

14 December 2022

Mr Stimson
Presiding Member
Expert Panel
Planning System Implementation review

Dear Mr Stimson,

Re: Submission to the Expert Panel – Planning System Implementation Review

Thank you for this opportunity to make a submission to the Expert Panel on behalf of Barossa Region Residents' Association, in regard to the Planning System Implementation Review.

We sincerely appreciate the opportunity to contribute the following feedback and recommendations for potential reform in respect of both the PDI Act and the Planning and Design Code.

Planning & Design Code

Rural Zone

Context: The Rural Zone is essential in the protection of the agricultural lands that are key economic drivers for South Australia, and specifically in our context, the Barossa.

Value-adding on rural land has always been important, to diversify and strengthen the economic value derived from this land. However, this value-adding should never threaten the viability or the pre-eminence of this vital primary production land, by becoming the dominant land use (either by sheer physical scale, or by a disproportionate economic scale).

Value adding on rural land must be prioritised towards adding value to the existing primary production (storage & warehousing, sales and consumption of primary produce).

Value adding of tourist development or accommodation must be of a small scale, so that it cannot jeopardise the value of the primary production land, (by becoming the dominant economic driver of that land).

For example:

- Tourist accommodation on Rural Land should be restricted to small scale, equal to a farm stay, for intimate numbers of guests. It's purpose should be to bring guests closer to the 'farm' or rural environment and to provide income for primary producers in the years when the land isn't as productive.
- Tourist accommodation on Rural Land should not be permitted to be large scale, multi-accommodation developments, which remove guests from the rural experience, and skew the economic value of the land away from the Primary Production.

- Similarly, Tourist development or experiences on Rural Land should be strictly small scale, value adding immersive experiences that promote the primary production value of the land.
- Tourist development should not be large scale, large footprint developments that become the dominant land use of the Primary Production land.

There are numerous areas, as outlined below, where the Planning & Design Code requires review and amendment, to ensure that Rural Land is protected, as intended:

1. Incremental erosion of Primary Production land in the Rural Zone

The Desired Outcomes of the Rural Zone are clearly intended to support the production and distribution of primary produce, and to support the viability of primary production land through ancillary value-adding:

Desired Outcome (DO)

Desired Outcome	
DO 1	A zone supporting the economic prosperity of <u>South</u> Australia primarily through the production, processing, storage and distribution of primary produce, forestry and the generation of energy from renewable sources.
DO 2	A zone supporting diversification of existing businesses that promote value-adding such as <u>industry</u> , storage and warehousing activities, the sale and consumption of primary produce, tourist development and accommodation.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

PO 6.3

Tourist accommodation is associated with the primary use of the land for primary production or primary production related value adding industry to enhance and provide authentic visitor experiences.

PO 6.5

Function centres are associated with the primary use of the land for primary production or primary production related value adding industry.

DTS/DPF 6.3

Tourist accommodation:

- (a) is ancillary to and located on the same allotment or an adjoining allotment used for primary production or primary production related value adding industry

DTS/DPF 6.5

Function centres:

- (a) are ancillary to and located on the same allotment or an adjoining allotment used for primary production or primary production related value adding industry
- (b) do not result in more than 75 persons for customer dining purposes.

1.1 The Planning & Design Code is failing to prevent the incremental erosion of available Rural Land for primary production **due to a lack of rigour in regard to the definition of ‘ancillary’**.

There is no definition of what constitutes ‘ancillary’ in the case of tourist accommodation and function centres on Rural Land (refer above PO 6.3a and PO 6.5a). This is resulting in the lodgement of Development Applications on primary production land of such intensity and scale, that the commercial output of these ‘ancillary’ developments become the predominant activity on the site. These activities cannot be accurately be defined as ‘ancillary’ or ‘value-adding’ as they become the economic driver on that primary production land, and therefore constitute both a virtual change of land use, and an imminent threat to the designated primary production purpose of land in the Rural Zone.

Case Study:

A current Development Application is in the system for a 100-person Function Centre, 75-person cellar door, and 8 tourist accommodations, on a parcel of existing primary production land, currently largely under vineyard.

The annual income from 8 premium accommodations, and a function centre that is operating consistently throughout the year, will vastly outstrip the value of the primary production. It could readily be foreseen that the property could be sold in the future into less benign ownership, and the vineyard removed for additional accommodation, or simply neglected, as it has ceased to become the primary economic driver for that piece of land.

For context – this allotment of Rural Land is 12 hectares, and is under the size where a dwelling would be permitted to be developed. It is counterintuitive that a dwelling would not be approved, but that the Planning & Design Code allows for multiple large-scale ‘value adding’ buildings to be developed on that same site.

