because of responsibility for the Housing Trust); three were involved in the regulation of land development (Lands, Agriculture, Mines). Local councils also had significant land development and control functions.

The planning system thus has to accommodate these government development activities and separate land-use controls. At the one extreme it can simply accept the policies and specific projects of these authorities and plan in consequence of them. On this basis co-ordination of the various authorities depends upon Cabinet direction which in Australia seems to have been considerably influenced by Treasury in its role as the financial evaluator of the government. At the other extreme the planning system can formulate future policies for all public development and control all specific projects by government authorities. This approach would give the planning department a status above that of the others involved in land development and control and they would become in effect subordinate departments.

This article focuses on one aspect of public development: transport. The positioning of railways, tramways, bus routes and roads substantially dictates the shape of a city and the feasibility of land-uses at any particular point. A planner thus cannot ignore the transport routes.

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Indeed in so far as he is trying to influence or at least provide for future land-use, he will wish to influence future transport routes.[1]

Consequently the article examines what the planning system says about transport – both in the planning schemes which map out future development, and in the regulations which control land-use. The article then turns to the transport authorities and the way they work. It examines their relationship with the planning system, their processes for determining future policy directions and the ways in which decisions about specific transport projects are determined and subject to public scrutiny and challenge. Finally the article looks at one specific transport project as a form of case-study.

During the writing of this article, in June 1981, the South Australian Government introduced before the House of Assembly a new piece of legislation – the Planning Bill 1981. This Bill attempts a complete restatement of the State's planning laws. The government indicated at the time of introduction that it would proceed with the Bill only after some months were allowed for public comment. Provisions of the Bill will be referred to throughout this article.

2 Planning Schemes and Transport

Under the South Australian Planning and Development Act the pronouncement of policies to guide future development occurs in authorised development plans. As Adelaide is the only major city in the State, the plan for that city – the Metropolitan Development Plan – contains any significant statement made within the planning system about transport development. That plan does pay considerable attention to transport routes.

The Metropolitan Development Plan attempted to review Adelaide's transport needs until 1991. This date represented a thirty-year period from the writing of the report and was the future limit for the review generally. For the shorter period of twenty years (which has now elapsed) the Plan provided for significant rail and highway development:

> Future Travel: A study is described in Chapter 19 of the daily travel that can be expected by 1991, when the built-up area will have extended to the north and south. It is estimated that while the population will more than double during the next 30 years, the amount of daily travel will nearly treble.
>
> The study also provides estimates of the amount of travel that can be expected between various parts of the metropolitan area. The main flow of traffic is likely to be in a north-south direction, with substantial flows to the City of Adelaide and between suburbs.
>
> Co-ordinated Traffic and Transport System: All forms of transport must be co-ordinated and used fully if people and goods are to circulate efficiently, but several alternative traffic and transport systems are possible. Suburban rail services can be extended to relieve road traffic, existing highways can be improved and freeways can be built, but all are costly. A system is required which provides the best service for the least cost.

1 From a different perspective, a transport planner is conscious of the impact of a transport route on future development of the city – see D Scrafton, "Urban Transport Policy" Search vol 10 nos 1 and 2 (1979) 14, 19.

The studies in Chapter 20 show that the best traffic and transport system for the metropolitan area would be to extend the existing highways. The costs involved will be high, but they will be higher still if more efficient zoning measures are not used to obtain a proper relationship between living, working and recreational areas so that travel is kept to a minimum.

Proposals for Public Transport: The proposals for public transport shown on the development plan are confined to those considered necessary during the next 20 years. The principal recommendation is to continue the existing Hallett Cove railway further south to Noarlunga, a distance of five miles. Passenger traffic on this line is expected to be heavy. Other new lines recommended are extensions from Ascot Park to Sturt, one from Islington to Athol Park, and several lines in the new industrial areas near Port Adelaide.

Express bus routes are proposed to outer suburbs which are not served by rail. The routes would be from the City of Adelaide to Modbury, Pooraka, Glenelg, Reynella and Bridgewater, along proposed freeways. Suburbs south of the Onkaparinga River could also be served by express bus.

Proposals for New Highways: The proposals for new highways shown on the development plan are also confined to those considered necessary during the next 20 years. More new highways will probably be necessary to cater for traffic after 1981.

The principal recommendation is for a central north-south freeway through the metropolitan area from Gawler in the north, passing west of the City of Adelaide, to join the Yankalilla Road south of Noarlunga. A freeway around the City of Adelaide is proposed, with radial freeways to Modbury and Port Adelaide. A freeway also links the Modbury area with Port Adelaide and the proposed new highway from Crafers to Bridgewater is shown as a freeway.

A new major arterial road from Port Adelaide to Morphettville, and three new principal crossings of the River Torrens are proposed: one north of Payneham, one at Darley Road, Campbelltown, and another at Athelstone. New roads are proposed in the Port Adelaide and Salisbury areas, and from Modbury to Parafield and to Elizabeth. A continuous route from Brighton to Sellicks Beach near the coast would serve coastal suburbs; and a route from Darlington to Noarlunga near the foothills would serve new suburbs. A link is proposed between Tonsley Park and Springfield, and new routes are proposed from Bedford Park to Crafers, and from Sampson Flat to Williamstown and to Kersbrook. These major arterial road proposals are described in more detail in Chapter 21, and they are shown on the development plan.[2]

As these proposals are included in the Metropolitan Development Plan, upon the adoption of that Plan they became the official policies for metropolitan Adelaide.[3]

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2 Metropolitan Development Plan p 282.

3 Planning and Development Act 1966 s 5(1) — definition of "authorised development plan".

After the passing of the Planning and Development Act in 1967 with its adoption of the Metropolitan Development Plan, the government recognised the enormous undertaking involved in carrying out the transport recommendations contained in the report. Consequently it commissioned a further study of the ways of fulfilling Adelaide's transport needs. The study was undertaken by a team of independent transport experts drawn largely from outside South Australia. A comprehensive study of transport modes was carried out by this team. In due course they produced the Metropolitan Adelaide Transport Study Plan 1968. This plan produced some significant proposed changes to the Metropolitan Development Plan but the overall emphasis upon freeways as a means of coping with transport problems was maintained. Subsequent actions suggest that at this point the government intended to amend the Metropolitan Development Plan to bring it into line with government transport policy.

By the time of the release of the MATS Plan public concern about the impact of freeways upon the quality of urban life had intensified and much vocal opposition was encountered.[4] After a further report,[5] the government responded by announcing a ten-year moratorium (since indefinitely extended) upon the construction of any freeways.

Neither the MATS Plan nor the announced government policy has been reflected in any major revision of the Metropolitan Development Plan. In 1971 Supplementary Development Plan No 1 was adopted. It stated:

> The State Planning Authority has re-examined the Metropolitan Planning Area, having regard in particular to the assessment of future development outlined in the Metropolitan Development Plan and the facilities proposed for the movement of people and goods.
>
> The Authority is satisfied that, generally, the assessment of future growth and the form and direction of expansion outlined in the Metropolitan Development Plan continue to provide a suitable basis for guiding Adelaide's growth up to 1991.
>
> The report of the Metropolitan Development Plan outlines transportation studies that were made prior to 1962 and describes the major new road and rail facilities needed to serve the residential, industrial and commercial areas envisaged. The co-ordination of all forms of transport is stressed and the proposals include extensions of public transport services, a system of express bus routes, extensions and improvements to existing arterial roads and the construction of new freeways.
>
> The Authority has examined the recommended traffic and transport proposals and has concluded that some modifications are necessary. The planning period adopted is 20 years and it is possible that within this period there will be changes in transport technology. It is considered unlikely, however, that within the period there will be any radical departure from the use of individual vehicles.

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4 Adult Education seminar: *The Metropolitan Adelaide Transportation Study and the Future Development of Adelaide* (University of Adelaide Department of Adult Education Conference Papers – November 1968).

