



Ref: 3/LIA/1/MM

30 January 2023

Mr John Stimson
Presiding Member
Expert Panel
Planning System Implementation Review
GPO Box 1815
ADELAIDE SA 5001

Email: DTI.PlanningReview@sa.gov.au

Dear Mr Stimson,

Planning System Implementation Review – Submission

Thank you for the opportunity to participate in the Planning System Implementation Review (PSIR), this submission has been prepared for the Mid Murray Council.

Mid Murray Council acknowledges the significant amount of work that has been undertaken by the Department in transitioning to the new system, and continually refining the system. Further, Council is supportive of reform that address common issues/concerns that have been identified.

This submission will focus on matters specific to Mid Murray Council, noting there is likely to be overlap and common themes within other submissions, such as the Murraylands and Riverland Local Government Association (MRLGA) submission, which Council has contributed to and supports.

Planning, Development & Infrastructure Act 2016

Deemed Planning Consent

The ability for applicants to be granted Deemed Planning Consent is resulting in a stressful workplace and hasty or undesirable planning decisions. The threat of these consents, considered alongside of short assessment timeframes, increased applications and shortage/unavailability of planning staff may result in more applications being refused, or poor planning outcomes simply to avoid a Deemed Consent being issued. The Deemed Consent has removed the ability for planning staff to negotiate better design/planning outcomes which would better suit the intent of the policy.

All correspondence to PO Box 28, Mannum SA 5238 ABN 88 313 305 455
Email postbox@mid-murray.sa.gov.au Web www.mid-murray.sa.gov.au

PRINCIPAL OFFICE

49 Adelaide Road, Mannum, SA
Telephone: (08) 8569 0100
Facsimile: (08) 8569 1931

Development & Environmental Services

Main Street, Cambrai, SA
Telephone: (08) 8564 6020
Facsimile: (08) 8569 1931

Morgan & Districts Community Hub

Cnr Fourth & Eighth Street, Morgan, SA
Telephone: (08) 8540 0060
Facsimile: (08) 8569 1931

Further to the above, planning managers/staff are having to consider staff leave requests against the 'decision clock' which is leading to considerable stress and potential for staff burn out. Further, Council are having to engage external consultants to manage workloads, which comes at a considerable cost to the community, particularly for smaller rural Councils with limited staff and budgets.

It is noted that other State planning jurisdictions work with a more balanced approach whereby a review can be undertaken by the respective Courts on the facts on the application, and the Court can make an independent and considered determination on the development application. Another possible option would be to provide a 'warning' whereby Council receives notification of intent to issue Deemed Planning Consent, and Council is then provided with 3-5 business days to finalise the application. Council asks that the Panel consider a more equitable approach to decision making.

Assessment Timeframes

Council understands the review will also focus on assessment timeframes. A review of current timeframes is supported, as the current framework does allow or consider extended timeframes for more complex application types. It is suggested that assessment timeframes for more complex applications (commercial / industrial / intensive animal keeping) is extended to 8 weeks, as current timeframes are not adequate and do not facilitate quality planning outcomes. Council suggests it is unreasonable for an application for a commercial facility or large scale industrial use to be assessed in 20 days.

Alternatively, the option to provide more than one (1) Request for Information may provide relevant authorities with the time required to adequately assess a complex application.

Development Assessment Portal

Council acknowledges that the Development Assessment Portal (DAP) has resulted in some positive changes, yet it still has not delivered the efficiencies that were anticipated. Council, through its planning and building staff, continue to highlight enhancement opportunities or issues and request the following matters be reviewed and/or addressed:

- The DAP does not allow multi process actions between planning and building staff. Basic information or actions, such as amending or adding address after verification or continuing to assess an application whilst it is on hold are some of the issues Council staff have encountered. This is resulting in the multiple handling of development applications. Council should be able to complete all aspects of an assessment at one point, regardless of the status of the application and further, Council should be given administrative license to amend data/details in the DAP, as required.
- Current DAP is too complex for basic DA's. The DAP needs to be streamlined for simple applications and also allow Council to concurrently assess planning consent and building consent.
- The DAP does not accurately capture the assessment timeframe once a Request for Information has been made.
- The DAP and PlanSA Website is complicated and oriented towards professionals within the development field. Streamlining and simplifying the dashboards would reduce the complexities for applicants, particularly those who struggle with technology. This would assist in reducing hostility towards the new planning process and reduce the time Council staff use to assist applicants through the system.

- The statistics section is cumbersome, time consuming and has little flexibility. For example, it requires wall, frame and roof material details for a swimming pool. Are the end users getting what they need from this part or can it be amended so the statistics required can be captured elsewhere in a more streamlined way.
- The system should be more streamlined where Council is issuing Building Consent and the Development Approval.
- Ideally the system shouldn't allow a subsequent building notification to be submitted if a prior notification has an unsatisfactory outcome.

Verification

The verification process is labor intensive. The DAP does not prevent incomplete applications from being submitted, therefore all the responsibility lies with the planning staff to ensure the application is able to be properly verified. The result is that greater attention is required on the more complex development applications and the simpler development applications are taking longer to process.

The DAP also requires the applicant to submit full documentation to enable the application to be verified, when the development application may not even be supported. This is a considerable cost and time consuming for the applicant, and providing the relevant authority additional time to provide preliminary guidance may alleviate this issue.

Public Notification

The 60 metre adjoining property owner requirements is not appropriate within the context of a rural setting. We are finding this often results in the adjoining owners not being notified due to size, width of road reserves and ownership of land holdings in the rural area. It is recommended that an accredited professional, or the Assessment Manager, has the discretion to include properties that are likely or reasonable expected to have an interest or be impacted by a proposed development.