Recommended Action:

- Add clarity to DO1 and DO2, to state that any value-adding must be economically subordinate to, and therefore truly ancillary to the primary production, and not constitute a change of land use.
- A clear definition of ancillary and value-adding in the PO 6.3 & 6.5, eg must be economically subordinate to the primary production.

1.2 The Planning & Design Code is failing to prevent the incremental erosion of available Rural Land for primary production by **failing to specify** that a shop or function centre must be ‘on the same allotment or an adjoining allotment used for primary production’ **in the SAME ownership**.

Failing to specify the issue of ownership is providing developers with the loophole of using another owner’s adjacent rural land, to validate that their own development is ‘located on an adjoining allotment used for primary production’. This effectively means that primary production land currently used as a vineyard, could receive development approval for large scale accommodation requiring the removal of the entire vineyard, but still meet the above DTS/DPF 6.3a, if the development is adjacent a neighbouring primary production property (irrespective of whether this neighbouring property is owned by the original developer). When the ‘adjoining allotment used for primary production’ is under different ownership, then any approval conditions would be unenforceable on this neighbouring block, and there is no guarantee that this neighbouring block would remain as primary production into the future.

Approvals such as these threaten a domino effect of primary production landowners leveraging their neighbour’s land as the ‘primary production allotment that they are ancillary to’, turning their own primary production land over entirely to an alternative land use.

The above argument is currently being presented in CAPs by developers.

Recommended Action:

- Add clarity to 6.3a that a shop or function centre must be ‘on the same allotment or an adjoining allotment used for primary production’ **in the SAME ownership**.

1.3 There are no rigorous definitions or guidelines to provide **consistency in regard to scale and intensity of developments in the Rural Zone.**

The DTS / DPF guidances such as boundary set backs and maximum floor space (below) in 6.2a, 6.3b & c, 6.4a and 6.6b and in 6.5a & b (above) are dismissed by Developers as primarily relevant to Public Notification, or considered simply as 'guidelines'. It is extremely rare that these DTS / DPF guidelines are met, or even partially met. When the DTS is not achieved, the development defaults to 'Performance Assessed' and then leaves the Council Assessment Panel with a significant 'grey area' to assess. This is resulting in large-scale Tourist Accommodation and large-scale Function Centre developments on Rural Land being approved within 5 - 10 metres of boundaries, or with floor areas that are multiplied times the guided floor space.

Additionally, 6.3c is wide open for interpretation, and is largely able to be ignored by developers and/or Assessment Panels. What is the definition of 'more than one facility'? Does this mean no more than ONE Tourist Accommodation eg only one accommodation unit? Or does it permit 10 accommodation units? Or, if the development application is for Tourist Accommodation, does 'no more than one facility' mean that this accommodation cannot be approved if a function centre (a facility), or a warehouse (a facility) or a cellar (a facility) already exists on the primary production land (or is being contemporaneously applied for).

The code does not provide any clarity or absolutes for the developer, assessment panel or the community in regard to intensity and scale. In the situation that a Council Assessment Panel does not recognise the inherent value of the primary production land (which is intended to be protected by the Code), it results in development approvals that are consistently eroding viable rural land. The argument made to support these developments under the Performance Assessed pathway is typically the future economic benefit that the proposed Tourism or Function Centre development will bring, but this argument shows disregard to the vital importance of protecting the economic benefit derived from the primary production land.

PO 6.2

Shops that are proposed in new buildings are sited, designed and of a scale that maintains a pleasant rural character and amenity.

PO 6.3

Tourist accommodation is associated with the primary use of the land for primary production or primary production related value adding industry to enhance and provide authentic visitor experiences.

DTS/DPF 6.2

Shops in new buildings:

- (a) are set back from all allotment boundaries by at least 40m
- (b) are not sited within 100m of a sensitive receiver in other ownership
- (c) have a building height that does not exceed 9m above natural ground level.

DTS/DPF 6.3

Tourist accommodation:

- (a) is ancillary to and located on the same allotment or an adjoining allotment used for primary production or primary production related value adding industry
- (b) in relation to the area used for accommodation:
 - (i) where in a new building, does not exceed a total floor area of 100m²
 - (ii) where in an existing building, does not exceed a total floor area of 150m²
- (c) does not result in more than one facility being located on the same allotment.

PO 6.4

Tourist accommodation proposed in a new building or buildings is sited, designed and of a scale that maintains a pleasant rural character and amenity.

DTS/DPF 6.4

Tourist accommodation in new buildings:

- (a) is set back from all allotment boundaries by at least 40m
- (b) has a building height that does not exceed 7m above natural ground level.

PO 6.6

Function centres are sited, designed and of a scale that maintains a pleasant natural and rural character and amenity.