5 Social Technology Systems Inc, *Adelaide Transportation Report* (1970).

> The Authority is confident of the need to act now to reserve land for new rights-of-way in addition to the existing road and rail networks. This will ensure that future needs for transport will be met and that social disturbance associated with the development of the routes will be kept to a minimum.
>
> The Authority emphasizes the need for transportation proposals to be reviewed continuously in order that technological changes can be taken into account.
>
> The basic data and recommendations contained in the Report of the Metropolitan Adelaide Transportation Study 1968 have been examined and taken into account in preparing this supplementary development plan.

It is significant that in this statement of general principles the State Planning Authority considered that it was its function to review the Metropolitan Adelaide Transport Study Plan. After the statement of principles the Supplementary Development Plan set out the specific revisions to the Metropolitan Development Plan transport proposals considered necessary. Overall these changes were not considerable; the freeway proposals of the Metropolitan Development Plan were amended in four respects.

> *Central North-South Freeway*
>
> Those parts of the route comprising the section between Gawler and Port Wakefield Road, the link between Fitzroy and Dudley Park, the link comprising two one-way routes between 'Freeway around the City of Adelaide' and Plympton, and the section south of Noarlunga across Pedlar Creek, are deleted. That part of the route between Islington and O'Halloran Hill varied as shown on the Plan accompanying this report.
>
> *Freeway Around the City of Adelaide*
>
> That part of the route comprising the section westward from Fullarton Road/Greenhill Road intersection to Keswick Bridge and southward from Port Road/Adam Street intersection is deleted.
>
> *City of Adelaide to Modbury Freeway*
>
> That part of the route between Grand Junction Road and the district centre at Modbury is deleted. The route is extended north from Grand Junction Road to Hillbank as shown on the Plan accompanying this Report.
>
> *Modbury to Port Adelaide Freeway*
>
> That part of the route between the district centre at Modbury and the Main North Road at The Levels is deleted.

No subsequent changes to the transport development proposals of the Metropolitan Development Plan have been made. To some extent the lack of revision may be ascribed to the interim nature of the government's principal response to the Metropolitan Adelaide Transport Study Plan – a moratorium on freeways even if indefinite. This explanation does not account for all matters however and an increasing gulf has arisen between the Metropolitan Development Plan and announced government policy. It seems that the State government (through Cabinet) will from time to time make decisions about major

transport developments but take no steps for legal formalisation of these decisions other than public announcement. Late in 1980, for example, the government decided to modify substantially road plans stemming from the Metropolitan Development Plan in the Hindmarsh area. This decision has a considerable impact upon an area which has been substantially run down as a result of an intermixture of industrial and residential uses, the decay of those industrial activities and the ownership of much land by the government for highway purposes. Rezoning for the area is being actively investigated[6] but under the current statutory framework the adoption of revised planning regulations will be hampered, if not prevented, by the presence of highway proposals in the development plan. The Planning Bill 1981 retains the existing Metropolitan Development Plan and its supplementary plans as part of what the Bill calls 'The Development Plan.'[7] The Bill provides for amendments to the Development Plan by supplementary development plans, but the processes involved in the preparation and adoption of these plans[8] differ little from those of the current Act.

3 Planning Controls and Transport

The Planning and Development Act envisaged that further force would be given to the Metropolitan Development Plan's transport proposals through the zoning regulations passed under the Act. Under the Planning Bill 1981 these regulations are incorporated as part of The Development Plan.[9] The regulations may reserve any land for any purpose for which land may be compulsorily acquired or taken under any Act and prohibit the carrying out of any work on such land without the consent of the Minister.[10] Transport routes could thus be reserved in the regulations. But as the Highways Department succinctly puts it 'To date, however, this procedure has not been used.' [11]

Although reservation for future transport routes through planning regulations has not been attempted, planning regulations still potentially govern the establishment of transport routes just as they govern other land-uses. Implementation of regulations, including the discretion to grant consent to uses permitted subject to consent, is entrusted to local councils and the State Planning Authority. Transport development will normally be carried out by government agencies. Planning regulations

6 Hindmarsh Steering Committee, *Second Report* (June 1979). The nature of the areas which have suffered most from transport proposals provides additional evidence as to the social impact of planning. The scope for local decisions and the significance of articulation of views mean, in the author's view, that the planning system must reinforce existing property interests. See particularly the panel discussion involving Hart, Hickinbotham, Moore and Warburton "Zoning as an Instrument of Planning" *Planning Issues* (University of Adelaide, Department of Continuing Education, 1978). An analysis of the relationship between planning and social power in South Australia is provided in Sandercock, *Cities for Sale* (1976) Chapters 2 and 6. This work, in the author's view, overemphasises the reformist goals of planning law. A penetrating discussion of the ideologies involved in the legal structures for planning is contained in McAuslan, *The Ideologies of Planning Law* (1980).

7 Planning Bill 1981 clause 41.

8 Clause 42.

9 Clause 41(2)(b).

10 Planning and Development Act 1966 s 36(4)(d).

11 South Australian Highways Department, *The South Australian Government's Responsibilities With Respect to Roads* (1980) 14. The Highways Department does monitor closely proposals in draft Development Plans and Planning Regulations see *Highways Department Annual Report 1979-80,* 9-10.

envisage special procedures where the developer is a government agency. The common regulation provides:

> "Where a use of land –
> (a) by a person, body corporate or other authority responsible for the provision of highways, sewers and water, gas and electricity supplies and public transportation services; or
> (b) by any government department; or
> ...
> would, but for the provisions of this sub-regulation, require the prior consent of the council ... subregulations ... shall in respect of that use, be read as if the words "the council" were replaced by the words "the Authority"."

One of the roles thus envisaged for the State Planning Authority by the Planning and Development Act has been that of a co-ordinator of the activities of government agencies. Its composition reflects this role and in the transport area both the Commissioner of Highways and a nominee of the Minister of Transport are members of the Authority.[12]

Whilst the composition of the Authority provides a voice for various interests, the ability of a body so composed to meet other than for short periods is severely limited. The State Planning Authority has generally met for one afternoon a month. In that time it has had to fulfil its tasks as an approving authority with respect to areas or land-uses of special concern (such as the Hills Face Zone and extractive industries) and to review proposed development plans and planning regulations. It is little surprise that its attempts to co-ordinate public development have amounted to little more than the avoidance of outright conflict between the development plans of different government agencies. Its jurisdiction is limited to land-use proposals and does not extend to other decisions and policies affecting the physical environment. Furthermore as part of the planning structure it lacks a sufficiently independent voice to ensure proper consideration of its recommendations at Cabinet level. These weaknesses are recognised in the *Report of the Inquiry into The Control of Private Development* [13] and have led to the almost complete abandonment of this function as one of those of the proposed South Australian Planning Commission.[14]

In addition to the structural weaknesses of the State Planning Authority, its powers in the transport area are extremely curtailed. The use tables in planning regulations do not refer to transport uses and the regulations exempt those transport uses from any control. This exemption will continue to have effect under the new Planning Bill.[15] The common provision of current planning regulations is:

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12 Planning and Development Act 1966 s 8(5).

13 Hart, *Report Of The Inquiry Into The Control Of Private Development* (1978) p 74. Cf Wilenski, *Urban Administration and Policy in New South Wales* (1978).

14 As explained previously in the text the Planning Bill 1981 lessens the controls upon government agencies. In those cases where the proposals of a prescribed agency seriously conflict with planning principles and are thus subject to control the cases are referred to Cabinet. In the cases of proposals by non-prescribed agencies, there is nothing in the Bill to refer them to the South Australian Planning Commission rather than the local council.

15 Under clauses 41(2) and 4 of the Bill existing regulations (including the exemptions) become part of The Development Plan and thus part of the principles of development control. The activity is as a result permitted by the principles of development control without the consent of the planning authority and any such activity is permitted by the Bill (clause 47(3)).

