



Strategic and Legislative Overview

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3.0 Strategic and Legislative Overview

3.1 Introduction

Recreational trails cannot be created in isolation; they must sit within the strategic and legislative context established by State and Local Governments. The State Government, through its various strategies and local councils, through their Strategic Management Plans, provide a comprehensive framework which guides the distribution of resources. In addition, State and Local Governments are responsible for the implementation of a wide range of legislation and by-laws which impact on new and existing trails. These laws have a significant influence on the location, construction and ownership as well as the ongoing management and maintenance of trails.

It is important, therefore, that careful consideration is given to all relevant Government legislation and strategies when planning for a new trail or reviewing an existing trail. While this may seem an onerous task, it is an essential one. A thorough understanding of the legislative and strategic context within which a trail proposal sits will help to avoid future pitfalls and improve the channels of communication with Government officials. Importantly, a well researched trail proposal is likely to be taken more seriously and, if supported by relevant strategies, will be more likely to attract funding and other forms of support.

This chapter provides a concise summary of the main legislative and strategic documents which are relevant to recreational trails. These documents should be reviewed as a minimum when planning a new trail or further developing an existing trail. The flowchart below illustrates the hierarchy and interaction between the levels of Government, their various strategic plans and the legislation which may relate to trail proposals.

Figure 1:
Strategic and Legislative
Flowchart



3.2 State Level

The State Government, through its various departments, plays a significant role in both the provision and support of recreational trails. This is most evident on Government owned land such as national parks and forestry reserves where recreational trails are often provided and maintained. The State Government also plays a major role by funding trail proposals, providing strategic direction through policies and plans and through the promotion of the existing trail network.

3.2.1 Strategic Plans

South Australia's Strategic Plan

Released in January 2007, the Strategic Plan presents the State Government's aims to improve the wellbeing of South Australians through increased prosperity and economic growth, together with better access to important services such as health and education. The Strategic Plan also aims to preserve and improve the environment, promote innovation and creativity and extend opportunity to all South Australians. The Strategic Plan is available at www.stateplan.sa.gov.au.

South Australia's Strategic Plan establishes a series of targets and priority actions designed to redirect the resources and activities of Government in order to meet six key strategic objectives:

- Growing Prosperity
- Improving Wellbeing
- Attaining Sustainability
- Fostering Creativity and Innovation
- Building Communities
- Expanding Opportunity.

An example for trail proposals are the following 'targets' which sit under the "Improving Wellbeing" strategic objective:

- Increase the proportion of South Australians 18 and over with healthy weight by 10 percentage points by 2014 (Target 2.2)
- Exceed the Australian average for participation in sport and physical activity by 2014 (Target 2.3)
- Increase the healthy life expectancy of South Australians by 5% for males and 3% for females by 2014. (Target 2.4)⁴.

All six objectives underpin the reasons for developing a trail, however, some objectives may take a higher priority for different sectors of Government.

The Planning Strategy

The Planning Strategy is an expression of policy which sets out the State Government's vision for development in South Australia and the regions within it. The Planning Strategy covers the full range of social, economic and environmental issues. When preparing and reviewing their Development Plan, local councils are required to maintain consistency with the visions contained within the Planning Strategy.

The Planning Strategy is comprised of three volumes: the Metropolitan Adelaide volume, the Outer Metropolitan Adelaide volume and the Regional South Australia volume. The various volumes of the Planning Strategy are available at www.planning.sa.gov.au.

⁴ South Australia's Strategic Plan
www.stateplan.sa.gov.au

Of interest to proposals for recreational trails, the Planning Strategy supports the establishment of a Metropolitan Open Space System (MOSS). MOSS seeks to create a second generation of parklands throughout Adelaide which will ultimately be a clearly defined, linked system of public and private open space in and around the whole metropolitan area. Importantly, initiatives to improve land within the MOSS are considered more likely to receive funding from the State Government's Planning and Development Fund.