DTS/DPF 6.6

Function centres:

- (a) are located on an allotment having an area of at least 5ha
- (b) are set back from all property boundaries by at least 40m
- (c) are not sited within 100m of a sensitive receiver in other ownership
- (d) have a building height that does not exceed 9m above natural ground level.

Recommended Action:

The scale and number of value-adding buildings per hectare allotment of land needs to be scaled so that the value-adding development cannot become more dominant than the original primary production land use. This is consistent with the manner that dwellings are restricted on primary production land, according to the size of the allotment:

- Add clarity to 6.3a that a shop or function centre must be 'on the same allotment or an adjoining allotment used for primary production' **in the SAME ownership**.
- Clarify the grey area that exists in regard to boundary setbacks. Eg Setbacks in the Rural Zone should be prescriptive, not a guidance.
- Clarify the grey area that exists in regard to Maximum floor space in a new Tourist Accommodation building (100 sq metres should be prescriptive, not a guidance)
- Clarify the grey area that exists in regard to size of Function Centres (the maximum permitted size of the function centre should be prescriptive, not a guidance)
- Clarify the intention of very confusing phrase 'no more than one facility' in 6.3c and provide a clear definition for this.

Eg: does it mean if a Cellar Door exists on the property (one facility) that further value-adding development is not allowed on the same allotment?

Eg: does it mean that only ONE tourist unit is allowed on a property – or does it permit 12 tourist units of the same type?

Eg the DTS states 'no more than one facility' but there are recent examples of one large-scale function centre and twelve tourist units being approved on Primary Production land, which could be construed as 13 'facilities' on the same allotment

Character & Heritage / Character Preservation District Overlay

Context: The Character Preservation (Barossa Valley) Act 2102 underpins the economic drivers, ie the pristine landscapes and agricultural lands of the Barossa, and helps shape a truly agrarian community. It also strengthens the Barossa's global tourism appeal and attracts guest willing to pay a premium for an experience that is unique on a global scale. It is essential that the clear preservation and protection intent of the Act is clarified and strengthened in the Code, to ensure that the scale of development permitted within the Character Preservation District, does not undermine or erode the economic value of either our agriculture land and our landscapes.

2. The intent of the Character Preservation (Barossa Valley) Act to protect the Barossa's special character has not translated into the Character Preservation District Overlay.

2.1 The Character Preservation District Overlay fails to define the special character that is specifically protected by the Act.

Section 6 (1) (c) of the Character Preservation (Barossa Valley) Act (below) clearly outlines the objective to ensure that future development does not detract from the special character of the district.

Section 7 Character values of district (below) provides an extensive definition of the character that the Act protects by legislation.

6—Objects

- (1) The objects of this Act are—
 - (a) to recognise, protect and enhance the special character of the district while at the same time providing for the economic, social and physical well being of the community; and
 - (b) to ensure that activities that are unacceptable in view of their adverse effects on the special character of the district are prevented from proceeding; and
 - (c) to ensure that future development does not detract from the special character of the district; and
 - (d) otherwise to ensure the preservation of the special character of the district.

7—Character values of district

- (1) The following character values of the district are recognised:
 - (a) the rural and natural landscape and visual amenity of the district;
 - (b) the heritage attributes of the district;
 - (c) the built form of the townships as they relate to the district;
 - (d) the viticultural, agricultural and associated industries of the district;
 - (e) the scenic and tourism attributes of the district.
- (2) The character values of the district are relevant to—
 - (a) assessing the special character of the district; and
 - (b) the policies to be developed and applied by any state planning policy and the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016* in relation to the district.

However, despite the comprehensive detail contained in the Act, the Desired Outcomes in the Overlay (below) fail to capture this detail. The Overlay does not provide any detail regarding the special character that is legislatively protected, and does not provide assessment panels with the requisite clarity to assess in a manner that protects the character of the district.

DO1 Recognise, protect and enhance the special character of the Character Preservation Districts.

DO 2 The long term use of land outside of townships for priary production and associated value adding enterprises is assured and promoted.

Recommended action:

- Incorporate definition of the special character as defined in the Act, into Desired Outcomes.

2.2 The Performance Outcomes and DTS/DPF for Built Form and Character in the Rural Area are not sufficiently rigorous to guide developers, assessment panels or community members in respect of scale or intensity, and the affect on the visual amenity of the district.

There is no guidance in the DTS/DPF's, creating an entire grey area in regard to assessment of the protection of the special character of the district.