> "Consent under these regulations shall not be required for the construction, reconstruction, alteration, repair or maintenance of
> (a) any road, railway ..... by any public authority, instrumentality of the government or council on, over or under any public roadway or reserve or any other reserve or any easement granted, created or acquired for any of the purposes aforesaid;"

No apparent exemption as a result of this clause exists for any tramway. Moreover it is possible that a busway be constructed other than along a public road – again no apparent exemption exists for such a busway. However in the great majority of cases, transport route developments are exempted and decisions about them have rested with the transport authorities free of any planning control restraint. Consistent with the reduced role of the South Australian Planning Commission, the Planning Bill is more lenient than current legislation on some government agencies. It draws a distinction between prescribed and non-prescribed government agencies. Draft regulations suggest that the major State level transport authorities will be prescribed agencies. Where the Crown or a prescribed agency of the Crown proposes to undertake development it must give notice to the South Australian Planning Commission (the successor to the State Planning Authority) and to the local council [16] but it does not need any consent from these Authorities.[17] The only constraint is that if the Minister of Environment and Planning considers that the proposal is seriously at variance with The Development Plan he may refer the matter to the Governor who may give directions [18] – thus in effect placing responsibility for such matters with Cabinet. Non-prescribed agencies of the Crown must obtain planning consent for any development – normally from the local council.[19]

Although the construction of transport routes is normally exempt from control under the Planning and Development Act, special controls apply with respect to the creation of new roads in most land subdivisions. The Act allows a local council or the Director of Planning to refuse approval for a plan of subdivision[20] if a number of road requirements [21] are not met:

i provision for roads must be adequate[22];

ii roads must be safe and convenient for traffic[23];

iii safe and convenient access to a road must be provided from every allotment[24];

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16 Planning Bill 1981 clause 7(1).
17 Clause 7(4).
18 Clause 7(3).
19 Clauses 7(5) and 47(2).
20 Technically, a division of land not involving a road will be a resubdivision provided not more than 5 allotments are created: Planning and Development Act 1966 s 5(1).
21 These subdivision rules which derive from the grounds upon which permission can be denied for a plan of subdivision are not retained by the Planning Bill 1981. New provisions as part of The Development Plan to restate these rules seem to be essential for the working of the proposed legislation.
22 Planning and Development Act 1966 s 49(h).
23 S 49(o).
24 S 49(1).

iv roads must be able to be graded so as to be safely and conveniently connected to existing roads[25];

v roads must provide convenient intercommunication with neighbouring localities[26];

vi roads must provide safe and convenient intercommunication with land adjoining that being divided[27];

vii roads must provide any access that is necessary or convenient to roads on land adjoining that being divided.[28]

Moreover a council may require to be satisfied as to the completion of binding arrangements for road surfaces, kerbs and footpaths of a roadway of width of not more than 7.4 metres.[29] The council may insist on a width of up to 14.8 metres where it considers such width necessary in view of the volume or type of traffic likely to use the road.[30] The Director of Planning may require provision for widening an existing road which abuts the land to be divided where widening is necessary having regard to future planning requirements.[31]

The subdivision powers of councils over roads have been respecified as a result of the 1971 decision of the Supreme Court in *Tea Tree Gully Council* v. *Jennings*[32] where it was held that 7.4 metres was the maximum roadway a council could require to be formed. Whilst the case was decided both in the Supreme Court and the Planning Appeal Board on this interpretation of the Act, the judgment of the Planning Appeal Board[33] is significant for an extensive discussion of appropriate principles governing roads in residential areas. Reference to this discussion must be accompanied by the caution that on appeal Wells J.[34] considered the Board was mistaken in reviewing these principles when they were not essential for its decision and when neither the State Planning Authority nor the Highways Department appeared before the Board.

The Board's conclusion challenges the primacy of traffic engineering considerations in the design of roads in residential areas. In *Jenning's Case* the land to be subdivided was to be serviced by one particular road which passed from one boundary of the subdivision to another. The council insisted that this road have a paved carriageway of 36 feet (11.1 metres): the developer was willing to provide only a carriageway of 24 feet (7.4 metres).

Transport experts explained the need for a hierarchy of roads within the subdivision, for a sufficient road to allow access by a bus service into the subdivision, and to cope with traffic volume for a roadway which would allow one lane of traffic in each direction as well as parked vehicles on either side of the road. Some reference was made to the somewhat ambiguous principles in the Metropolitan Development Plan.

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25 S 49(n).
26 S 49(o).
27 S 49(r).
28 S 49(g).
29 Planning and Development Act 1966 s 51(1).
30 S 51(12).
31 S 52(1)(a).
32 [1971] SAPR 173.
33 [1971] SAPR 137.
34 [1971] SAPR 173.

On the other hand concern was expressed at the encouragement provided by the freedom of traffic movement proposed for traffic not connected with the use of the subdivided area and for speeds in excess of 25 miles per hour. On these grounds the mere existence of a through road was considered undesirable. The factors of extraneous traffic movement and speed were inconsistent with the preservation of residential amenity.

Some suggestions were made that the arterial road pattern in the general area of which the land to be subdivided was part would be changed and a significant role given to the road in dispute. The Board dismissed this issue on the basis that even if such a suggestion were to be adopted it could not impose burdens on the subdivider.

The Board set out the evidence at some length. It favoured the arguments against a wider road. It did not accept the need to provide a clear traffic corridor and a design such that drivers should not have to manoeuvre around parked vehicles. In its view these inconveniences were outweighed by the demands of residential living:

> "As a matter of sound planning or sound development practice the carriageway of Oratanga Road should be kept to a small width to protect the amenity of the residential environment and to remove, as far as may be, any possibility of it being used for the movement of external traffic throughout the subdivision."[35]

Obviously conflicts between traffic convenience and residential amenity will continue. Planning authorities will be called upon to perform a balancing task. In exercising discretion under the planning regulations, the authorities have to take into account a range of considerations. Disputes are mostly likely to arise if, in the course of determining whether to grant approval to a proposed new subdivision, an authority decides to demand a roadway width greater than 7.4 metres.

4 State Transport Authorities

Within South Australia at a State level there are three major transport authorities – the Highways Department, the Road Traffic Board and the State Transport Authority. In addition the task of policy formulation for the government is carried out by the Department of Transport. Local councils also have significant transport responsibilities, particularly in the area of roads.

In South Australia's early history roads were largely left as a responsibility of local government. From the mid-nineteenth century some functions were given to a Central Board of Main Roads and District Boards of Roads and later Local Boards of Roads. Then in 1886 sole responsibility for roads was given to local councils.[36] Despite this delegation of authority the State government was forced to accept some financial responsibility and to provide engineering expertise.

In 1926 the Highways Department was established by the Highways Act and this legislation, with amendments, remains in force today. The head of the Department is the Commissioner of Highways. The

35 [1971] SAPR 137, 166.
36 District Councils Act 1886 s 274.

Commissioner is given the responsibility of creating and maintaining an arterial road network to service the State.[37]

The Road Traffic Board is established by the Road Traffic Act.[38] The Board consists of the Commissioner of Highways and the Commissioner of Police (or their nominees), a representative of local government, a person with knowledge of road safety and one with a knowledge of motor vehicle safety. The Board's major concerns are road design and road safety.[39] It makes recommendations to the Minister and other authorities about road construction, traffic control devices and measures to improve traffic flow and road safety.[40] It conducts research into road accidents[41] and investigates and reports upon proposals for alterations to traffic laws.[42]

In 1974 the State Transport Authority was established.[43] The creation of this Authority represented an attempt to unify the different aspects of public transport. The Authority is responsible for the co-ordination of all forms of public transport in South Australia.[44] It inherited the responsibilities of former authorities for railways, trams and buses. It is responsible for the construction and operation of metropolitan railways,[45] the operation of trams and the construction of tramways[46] and the operation of bus services.[47].

As well as creating a single authority to operate all public transport services, the South Australian government has attempted to ensure greater interaction between the State transport authorities. This attempt was in part prompted by the difficulties flowing from the Metropolitan Adelaide Transport Study. Formerly the various transport authorities had their own Minister. Today there is but the Minister of Transport. The Department of Transport, headed by its Director-General, serves as the public service unit to advise the Minister. It is ultimately responsible, in theory at least, for all transport policy, planning, administration and finance.