The Planning Strategy also promotes the enhancement of the trail network through the improvement of existing trails and by identifying opportunities for new trails such as along rehabilitated watercourses.

South Australian Tourism Plan 2003-08

The South Australian Tourism Plan 2003-2008 is a high level joint tourism industry/government strategic plan which provides direction and purpose to the State's \$3.4 billion (2001) tourism industry and its partners over a five year period.

The Plan seeks to develop South Australia as a 'speciality' tourist destination by improving visitor access and tourism infrastructure; further improving target marketing (with a particular focus on the self-drive market); and strengthening the profitability and professionalism of the industry. The plan is available at www.tourism.sa.gov.au.

While many of the ideas contained in the Tourism Plan are of relevance for trail proposals, it is suggested that the objectives and strategies which underpin Goal 1 "Enhance and grow the State's authentic experiences" are of particular relevance.

Be Active: Physical Activity Strategy for South Australia 2004-2008

The aim of the Physical Activity Strategy is to establish a framework that fosters strong partnerships between Government, community and private sector organisations to support increased levels of physical activity in the South Australian community.

The Strategy responds to surveys which have found that half the South Australian community are not sufficiently active to gain health benefits. Across all age groups physical activity levels are declining, which can have serious health consequences leading to chronic diseases and conditions such as cardiovascular disease, diabetes and obesity.

The Strategy provides a framework and a detailed implementation and action plan will be developed. This will bring together relevant government and non-government organisations, private enterprise and community groups to address the issue. The strategy is available at www.recsport.sa.gov.au.

Of interest to trail proposals is the Strategy's emphasis on establishing partnerships across Government departments and between community organisations as well as encouraging the development of environments that support increased levels of physical activity amongst the community.

Safety in Numbers – A Cycling Strategy for South Australia 2006-2010

In February 2006, the State Government released *Safety in Numbers – A Cycling Strategy for South Australia 2006-2010*. The strategy is available at www.transport.sa.gov.au. The goal of the strategy is to achieve "More people cycling safely more often in South Australia, with an aim to double cycling trips by 2015".

To achieve this, *Safety in Numbers* promotes the objectives of:

- Effective planning and coordination for cycling
- Comprehensive cycling networks and facilities

- Safer cycling
- Successful promotion of cycling
- Government leading by example.

The strategy includes specific actions to further develop the cycling network, particularly within urban settings, by extending and improving cycling routes, providing links to public transport interchanges and establishing bicycle lanes along arterial roads. The Cycling Strategy is supported by the State Bicycle Fund which assists local Councils to develop and upgrade their cycling facilities in accordance with *Austrroads, Guide to Traffic Engineering Part 14 – Bicycles*. The State Bicycle Fund is administered by the Department of Transport, Engineering and Infrastructure (see page 22).

Draft Recreational Trails Strategy for South Australia 2005-2010

A draft strategy has been developed which is designed to coordinate trail development activities across the State and guide the provision of trail infrastructure and associated services. The Strategy recognises that trails provide significant economic development opportunities, particularly in regional areas where many of the State's icon trails are located. The Strategy has been integrated with other important strategies such as the State Mountain Bike Plan (2001–2005).

The Draft Recreational Trails Strategy provides an important point of reference for any new trail proposal. It establishes the social, economic and environmental importance of trails, it provides a number of principles to guide the development of new trails, it creates a categorisation system which assists in the management and funding of trails and it provides a comprehensive Action Plan for the improvement of the State trail network.

The Action Plan is based on the attainment of the following key directions:

1. Coordination and Partnerships
2. Sustainability and Nature Conservation
3. Opportunities
4. Promotion and Communication
5. Community Involvement
6. Research, Evaluation and Education.

The Draft Recreational Trails Strategy also provides a number of priority projects and actions which include the improvement of existing national and regional category trails as well as the investigation of the suitability of other trail initiatives.