Built Form and Character in the Rural Area	
PO 3.1 Preservation of existing natural features including topography, watercourses and mature trees.	DTS/DPF 3.1 None are applicable.
PO 3.2	DTS/DPF 3.2

Policy24 - Enquiry

Buildings and structures do not interrupt views of the skyline through measures including being sited below ridge lines.	None are applicable.
PO 3.3 Buildings and structures harmonise with the natural features of the landscape and reinforce the rural character through the use of muted, neutral, non-reflective landscape colours on external surfaces.	DTS/DPF 3.3 None are applicable.
PO 3.4 Large buildings and structures are sited and oriented to minimise their visual bulk, particularly if close to roads or in open settings where there are no other buildings or mature trees in close proximity.	DTS/DPF 3.4 None are applicable.
PO 3.5 Buildings and structures are grouped to create compact clusters well set back from public roads.	DTS/DPF 3.5 None are applicable.

Recommended Action:

- Incorporate specific, detailed, mandatory requirements into the Character Preservation Action overlay that incorporate scale, intensity and height restrictions, to ensure that the legislative intent of Character Preservation (Barossa Valley) Act is realised.

2.3 Re-introduction of Character Area statements

We recommend the reintroduction of Character Area statements to ensure that the desired Character for Zones / Sub Zones is clearly articulated and to provide context for the Desired Outcomes.

2.4 Transition of local policy from the former Barossa Council Development Plan

We support the integration of local, nuanced policy that The Barossa Council prepared for the Development Plan, that was not transitioned into the Planning and Design Code. We strongly support the re-introduction of appropriate local policy to preserve and enhance the special character that is unique to the Barossa.

Barossa Region Residents' Association strongly supports Barossa Council's proposal to strengthen the Character Preservation Overlay, and understands that council has received initial support from the State Planning Commission to initiate a Code Amendment in collaboration with PLUS.

Planning, Development and Infrastructure Act

Public Notification

3. Increased Public Notification

According to Section 107(3) the Relevant Authority is required to notify adjacent landowners (defined as 60m). Notice must also be given to members of the public by notice on the relevant land – however notice on the land, and/or public notice via the SA Planning Portal may not be viewed by owners or occupiers. It is the case that certain developments warrant a higher level of notification by way of written notice, specifically in the Rural Zone where a notice on the land is not required, or where a development would affect a landowner further than 60m from the site. 60metres is not a meaningful metric for rural acreage blocks.

Recommendation:

- In the Rural Zone, notification for adjacent neighbours should be defined by postcode or kilometres not metres.

Appeal Rights

4. Increased Appeal Rights

We strongly advocate for third party appeal rights. We believe this is essential to ensure an additional layer of accountability for Assessment Panels / Relevant Authorities and provides community members a pathway to challenge decisions that affect them.

We strongly advocate for a pathway to appeal that does not require the ability to finance a legal challenge. Even in the case of the ERD 'no cost' appeal, the legal fees are prohibitive, and in the case of a judicial review in the courts, this is escalated by the potential for liability for the opposing counsels' fees.

Recommendation:

- Reinstatement of third party appeal rights for Performance Assessed developments.
- Provide an avenue for appeal that does not require the third party engaging legal counsel.

Assessment Panels

5. Conflict of Interest with Assessment Managers being employees of a local council

Council Assessment Panels are legislatively independent from the local council. However, the Assessment Manager is commonly the Council's Planning Department's Planning Manager and the author of planning reports to the same Council Assessment Panel in which they function as the Assessment Manager. Thus, the Assessment Panel is not regarded as being totally independent of the Council with a Council employee performing the dual role of authoring reports and providing guidance and advice to the Panel, this leads to a perception of conflict of interest.

Recommendation: Assessment Managers should not be employed as a planner in the same local council as the Assessment Panel.

6. Regional Assessment Panel where regions are divided across multiple councils

We understand that the Act provides for a Regional Assessment Panel (established by the Minister) comprising parts or all of the areas of two or more councils.

The Barossa Wine Geographical Indication is a globally recognised wine region and tourist destination, and is divided across multiple councils, with multiple Assessment Panels. This leads to inconsistency of interpretation of the Planning Code and subsequent approvals.

Recommended Action:

- Where a region is divided across multiple councils, mandatory establishment of a Regional Assessment Panel for developments of scale that have significant affect across the region.

7. Miscellaneous:

- It is of concern that the elected members of local councils are prohibited from instructing their own Assessment Panel in matters of meeting procedures.

Example: Local community members have requested their elected members for online access to Assessment Panel meetings, as the Panel has not desired to provide this. The elected members have been advised by council staff that they have no authority to direct the Panel on these matters.

- It is of concern that the current regulations for an Assessment Panel quorum mean that a minimum of three constitutes a quorum. This means that the votes of only two panel members are required to approve a development application (of either a minor or major scale), in the case of panel members being absent.

Thank you again for the opportunity to put forward these contributions. We look forward to receiving feedback from the Expert Panel and its recommendations to the Minister for Planning.

Kind regards,

Cathy Wills – Vice President
On behalf of Barossa Region Residents' Association
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