The activities of the Commissioner of Highways, the Road Traffic Board and the State Transport Authority are subject to the influence of the Department of Transport through their responsibility to the Minister for Transport. The Commissioner of Highways was made subject in 1958 in the exercise of almost all his significant powers to direction of the Minister. The functions of the Road Traffic Board are of an advisory nature and its recommendations are made to the Minister. At the time of its establishment in 1974 the State Transport Authority was made expressly subject to the general control and direction of the Minister. Because of the width of the Minister's responsibilities, the Department of

37 South Australian Highways Department, *The South Australian Government's Responsibilities With Respect To Roads* (1980) passim.
38 Road Traffic Act s 11(1).
39 S 11(2).
40 S 15(a).
41 S 15(c).
42 S 15(f).
43 State Transport Authority Act 1974 s 5.
44 S 12.
45 Railways Act s 4.
46 Bus and Tramways Act s 27.
47 S 30.

Transport is able to bring under consideration all forms of land transport, public and private.[48]

In addition to the exemptions within the planning system, the Highways Department is given some exemptions from the planning legislation by its own legislation. The major source by which the Highways Department may acquire land is section 20 of the Highways Act. This section gives power to acquire land for the purposes of the Act. The normal purpose of acquisition is for road construction and this activity is clearly exempted from planning regulation control by the planning regulations themselves. Special acquisitions authorised by the Highways Act are for quarries and depots for storage of plant and materials and for road widening. In both of these cases the Highways Act provides that the Planning and Development Act shall not apply to the land so acquired.[49]

In carrying out their responsibilities the State transport authorities are subject to some influence from the Commonwealth government. Indeed the Commonwealth could undertake some transport activities and such activities would fall outside the planning and control aspects of the State land-use planning system. The Commonwealth power with respect to interstate trade and commerce provides the potential for Commonwealth transport activities. The Commonwealth has accepted a direct role with respect to major civil and military airports which it owns and operates. Airports have a severe impact upon surrounding land-use, particularly in Adelaide where the major civilian terminal is close to the city centre, and pose peculiar problems of inter-governmental co-operation. Airports deserve separate consideration which will not be attempted in this paper. The national government has also established an interstate railway service[50] and in South Australia it is responsible for all non-metropolitan railways as a result of the referral to it of the State's powers in this respect.[51] The Commonwealth has not involved itself in road construction outside the Territories.

The Commonwealth has influenced transport decisions through its financial grants. But the grants are made to State authorities who then operate within the normal State structure. Even this financial influence has been reduced in recent years. The Whitlam government's commitment to Commonwealth involvement in the improvement of urban facilities included public and private transport facilities. The Transport (Planning and Research) and the Urban Public Transport (Research and Planning) Acts of 1974 authorised research to be conducted at the request of the States.

Financial influence does continue through road grants. The current road grants take place under the Road Grants Act 1980. The Act spells

48 D Scrafton, "Urban Transport Policy", Search Vol 10 nos 1 and 2 (1979) 14, 18.

49 Highways Act s 10(2), s 27(1).

50 The Australian National Railways Act 1917-77 s 6 establishes the Australian National Railways Commission.

51 The agreement between the Commonwealth and South Australia is given effect in the Commonwealth Railways Agreement (South Australia) Act 1975 and the South Australian Railways (Transfer Agreement) Act 1975. Under s 11 of the Commonwealth Act and s 13 of the South Australian Act, the Australian National Railways Commission is authorised to operate non-metropolitan railways in South Australia.

out the terms on which the Commonwealth provides financial assistance to the States. Precise arrangements are set out in the "Notes on Administration" compiled by the Commonwealth Department of Transport (now called Transport Australia). The grant system under the 1980 Act is based on a division of roads into four categories: National Roads, Urban Arterials, Rural Arterials and Local Roads. The number of categories has been substantially decreased from previous legislation and this reduction has reduced the capacity for Commonwealth direction.[52] Similarly, grants for specific road needs, as were provided for example for the Eyre Highway, are no longer provided for separately but included in overall funding arrangements.

Separate processes exist for the making of grants with respect to the categories of national roads,[53] arterial roads[54] and local roads.[55] With respect to national roads[56] the Commonwealth exercises greatest influence as the Commonwealth Minister for Transport may indicate what construction or maintenance work, what order of works and what standards for works he considers necessary. These views will bear heavily upon a State in submitting a programme of works for approval and thus financial support. For arterial roads[57] the State has the initiative in submitting a programme of works for approval. For local roads[58] a less specific process of approval for a programme of allocations on agreed principles is involved. The grants to the States are conditional upon expenditure in accordance with agreed programmes.[59] In addition the Commonwealth attaches as a condition of the grant of Commonwealth money a requirement of spending by the States from their own resources. A quota of such expenditure is set out for each State in the Fifth

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52 The previous processes for national government review of road spending have been criticised for creating dual systems of policy formulation, neither of which could be implemented, and difficulties of programme implementation causing considerable wastage. See Maclean and Hickman, *A More Critical Look At Some Of The Assumptions Used in Allocating Commonwealth Government Assistance for Land Transport Investment* (Australian Transport Research Forum, Adelaide, 1976).

53 National Roads encompass national highways and developmental roads. National highways include the principal roads between State capitals and other roads considered to be of national importance (s 4(1) and (2)). Developmental roads are those whose development is considered to be of national importance because of their impact upon the development of particular industries or particular energy resources or in facilitating or developing trade or commerce with other countries or among the States (s 5(3)).

54 Arterial Roads are those declared as either Urban Arterial Roads or Rural Arterial Roads by the Commonwealth Minister (s 4(1)).

55 Local Roads are all roads other than National Roads and Arterial Roads (s 4(1)).

56 With respect to National Roads, the Commonwealth Minister for Transport may notify a State of construction or maintenance work, the order of works, and the standards for works which the Minister considers necessary to be observed (s 6). The Minister may then request the State to submit a programme of works incorporating the matters notified (s 7(1)). Such a programme may then be approved (s 7(2)). In addition to this process a programme of works may be independently approved (s 7(4)).

57 With respect to Arterial Roads a programme of projects may be submitted by a State and may be approved by the Commonwealth Minister (s 11). The money paid by the Commonwealth is divided between Urban and Rural Arterial Roads (s 12).

58 With respect to Local Roads a programme of allocations is submitted and approved (s 15). Principles to govern these allocations may be agreed between a State and the Commonwealth Minister (s 16). The allocation covers both money to be spent both by the State and by any government authority in the State responsible for roads (thus covering local councils) (s 14).

59 Ss 9, 13, 18.

Schedule of the Road Grants Act. If any State does not meet its quota it must pay to the Commonwealth the shortfall.[60].

The failure to revise the Metropolitan Development Plan to accord with government transport policy has meant that the land-use planning system at the future policy level does not provide for transport routes. Undoubtedly the Highways Department particularly carries out assessment of future policies. However these policies have never been subject to any formal process of announcement, public debate and adoption. Apart from the Metropolitan Development Plan, any person inquiring about government highway policy would be referred to Cabinet minutes (which are unlikely to be available), press reports of government decisions (such reporting is necessarily haphazard), and Highways Department annual reports (which rarely elucidate issues of this level).

There is one example of a formal statement of State government transport policies in the creation of a completely separate body of plans for road widening. The Metropolitan Adelaide Road Widening Plan Act 1972-76 instructs the Highways Commissioner to prepare a plan known as the Metropolitan Adelaide Road Widening Plan.[61] The Commissioner may amend or vary that plan from time to time. The Plan and any amendments are deposited with the Registrar-General of Deeds in the General Registry Office in Adelaide.[62] In fact the plan consists of some 45 maps covering the Adelaide metropolitan area and setting out details of all planned widening of major roads.

The Plan has a considerable impact on the private use of land. No person may allow any building work to be carried out on any land shown on the Plan as possibly required for road widening and any land within six metres of the boundary of that land without the consent of the Highways Commissioner.[63] If any such work proceeds its value is not taken into account in fixing compensation payable if the land is in fact acquired by Commissioner for road widening purposes.[64] Applications for consent must be in the prescribed manner.[65] Consent may be granted or withheld or granted subject to conditions.[66] The Act imposes no limits on the discretion of the Commissioner in granting his consent. The restrictions under the Metropolitan Adelaide Road Widening Plan Act are prescribed encumbrances which must under s 90 of the Land and Business Agents Act [67] be disclosed to purchasers of land.