All new trail proposals should be reviewed against the strategic framework established by the Trails Strategy. Specifically, they should consider which category (local, regional, national) they fall under, how they will meet the guiding principles and how they will address the detailed strategies contained in the Action Plan.

3.2.2 Legislation

Development Act 1993

The Development Act 1993 has been established to provide for orderly and efficient planning and development in the State by:

- establishing objectives and principles of planning and development
- establishing a system of strategic planning to guide development
- providing for the creation of Development Plans
- providing for appropriate public participation in planning and the development assessment process.

The *Development Act 1993* has no direct policy role or position: its role is to establish a framework for making policy and provide for its implementation through the assessment of Development Applications. However, trail proposals should consider the documents established by the Development Act including the Planning Strategy and local Development Plans. Trails should be consistent with the strategic direction provided by the Planning Strategy and may require formal Development Approval in accordance with local Development Plans. Further information should be sought from the Planning Section of the Council within which the trail proposal is located.

Recreational Greenways Act 2000

The *Recreational Greenways Act 2000* has been established to secure public access over corridors of land that form part of a recreational trail. The Act allows State Government Ministers to enter into an agreement with the landowner. The Greenways are established by proclamation and become an encumbrance on the land title. This provides trails with security of tenure and provides indemnity to the landholder for public injury.

Trail proposals which seek to utilise the *Greenways Act* to secure access to private land should seek independent legal advice on the process to use a Greenway.

Roads (Opening & Closing) Act 1991

This Act enables roads to be opened or closed by a Road Process Order made by the relevant authority (usually Local Government), confirmed by the relevant State Government Minister and notified in the SA Government Gazette in accordance with this Act. The application of this Act is fundamental to the utilisation of road reserves (made and unmade roads) for trails. In addition, unmade roads may be subject to a lease or permit arrangement between the local Council and adjoining property owner. Trail proposals which seek to use unmade roads should identify whether or not any leases or permits are in place and whether these alter the right of access by the public.

National Parks and Wildlife Act 1972

This Act provides for the establishment and management of reserves for the benefit and enjoyment of the public, to provide for the conservation of wildlife in a natural environment and for other purposes including recreational activities. The Act requires the preparation of Management Plans which set out guidelines for the management and use of National Parks.

New trail proposals that are located within National Parks must be in accordance with the Park's Management Plan. The Management Plan may also identify the type and frequency of usage of recreational trails.

Native Vegetation Act 1991

The *Native Vegetation Act 1991* controls the clearance of native vegetation in South Australia. Under the Act, the clearance of native vegetation requires the consent of the Native Vegetation Council, unless it is covered by an exemption contained within the *Native Vegetation Regulations 2003*.

Native vegetation as defined by the Act includes any naturally occurring local native plants. This covers the full range of native species, from tall trees to small ground covers, native grasses, wetland plants such as reeds and rushes, as well as marine plants. The plants may comprise natural bushland or they may be isolated plants in a modified setting, such as single trees in pastured paddocks.

Vegetation "clearance" includes any activity that could cause substantial damage to native plants. This includes not just cutting down and removing plants, but also

burning, poisoning, slashing of understorey, removal of branches (for example, brush cutting or woodcutting), drainage and reclamation of wetlands, and in some circumstances grazing by animals. Regulations under the *Native Vegetation Act* include a number of circumstances in which native vegetation may be cleared provided all criteria under that particular exemption are complied with.

A clearance application must be made to the Native Vegetation Council for the clearance of any native vegetation that is not exempt under the *Native Vegetation Act*.

This Act has significant implications for trail development as any proposals which seek the removal of native vegetation will require approval unless they fall within a limited range of exemptions (see page 39).

Forestry Act 1950

This Act provides for the creation and management of State forests and other related matters. This Act empowers ForestrySA to regulate the way in which State forests are utilised including access and provision of recreation opportunities.