As well as the absence of mechanisms for debate about future policy, no structures exist for debate about individual projects. To some extent these decisions are subject to legal procedural requirements where compulsory acquisition is involved or where an environmental impact assessment is required. These topics are examined later in the article.

5 Local Government Transport Responsibilities

Local councils have maintained responsibility for roads subject to the powers of the Commissioner of Highways. Their major source of power

60 S 19(2).
61 Metropolitan Adelaide Road Widening Plan Act s 5(1).
62 S 5(2).
63 S 6.
64 S 7.
65 S 8(1).
66 S 8(2).
67 See Regulation 44(3)(4)(viii).

is the Roads (Opening and Closing) Act. Subject to the Highways Act, all roads are vested in the care, control and management of the council of the area in which they are situated.[68] There is a large portion of South Australia which has not been subject to local government incorporation and in these areas the management of roads vests in the Commissioner of Highways.[69] Councils have power under the Roads (Opening and Closing) Act to open any new road and alter, add to or close all or any part of an existing road.[70]

The hierarchial structure established by the State government to co-ordinate State transport authorities does not include the local councils. However responsibility for roads is vested in both the councils and the Commissioner of Highways. When the Highways Act was first introduced a formal division between central and local responsibilities was devised through the classification of main roads. A list of main roads was set out as a schedule to the Act and those were envisaged as the roads for which the Commissioner of Highways would be responsible. However the Commissioner may take responsibility for any road.[71] The assumption of power merely requires notice to the council in whose district the road is situated.[72] Since the Act thus allows complete flexibility as to the responsibility, formal expression has not been maintained and the schedule of main roads has largely fallen into disuse.

Although no special mechanisms for council transport policy determinations exist, procedures for debate about specific projects have been established. The activities of local councils are more likely to produce controversies at the specific project level. Certainly decisions whether to open or close a road commonly provoke considerable community reaction. The Roads (Opening and Closing) Act sets out procedural steps to be followed before a road is opened or closed.

Under this Act the procedures involve the preparation of plans covering the work involved. The plan must be lodged with the Surveyor-General. The Surveyor-General is required to give notice of the plan to the Director of Planning.[73] Yet again no control function seems to be involved; the notice appears to be solely for record purposes — the Director of Planning is not called upon to make any response and is not given standing in respect of the subsequent procedures under the Act.

The survey plan to be lodged with the Surveyor-General must show the exact position of boundaries and measurements of any new road or alteration or closure.[74] The names of the owners and occupiers of, and

68 Roads (Opening and Closing) Act s 6(2).
69 S 6(1).
70 S 9. The opening and forming of roads is also a power of local councils under s 383 of the Local Government Act, but the power under this section has been held to be limited to the physical acts of road making and not to be concerned with land ownership: *Attorney-General ex rel. Carkeek* v *West Torrens Corporation* (1981) 92 LSJS 483.
71 Highways Act s 26.
72 S 26(1)(b)(11). The informality may lead to some evidentiary problems as the division of responsibility does affect legal liability for injuries to persons using the highway: see *Webb* v *Port Adelaide Corporation and the State of South Australia* (1981) 92 LSJS 411.
73 Roads (Opening and Closing) Act s 11(4).
74 Roads (Opening and Closing) Act s 11(i)(ii).

holders of any mortgage, encumbrance or other charge, or any easement over land affected by the proposals must be deposited.[75]

A notice setting out a general description of the proposal shall be set out in the Government Gazette and sent to all the listed persons.[76] Within a month any person whatsoever may give notice of objection.[77] The council must then hold a meeting to consider the proposal and any objections.[78] Any person objecting who has served a notice of objection may attend the meeting to support his objections either personally or by counsel.[79] At the meeting the council must decide whether or not to confirm the proposal.[80] If it confirms the proposal a copy of the minutes of the meeting must be forwarded to the Surveyor-General.[81] The Surveyor-General must make a recommendation whether or not to confirm the council's order and forward his recommendation with the relevant material to the Minister of Lands.[82] Confirmation is effected by the Governor[83] and thereupon the proposal comes into operation.

The main feature of these procedures is that the objection is made to the body responsible for the proposal. Of course its handling of the objection will influence the Surveyor-General and the Minister for Lands in their review of the proposal. Although notice of the proposal is given only to persons with an interest in land affected and thus may be limited to owners of land which is subject to acquisition or borders a road to be closed, the right of objection is not so limited and includes neighbouring landowners. Little is said about procedure at meetings apart from the right to appear and be represented. The ability to cross-examine council officers will, for example, be significant in establishing the grounds of an objection.

These procedures can be contrasted with the far more elaborate set of rules which has evolved in England for the holding of public inquiries about road proposals. The procedures involved were the subject of review in the recent House of Lords decision in *Bushel v Secretary of State for the Environment.*[84] The dispute flared because of a challenge to the need as opposed to merely the route for a road. The decision in the case turned on the ability to cross-examine as to the basis of departmentally adopted traffic predictions and the use of additional material by the Secretary of State in deciding whether to adopt the recommendations of the inquiry. More significant for current purposes is the existence of the Highways (Inquiries Procedures) Rules 1976 and the extensive adversarial procedures allowed. Thus all parties may be represented and they are entitled to cross-examine departmental officers and call witnesses (including traffic experts) at a hearing before an independent inspector.

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75 S 11(i)(ii) and (iii).
76 S 12(1) and (2).
77 S 12(3).
78 S 12(1).
79 S 13(2).
80 S 14(1).
81 S 14(2).
82 S 14(4).
83 S 14(4).
84 [1980] 3 WLR 22.

The Roads (Opening and Closing) Act procedures have been seriously weakened by interpretation as a protection for residents who wish to object to road proposals. In *Kiosses* v *Henley and Grange Corporation*[85] the objector opposed a plan by the council whereby one of three roads coming into an intersection was to be so blocked that vehicles could not proceed along that road into the intersection and could enter that road only by turning left from one of the other roads. The objector owned a petrol station occupying the land between the road to be so blocked and one of the other roads. He complained of non-observance of the Roads (Opening and Closing) Act procedures. His complaint was rejected on the basis that the proposal did not amount to the closure of a road. Passage was closed to vehicles and not for example to pedestrians. Bray CJ held that only if public right of way was completely prevented was a road to be regarded as closed.

On the other hand Bray CJ doubted the powers of councils to do what was being proposed. These doubts are of significance because of the widespread use of barriers to prevent vehicular passage along a road or to gain access from a road to another road. These efforts are a response to the rectilinear grid system of roads whereby a great many roads provide access from one point to another and allow detour to avoid delays on major roads.

Subsequent to the *Kiosses* decision, a different technique has been resorted to in order to secure a sound legal basis for these barriers. Regulations have been made under the Road Traffic Act which prohibit the driving of vehicles on that portion of the road which is to form the barrier (see particularly the Traffic Prohibition (Unley) Regulations of 27th July 1972 most significantly amended on 9th January 1975). The Road Traffic Act[86] allows for Regulations to be made by the Governor:

> "(c) prohibiting regulating or restricting the driving or standing of vehicles upon prescribed roads or parts of roads or on roads or parts of roads within a prescribed area."

The Unley Regulations thus rely upon this power to prohibit vehicles on parts of prescribed roads. The barriers are then properly classified as traffic control devices because they are structures guiding the movement of traffic. Local councils cannot put this procedure into operation of their own power. They must induce the Governor to make regulations — on these matters the views of the Road Traffic Board are paramount.[87] Any traffic control devices must comply with any relevant regulations,[88] be approved by the Road Traffic Board[89] and may be installed or removed only with the approval of the Board.[90]

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85 (1973) 6 SASR 186.
86 Road Traffic Act s 176(1).
87 S 15(f).
88 Regulations may be made pursuant to s 176(1)(a) "prescribing the design, colour, marking or other specifications of traffic control devices and of any other lines, marks or words which may be placed or inscribed on road surfaces for the regulation or guidance of traffic and for regulating and controlling the construction, erection, marking and use of such devices, lines, marks or words".
89 S 15(1).
90 S 17(1) and (2),

6 Compulsory Acquisition

The performance of their transport responsibilities may lead State or local transport authorities to wish to purchase land without the agreement of the current landowner. Powers to do this normally involve procedural safeguards for the current owner. Clear authority exists for the compulsory acquisition of land by the Commissioner for Highways for a road, by a local council for a road, and by the State Transport Authority for a railway or tramway. Some doubt exists as to the powers of the State Transport Authority to acquire compulsorily for a busway not to run along a road.

The Commissioner for Highways has a general power to acquire land by agreement or otherwise for the purposes of the Act.[91] He may also acquire land by agreement or compulsory process for use as a quarry or a depot for storing plant or material.[92] He may also acquire land by agreement or compulsory process to widen or make any deviation in a road.[93] When the Commissioner for Highways acquires land he is authorised to acquire not only land actually required for his purpose but also such additional land as he deems expedient. All acquisitions require the approval of the Minister.

The Roads (Opening and Closing) Act authorises the opening of a road by a council.[94] A road may not be opened through any garden, orchard, vineyard, yard, park, or planted walk or any enclosed ground planted as an ornament or shelter for a house, for ornamental purposes or as a nursery for trees.[95] This limitation is confined to such lands in private ownership and the Roads (Opening and Closing) Act contains no protection for parklands owned (as would be the common situation) by a local council.[96] In cases of lands protected by the Act the council must either obtain the consent of the owner or a declaration from the Minister of Lands authorising the opening. Before the Minister may grant an authorisation he must wait one month after notice to persons affected and take into account any representations from them. The scope of this special procedure – especially the inclusion of gardens, yards and enclosed grounds planted to shelter a house – would seem to entail its application quite commonly.

The Roads (Opening and Closing) Act because of its special exemption seems to contemplate the opening of a road on private land. It has provisions for the exchange of land by agreement with the land-owner.[97] The Supreme Court has recently confirmed that the processes of the Act

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91 Highways Act s 20.
92 S 10.
93 S 27.
94 Roads (Opening and Closing) Act s 9.
95 S 7.
96 *Attorney-General ex rel Carkeek* v *West Torrens Corporation* (1981) 92 LSJS 483. Other protections for public parks may exist including a general law trust (see *Brisbane City Council v Attorney General.* [1979] AC 411) possibly enforceable under s 62 of the Trustee Act.
97 S 10.

are directed to the acquisition of land ownership from private persons.[98] Once a council order for a new road has been confirmed by the Governor on the recommendation of the Minister for Lands, the land becomes a road, is dedicated to the public and under the care, control and management of the council.[99] The only express reference in the Roads (Opening and Closing) Act to compulsory acquisition is in s 5 which states that the Land Acquisition Act is incorporated with the Act and the council shall be regarded as the promoter of an undertaking for the purposes of that Act (the section excepts sections of the now repealed Compulsory Acquisition of Land Act 1925). The Local Government Act gives councils power to acquire land compulsorily for undertakings (which include roads) but this power is to apply only in cases not provided for by the Roads (Opening and Closing) Act.[100]

The State Transport Authority has power to acquire by agreement or compulsory process any land which it deems necessary to acquire for carrying out any railway works.[101] Railway works include both the railways themselves and any works or conveniences connected with or for the purpose of any railway.[102] The State Transport Authority also has power to purchase and take subject to the Land Acquisition Act any land which in the opinion of the Authority is necessary or convenient to be purchased for any purpose authorised by the Bus and Tramways Act.[103] The Authority has power to operate trams[104] and make tramways.[105] It also has power to operate buses.[106] The reference to the making of tramways and the absence of any reference to the making of busways could be argued to place the construction of a busway not on a road outside the purposes of the Act. The Act may not have contemplated a specialist busway – its provisions show concern for the operation of buses on roads not previously used for buses.[107]

Compulsory acquisition under the Land Acquisition Act involves procedures similar to those required by the Roads (Opening and Closing) Act. Notice must be given by the Authority to any person having an interest in land to be acquired.[108] Any such person may then require an explanation of the reasons for the proposed acquisition and details of any scheme governing the acquisition.[109] The authority must respond to this demand.[110] Additionally the person may challenge the acquisition – requesting that the proposal be not proceeded with or be altered in some way.[111]

The challenge to acquisition may be based on any grounds, but the grounds can include:

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98 *Attorney General ex rel Carkeek* v *West Torrens Corporation* (1981) 92 LSJS 483.
99 S 15.
100. Local Government Act s 407.
101 Railways Act s 56(2).
102 S 56(1).
103 Bus and Tramways Act s 48.
104 S 27(1)(a).
105 S 27(1)(h).
106 S 30.
107 S 33.
108 Land Acquisition Act s 10.
109 S 11.
110 S 12.
111 S 13(1).

serious impairment to an area of scenic beauty;

destruction or adverse effect upon a site of architectural, historical or scientific interest;

creation of conditions seriously inimical to the conservation of flora and fauna deserving of preservation in the public interest;

adverse prejudice to any other public interest.

Again the challenge is not made to an independent body but to the acquiring authority. The authority must however consider the matters raised and inform the person raising them of its decision.

Compulsory acquisition procedures have been extensively reviewed by the Australian Law Reform Commission.[112] Generally South Australian procedures were kindly regarded by the Commission.

The effort to avoid development of land likely to be needed for future road usage and thus to reduce compensation outlays involved lies behind the provision for reservation in zoning regulations of land needed for public purposes and in practice is most clearly evidenced in the Metropolitan Adelaide Road Widening Plan. These techniques impose legal restrictions on the use of land. Even without these restrictions the existence of highway plans will inhibit the use of land. Whilst the early and well-publicised notice of plans thus smoothes the ultimate process of acquistion, problems exist in the interim period. In the extreme an existing land-use may have become obsolete but even in other cases normal maintenance will be impaired. Sales are difficult. To alleviate the situation of the land-owner subject to these restrictions, both the Planning and Development Act and the Highways Act provide some extension of the rights of compensation on acquisition.

The Planning and Development Act offers compensation when a land-owner attempts to sell land reserved for public purposes by planning regulations. The owner may have sold the land at a price affected by the reservation or been unable to sell it. In the former case he may claim the difference between the value at the date of sale as affected by the reservation and the value without that effect.[113] In the latter case he may claim the similar difference in value as at the date of claim[114] or the acquiring authority may proceed to acquire the land for the purpose for which it has been reserved.[115] Any compensation paid for difference in value is later taken into account when compensation is paid for acquisition.[116]

The Highways Act is more generous to the land-owner[117] in that he may force acquisition ahead of the time when the land is needed for

112 Australian Law Reform Commission, *Lands Acquisition and Compensation – ALRC 14* (1980).

113 Planning and Development Act 1966 s 64(2)(a). The Planning Bill 1981 contains a similar provision in clause 66(3).

114 S 64(2)(b). Again the Planning Bill equivalent is clause 66(3) but this clause allows compensation to be claimed even without an attempt to sell.

115 S 64(3). The Planning Bill clause 66(b) allows a landowner to force acquisition if consent to development is denied and he is unable to sell.

116 S 68. The Planning Bill Equivalent is clause 66(7).

117 Than the Planning and Development Act but probably not more so than the Planning Bill.

highway. The land-owner may apply for a certificate from the Minister for Transport.[118] The certificate is not to be granted unless the Minister is satisfied:

> "there is a possibility that the whole or part of the land may be required by the Commissioner for the purposes of the Highways Act;
>
> by reason of that possibility the value of the land is adversely affected; and
>
> by reason of the fact that the value of land is adversely affected, the owner of the land has suffered or may suffer hardship." [119]

The only limitation on this procedure is the extent of the discretion entrusted to the Minister. The Act magnifies this discretion by providing that "no proceedings shall be instituted or heard in any court or tribunal in respect of the grant of such a certificate or the failure or refusal of the Minister to grant such a certificate".[120]

7 Environmental Impact Assessment

One of the issues involved in transport route decisions is that of environmental impact. The procedures for assessment of impact assume greater significance because of the extensive exemptions for transport authorities from the system of planning controls. In South Australia other than the controls of the planning system there are no legislative controls requiring assessment of environmental consequences prior to the construction and operation of a transport route. The operation of the route would be subject to pollution controls, but apart from design standards for motor vehicle emissions no pollution controls currently in force affect moving vehicles. Operators do face the possibility of actions in nuisance.