Aboriginal Heritage Act 1988

This Act provides protection for all Aboriginal objects, remains, sites of spiritual, archaeological, anthropological and historical significance whether they are registered or not. The main features of the Act are:

- protection of all sites with Aboriginal tradition, archaeology, anthropology or history
- provision for traditional custodians to determine whether land or objects are of significance to the Aboriginal people
- provision for the developer and the public to seek a determination through the Minister for Aboriginal Affairs and Reconciliation as to whether an area or an object is of significance.

The Minister responsible for the *Aboriginal Heritage Act* may allow the disturbance of sites following consultation with the traditional custodians, relevant Aboriginal organisations or any other interested Aboriginal person.

Proposals for recreational trails need to consider Aboriginal Heritage matters particularly in coastal areas or along relatively undisturbed creeklines where signs of Aboriginal occupation may be present.

3.3 Regional Level

3.3.1 Strategic Plans

Regional Recreation, Sport and Open Space Strategies

Regional recreation, sport and open space planning has been driven by the Office for Recreation and Sport in association with Planning SA and has resulted in the development of strategies for the whole of the State. Each strategy establishes partnerships with local Councils within the various planning regions to coordinate and prioritise the funding of regional recreation, sport and open space facilities.

Given the linear nature of recreational trails, they often cross Council boundaries and attract users from a wide catchment. Because of these characteristics, trails are often identified as regional facilities by Regional Recreation, Sport and Open Space Strategies and may be more likely to attract funding from a wider range of sources.

More information on these strategies can be obtained from the Office for Recreation and Sport at www.recsport.sa.gov.au and local Councils.

Natural Resources Management Plans

There are a number of Natural Resources Management Plans currently being developed for the eight Natural Resources Management (NRM) regions across the State. These plans will replace existing Catchment Water Management Plans, Soil Board Plans and Animal & Plant Control Board Plans. These Plans will contain strategies to better manage and improve environmental conditions in the various NRM regions. Importantly, recreational trail proposals which contribute to the environmental rehabilitation of an area are likely to be encouraged by these Plans and may be eligible for financial support.

More information about Natural Resources Management Boards and their Management Plans can be obtained at www.nrm.sa.gov.au.

3.3.2 Legislation

Natural Resources Management Act 2004

The *Natural Resources Management Act, 2004* provides an integrated structure for managing South Australia's natural assets including soils, water, plants and animals as well as the diversity of landscapes and ecosystems.

The Act integrates a number of previously separate administrative arrangements into one system, establishes the Natural Resources Management Council as the statewide peak body for natural resources management and creates a number of Regional Natural Resources Management Boards.

The Act also requires the preparation of both State and Regional Natural Resources Management Plans (see 3.3.1). While the State Plan has now been released, the various Natural Resources Management Boards have yet to finalise their Plans. Prior to the completion of these Plans, the existing Catchment Water Management Plans of the former Catchment Water Management Boards continue to provide guidance for the improvement of water quality throughout the regions.

The *Natural Resources Management Act* also prescribes that certain water affecting activities require a permit. This has implications for recreational trails which include water crossings or earthworks which may affect a watercourse. Currently, permits for water affecting activities are issued by the Department of Water, Land & Biodiversity Conservation.

The *Natural Resources Management Act* also requires that land owners must take action to destroy prescribed pest plants including olives, blackberries and gorse. With this in mind, weed control should be factored into the ongoing maintenance and management of trails.

3.4 Local Level

3.4.1 Strategic Plans

Strategic Management Plans

All Councils are required by the *Local Government Act 1999* to prepare Strategic Management Plans for their areas. These documents, which usually have a three to five year planning horizon, establish a framework which guides the allocation of Council resources. Given that the provision of recreation facilities is a core responsibility of local Government, most Strategic Management Plans provide detailed objectives and strategies for the improvement of facilities.

Strategic Management Plans are usually supported by Annual or Corporate Plans which provide greater detail on how the objectives of the Strategic Management Plan can be achieved.