The South Australian government requires as a matter of administrative practice all government agencies to comply with environmental assessment procedures. These procedures are set out in the then Department for the Environment's Environmental Impact Assessment Handbook of May 1978. Pursuant to these procedures a notice of intent for any new transport operation must be served by a transport authority to what is now the Department of Environment and Planning. That Department decides whether the project may be approved on environmental grounds or requires the preparation of an Environmental Impact Statement. If any Environmental Impact Statement is considered necessary, the decision to require it must be made by the Minister of Environment and Planning.

If an Environmental Impact Statement is to be prepared, its format is governed by guidelines in the Handbook. The transport authority must submit a draft statement to the Department of Environment and Planning for assessment of its adequacy and then make the draft available to the public for comment. The transport authority then revises its draft. The final statement is again submitted to the Department of Environment and Planning. That Department then makes recommendations to its Minister for approval, or the imposition of

118. Highways Act s 20(1).
119 S 20b(2).
120 S 10B(1).

conditions, or rejection. Despite suggestions in the Handbook of a veto power for the Minister of Environment and Planning, it appears that if the views of that Minister and the transport authority cannot be reconciled the matter is referred to Cabinet.

Under the new Planning Bill environmental impact assessment may be statutorily required for any development of major social, economic or environmental importance.[121] However prescribed government agencies are not subject to any of the controls of the Bill.[122] It is unclear whether development by a government agency which is not subject to the statutory assessment procedure (either because the development is not of major importance or the agency is a prescribed agency) will continue to be subject to an informal environmental impact procedure. It is possible that such procedures will continue to be imposed by a government policy direction to all State government agencies. Alternatively any agency may decide itself to continue such procedures.

Under the current policy, the Highways Department has established its own procedures for environmental assessment.[123] These procedures commence with a division of highway projects into three categories:

i projects having little or no significant environmental impact;

ii projects of potential environmental significance but for which acceptable treatment is clear;

iii projects of major environmental impact.

Examples given of works within the first category include resealing and traffic control devices. Examples given within the third category are major relocations and new routes through areas involving sensitivity with respect to the social and physical environment.

Works within the first category are handled within the Highways Department. Internal reports are required to produce satisfaction that no environmental impact is involved.

Works within the second category involve more detailed evaluation. The Department has its own form – the Departmental Appraisal of Environmental Factors – which requires particulars of the project, its impact upon land-use, heritage items, vegetation, fauna and upon natural features, descriptions of visual effect, and assessment of alternatives. Again evaluation occurs within the Highways Department. Normally the Department of Environment and Planning is merely informed of the assessment though that Department may be asked for evaluation in more contentious cases.

Works within the third category are subject to full investigation. As well as completion of the Departmental Appraisal of Environmental Factors form a planning report is prepared. These documents are then submitted to the Department of Environment and Planning for assessment and appraisal. That Department may then require a formal Environmental Impact Statement.

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121 Planning Bill 1981 Clause 49.
122 Clause 7(4).
123 See generally, Shepherd, *An Evaluation of a State Road Authority's Environmental Impact Assessment Procedures* M Env Thesis, University of Adelaide, 1980.

The preparation of an Environmental Impact Statement is the only point within these procedures where public participation is formally required. So far an Environmental Impact Statement in relation to a highway has been required only for the Stuart Highway and in that case special caution was called for (and the subject of concern to the national government) because of possible impact upon sites of aboriginal significance. Traditionally public input has been the result of dealings between the Highways Department and local councils. Of late the Department has shown some awareness of the need for increased public relations.

8 Transport for the North-East

The major transport issue in South Australia in the past decade has concerned the means by which transport would be provided for Adelaide's north-eastern suburbs. Adelaide's topography has dictated that growth occur to the north (Elizabeth-Salisbury), north-east (Modbury-Tea Tree Gully) and the south (Noarlunga). Access from the north-eastern suburbs to the city has traditionally been provided by roads which suffer from considerable congestion over the last couple of miles into the city.

The Metropolitan Development Plan and the Metropolitan Adelaide Transport Study Plan both provided a common answer to this problem: the Modbury freeway. To enable penetration through Adelaide's inner suburbs the freeway moved along the valley of the River Torrens. The proposal thus ensured opposition from environmental groups. The value of the river valley is accentuated by the dry character of the Adelaide plains and the absence of other rivers – even the Torrens is not a substantial waterway. Despite these factors many of the creeks forming the tributaries of the Torrens have been built over or modernised into concrete channels.[124]

The government moratorium on freeways meant that improvements to transport for the north-eastern suburbs occurred in a piecemeal fashion. In 1977 the State government determined to discover a long-term solution to the problem. It set up the North East Area Public Transport Review within the Department of Transport. That review commenced from a rejection of any freeway solution.

> "There is a need to improve public transport to the north-east suburbs. The outer north-east is among the faster growing areas in Metropolitan Adelaide. Overall the population of the north-east area will increase by 20% during the period 1976 to 1996. The outer suburban area, with over 60% growth in population, will reach a total of 170,000 in the same period.
>
> Roads linking the north-east with the City are showing signs of congestion and by 1996, even with another road into the City similar to the North East Road, congestion would be serious and peak hours would be long.
>
> The Government will not build such a road because the only possible location, except for a large scale demolition of existing houses, would be along the Modbury transportation corridor –

124 Ed Warburton, *Five Creeks of the River Torrens* (Department of Adult Education, University of Adelaide, 1977).

> the freeway route defined during the Metropolitan Adelaide Transportation Study (MATS). The environmental impact of a freeway on the River Torrens, particularly its inner end and the traffic impact on the City of Adelaide, would be intolerable.
>
> The Government is therefore considering the construction of a modern rapid transit facility to provide improved public transport as a viable alternative to the car for radial trips to reduce pressure on the arterial road system."[125]

The proposal resulting from NEAPTR was a light-rail or tram route between Tea Tree Gully and the city. This transport mode had significant environmental advantages, because of reduced noise pollution, a compact surface area lessening land impact, and particularly an absence of air pollution. However the ultimate route chosen was close to that of the Modbury freeway, went alongside the Torrens river through the inner suburbs, and required five river crossings as the river curved along its route. Again the major opposition was based on environmental grounds. The change of government in South Australia in 1979 led to a review of the light-rail proposal. This review produced a preference for a guided busway – giving more flexibility outside the major corridor – but no change to the route.

The process leading to the choice of the NEAPTR tramway and later guided busway provides evidence of the methodology for public debate utilised by transport authorities. The methodology to be used was one chosen by the Department of Transport free from any controls upon its choice. The Department ensured public release of information from an early stage and took great efforts to explain its work to any enquirers. The process involved response to inquiries from individuals or small numbers of persons. The presentation of alternatives came only when objections to the river route through the inner suburbs were encountered; then the alternatives took the form of routes through minor suburban streets and lanes and encountered predictably strong opposition from local residents.[126]

There was no public interchange on the matter[127] and certainly no opportunity for examination of transport officials on the model illustrated by *Bushell's Case.*[128]

As part of the process before a final decision by government an Environmental Impact Statement was prepared. This Statement was needed because of the State Government policy relating to public authorities and moreover financial assistance was to be sought from the Commonwealth government. The draft Statement was prepared by the

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125 Director-General of Transport (S.A.), *North East Areas Public Transport Review – Transportation Alternatives Between Lower Portrush Road and the City of Adelaide* (1978) p 1.

126 One attempt at presentation of options seems to have occurred in Northern Tasmania as a result of Commonwealth pressure – Public Consultation in Transport Planning, *Transport Australia* vol 23 (1979) 7.