Trail Strategies

A number of local Councils have prepared trail strategies for their areas⁵. These strategies set out where, when and how trails will be developed and maintained and identify the standards which will govern their design and location. Local trail strategies will often address ongoing maintenance responsibilities as well as prioritising limited Council resources for the establishment and maintenance of existing or new trails.

Recreation and Open Space Strategy Plans

While not a legislative requirement, many local Councils have prepared Recreation or Open Space Strategy Plans. These plans provide detailed recommendations for the management and improvement of Council's recreational and open space assets. In many cases, these strategy plans will propose new trails or identify existing trails which are scheduled to be upgraded.

Together with any local trails strategy, the Recreation or Open Space Strategy Plans are usually the first documents that the Council will use to determine whether or not they will support a new trail proposal. They are also the key documents which the State Government uses to allocate funding. Trails that are not identified in local Recreation and Open Space Strategy Plans are much less likely to receive funding than those that are.

3.4.2 Legislation

Local Government Act 1999

In South Australia, local Councils are established by the *Local Government Act 1999*. This gives Councils broad powers to make decisions and deliver services.

Although each Council is different, all Councils should fulfil the following roles and functions:

- prepare strategic management plans and make decisions about priorities for services and facilities in the area
- provide services for the well-being of people who live and work in the local community
- represent the interests of local communities to the wider community, including to State and Commonwealth Governments
- provide open, responsive and accountable Government, and ensure that available resources are used fairly, efficiently and effectively.

Of particular interest for trail proposals is Section 196 of the Local Government Act which requires that all Councils prepare management plans for community owned land. These management plans must state the purpose for which the land is to be held by Council, as well as the Council's objectives, policies and proposals for the management of the land.

Also of interest for trail proposals is the requirement under the Local Government Act for Councils to manage made and unmade road reserves. This involves maintenance, addressing public liability issues and the leasing of unmade road reserves.

⁵
For examples, see
www.dcmtbarker.sa.gov.au and
www.onkaparinga.sa.gov.au

Development Plans

The Development Plan is a statutory or legally binding planning document which sets out the guidelines against which Development Applications are assessed in each Council area.

The Development Plan has two purposes. Firstly, it sets out objectives to guide the type and location of future development across the Council area. Secondly, it provides the detail for the assessment of individual development applications. The Development Plan does this by establishing a network of zones and policy areas over the Council area which describe the desired future character for that particular area. The Development Plan then sets out more detailed criteria against which development applications will be assessed in each zone and/or policy area.

Importantly, the Development Plan only comes into effect once an Application has been lodged. Because of this, it cannot control existing development or influence the way existing land uses are managed. The Development Plan also does not directly control the investment in roads and other infrastructure or the provision of community services such as garbage collection and schools. These infrastructure issues need to be co-ordinated through the Council's Strategic Management Plan in association with the State Government and the private sector.

3.5 Federal Level

While the Federal Government does not have any direct responsibilities associated with recreational trails, it does play an important role as a source of funding for other levels of Government and community associations. For example, the Federal Government has established a network of Area Consultative Committees whose role is to work in partnership with all levels of Government, employers and communities for growth at the local level through building business, creating jobs and fostering sustainable economic development. Area Consultative Committees are also responsible for the administration of Federal Government funding programs such as the Regional Partnerships Program. Further information about Area Consultative Committees can be found at www.acc.gov.au/index.aspx.

The Federal Government also has some legislative responsibilities which may impact on trail proposals.

Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC), the approval of the Federal Environment Minister is required if an action (i.e. a trail proposal) will have, or is likely to have, a significant impact on a matter of national environmental significance.

An action that is "likely" to have a significant impact must be referred to the Federal Minister for the Environment. If the Minister decides that the action is likely to have a significant impact on a matter of national environmental significance, then the action requires approval under the EPBC Act. If the Minister decides that the action is not likely to have a significant impact on a matter of national environmental significance, then the action does not require approval under the Act.

A preliminary indication of whether an approval under this Act is required can be found on the Federal Department of Environment and Heritage website at www.deh.gov.au/epbc.