127 Cf Warburton, "Does The Government Want Real Discussion Of The Issues?" *Public Transport For The North East – Is There A Choice?* (Department of Continuing Education, The University of Adelaide, 1978). Some press correspondence between the author and Dr Scrafton (the Director-General of Transport) occurred at the time, see *Advertiser* 24 May 1978 p 8; 25 May 1978 p 5.

128 [1980] WLR 22.

Department of Transport and made available for public comment. After revision it was approved by the Department for the Environment and accepted by State Cabinet.

The course of the transport route through the inner suburbs along the River Torrens gave rise to many environmental concerns. They included four general areas. Firstly, the transport track was likely to affect mature trees, native shrubs and grasses and water plants which provide food and habitat for birds and animals. Secondly, the river's water quality could be affected and suggestions were made of the need for channel modifications to compensate for flow impediment caused by bridges. Thirdly, the track alongside the river and the bridges across it raised questions of the visual attraction of the river. Fourthly, the route could result in partial loss of the river environs for the community and detract from activities in areas still available. The Environment Impact Statement concedes these matters. However it does not detail plant bird and animal life to be affected. It states that visual impact is a matter for good design. It does not explain what river peninsulas would be cut off, what impediments to access would arise or how great the noise impact on recreational activities would be. As well as lack of detail as to the consequences, no assessment is made of their significance, nor of the balance between the impacts and the transport benefits of the route.

The procedure adopted for environmental impact assessment in the case followed the norm in Australia. A draft statement is prepared by the proponent, made available for public comment, then finalised and submitted for response to the environment department; ultimately the decision to proceed remains with the proponent though Cabinet could intervene in the case of dispute. The proponent seems to be reviewing a project to which it has become firmly committed whilst the environment department occupies the uncomfortable position of one government agency assessing the work of a fellow government agency. In contentious matters differences of view are such that it is unreasonable to expect that production of reports will produce harmony. However the appearance of self-justifying exercises does detract from the effectiveness of environmental impact statements as a public relations exercise.

The planning input for NEAPTR reveals some of the weaknesses of the authorised development plan structure when combined with informal policies on transport routes. The Modbury corridor remained part of the Metropolitan Development Plan and the highway authority purchased much of the land away from the river necessary for that route. When the State government committed itself against large-scale interference with private property, the existence of a route in public ownership foreclosed most of the options.

The task of solving the provision of transport for the north-east was left almost solely to the transport authority and the participation of the planning authority seems to have been negligible. Yet the planning authority foresaw the rapid growth in the north-east and indeed sponsored special legislation for the opening up of the Golden Grove area.[129] Responsible planning would seem to have demanded research by the planning authority into alternative means of providing transport for this development.

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129 Tea Tree Gully (Golden Grove) Development Act 1978.

9 Conclusions

During the late nineteen-seventies, the administration of South Australia's planning laws was fundamentally reorganised along lines reflecting the philosophy of Mr John Mant, the then Director-General of the then Department of Housing, Urban and Regional Affairs. Central to the reorganisation was the concept of sector management. The State was divided into a number of sectors and within each sector there was a sector manager responsible for the activities of the Department in that sector.[130]

Sector management reduced the emphasis upon the development approval function of the planning authority. The manager was seen more as a co-ordinator of the decisions of public authorities and private persons. Similarly sector management was regarded as providing a more positive role for the planning authority. Instead of merely reacting to proposals of others and rejecting those to which a clear planning objection existed, the manager attempted to stimulate development promoting planning policies. This process utilised government agencies such as the Housing Trust and the Land Commission, but conceptually could have utilised private developers through such devices as financial incentives and special agreements.

Planning regulations in South Australia have relied heavily upon zoning and thus have set minimum standards for development and attempted to remove land-use conflicts through use segregation. They have offered little scope for project performance standards. Sector management favoured discretionary controls and negotiation on a project-by-project basis with potential developers.[131] Limits on the discretion of the planning authority were to be provided through official policy documents.[132] Thus the decision on *Tanczos* v *State Planning Authority*[133] which emphasised the impact upon discretion of authorised development plans was regarded by the planning authority as a significant victory.

The current South Australian government has, as indicated previously, introduced the Planning Bill 1981 which involves a complete revision of the State's planning laws. But prior to the tabling of the Bill, it made administrative changes which have downgraded sector management and restored the emphasis upon development control. A greater emphasis on control function is also inherent in the amalgamation of the planning and environment departments as the interaction between the departments (as currently functioning) lies largely in the pollution control function of the environment department. It is doubtful whether sector management operated for sufficient time for any conclusions to be drawn as to its effectiveness. Its significance for this paper lies in its recognition of problems of the type posed by transport development.

130 State Planning Authority, *Annual Report 1977-78* pp 4-5. A significant review of these developments is provided by Fogg, *Process, Procedures and Plans* (1980).

131 The relationship between plans and approval decision is explored in Roberts, *The Reform of Planning Law: A Study of the Legal, Political and Administrative Reform of the British Land-Use Planning System.*

132 Evidence for these preferences is provided by the control procedures set out in the Tea Tree Gully (Golden Grove) Development Act 1978.

133 *State Planning Authority* v *Tanczos* (1979) 20 SASR 491.

This article has discussed transport planning and implementation because of the interaction of those systems with land-use policy making and controls. The article has pointed out that the planning system attempted to provide for transport in its policy documents but the system has remained officially locked into the transport vision of the nineteen-sixties. The implementation of transport policy through specific projects has been largely beyond the influence of planning authorities. In addition many transport decisions affecting land-use, such as parking fees and taxi licensing, fall outside the planning system because that system is based on land-use control.

No legally recognised statement of transport policy exists. Prospects for a blueprint for future urban transport proposals seem remote – the prospects for the interrelation of such proposals with overall urban development are even more remote. The review of policy statements within the planning system setting out proposals for a period which has now expired and departing significantly from what the government actually intends must cause considerable doubts about the structures currently used. At the same time, democratic government seems impossible when policy remains locked away solely in the knowledge of the bureaucracy.

The lack of policy statements makes project decisions more significant. At this level there is a degree of specificity and timing not possible in policy statements. Concentration on this level also ensures constant updating of outlook. For these purposes sector management was important. The system could attempt to co-ordinate decisions by public and private authorities and maintain an overall picture of urban development, even if only on a relatively short-term basis.

Public involvement in transport decisions by State government agencies has not been given any legal guarantee apart from the impact of compulsory acquisition and environmental impact assessment procedures. Sector management did not change this situation and its emphasis upon discretionary appraisal of individual proposals may have increased a tendency to confine discussions within different parts of the bureaucracy. Public involvement pursuant to environmental impact assessment has been and seems planned to continue to be limited. It is remarkable that the only general legal processes for public involvement in transport decisions are at the local government level – apparently the State government wishes to impose procedures on another branch of government but not upon its own instrumentalities.

The division between central and local transport jurisdictions, although without system in relation to highways, seems to have properly imposed responsibility upon local councils for issues of concern to local communities. Local amenity is much influenced by matters such as street widths and road interconnections. Local councils in dealing with subdivision applications have struggled with these problems because of their lack of expert resources. Some imbalance may well have resulted from their dependence upon transport authorities for advice. Whether or not differences within local communities can be reduced, procedures have not operated as originally planned and that factor may have contributed to public controversy. On the other hand resort in the case of road barriers to the Road Traffic Act has ensured some balance of local and metropolitan-wide interests.

Public authorities have played a significant role in the development of resources in Australia. Recently greater interest has been shown in legally prescribed procedures affecting these authorities — measures such as administrative appeals, compulsory acquisition processes, environmental impact assessment and review by ombudsmen. Increased public scrutiny will demand greater efforts by public authorities to explain their actions. Greater knowledge may increase public satisfaction and communication has the potential to improve the responsiveness of public authorities to their constituencies. Transport authorities have operated virtually free from any legal restraints in this direction. The land-use planning system on the other hand, possibly because of its intrusion on established proprietary interests has stressed public involvement in policy formulation and decision making and set out elaborate procedures. However the system has not operated in South Australia to cover the transport field and overcome inadequacies of the processes of transport authorities. In turn this failure reveals limitations of the land-use planning system as a total system for all public and private land development.