Wastewater

There is concern that the requirements to provide wastewater information is being waived by private certifiers under Schedule 8 of the Act with instances of dwellings having already been approved without any consideration for how wastewater will be managed. This is of concern as the requirement to demonstrate adequate wastewater disposal is critical to a large portion of development within rural townships and surrounding areas. Whilst it is accepted that this matter is dealt with under the *SA Public Health Act*, there is no direct linkage between Environmental Health Officers and Planning staff through the Portal unless each Council manages this internally. It is an integral component of the planning assessment that is best managed at the planning stage, at least concurrently to demonstrate that the site is suitable or able to accommodate a wastewater system.

Review Period

The Expert Panel must also consider that the data collected to form its initial perceptions of success, or otherwise of the DAP, was during a period of considerable development activity as a result of government stimulus to facilitate construction activity during peak Covid-19. Mid Murray Council experienced record numbers of development applications during this period, while at the same time Council was required to adapt to significant changes, lock downs and an inability to recruit staff. These factors may have skewed the results / data and the Panel should consider a further review period, at a later date, to gain a true understanding on how the system is operating.

Planning & Design Code

River Murray Flood Plain Overlay

This is a critical part of the review, which needs to be addressed as a matter of urgency. The River Murray Flood Event of 2022/23 has seen river levels reach heights over and above what was experienced in 1931, and second only to the 1956 flood event. Significant review and reform is required for dwellings and other associated structures that are to be located within the flood plain. Council have already experienced a number of enquiries, and expect to receive applications for new and replacement dwellings that wish to respond to the flood heights recently experienced.

Building Heights

The current policy requires a dwelling to have their FFL elevated 2.5m above natural ground level. This is also to be considered in association with the maximum overall building heights of 7.5m. Planning staff have been allowing minor departures from this 2.5m height in the order of 2.7m – 3m which is consistent with former policy within the Mid Murray Council Development Plan (Shack Settlement Policy Area).

The Panel, along with representatives from Department for Environment and Water, are implored to review this as a matter of priority and determine whether increased FFLs are appropriate, or if land owners must accept some form of risk when building within a known flood plain. Should the policy aim for flood protection or just provide flood mitigation policy that will be of benefit to some, but not others in lower lying areas.

Underfloor Enclosures

Policy regarding the underfloor area beneath an elevated dwelling does very little to place an arbitrary restriction on the size of enclosures. The PO states '*dwellings and dwelling additions or alterations do not impede floodwaters and fluctuating pool levels*' and a number of applicants have used the lack of quantitative restrictions to enclose large portions of the ground levels by arguing the walls are removable. The current flood event is clearly demonstrating that many walls are not, in fact, removable as they have been unlawfully converted to living areas etc.

It is suggested to amend PO 5.3 to restrict the underfloor enclosure to a small wet area (15 square metres) or provide further clarity in the PO by stating ground floor enclosures must only consist of roller doors or other easily removable fixtures – not removable walls (except for a small enclosed wet area). Further to this, the removal of the 'removable panel' reference in the corresponding DPF would also reinforce this aspect.

PlanSA Website and e-Planning System

PlanSA Website

The PlanSA website could be more user friendly. Numerous applicants encounter difficulty navigating the PlanSA system which results in a high number of customer enquires through to Council. It is recommended that the Panel undertake more specific consumer testing and seek feedback directly from the community.

In addition to the concerns raised in Council's submission, please find attached a Table of Examples outlining some of the issues Council is experiencing.

The Council thanks the Panel for the opportunity to provide feedback on the Planning System Implementation Review and would welcome the opportunity to discuss any matter raised in our submission in further detail, with the Panel, if required.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'JM', is positioned above the typed name.

Jake McVicar
Assessment Manager
Director – Development & Community Services

cc. Table of Examples

Planning System Implementation Review – Mid Murray Council
Table of Examples

Area of Planning	Example of Issue
Deemed Planning Consent	Council staff may not have the capacity to assess development applications within the given timeframe. A prominent issue is that Council Assessment Panel report writing takes a significant amount of time and meetings may only be monthly. This can cause issues, particularly in regional Councils where calling a special meeting can be costly, particularly given that the development may be relatively straightforward. When this occurs and a Deemed Planning Consent can be given, the situation may not allow for appropriate or desired planning outcomes.
Assessment Timeframes	<i>Same as above</i>
Portal	The PlanSA Portal is complex and is not intuitive for some people who are unfamiliar with the planning process or technology. Simplifying the application process or having more guidance through the application dashboard would assist in making the process clearer.
Verification	The vast majority of applications that are submitted to Council have had a lack of information or appropriate plans. Having some guidance sheets for particular development on what plans are required would be useful for listing the appropriate plans.
Public Notification	Council has had several instances where rural landholdings would comprise multiple parcels adjacent to each other, however these holdings are sometimes separated from their neighbours by road reserve. In some cases the road reserve exceeds 60m and neighbours who may be impacted by the development are not notified. This juxtaposes that a site adjacent to the subject site further away may be notified due to a lack of road reserve.
River Murray Flood Plain Protection Area Overlay	<p>Building Heights Elevation and total height policy is often contradictory to itself. Elevation should be 300mm above the 1956 flood event, however this varies greatly along the length of the river. In Cadell, the 1956 flood height exceeded 8m, whereas in Mannum, it was less than 4m. Flood policy cannot currently give a consistent height. It is proposed that 2.7m to 2.9m in underfloor elevation is the most appropriate height for policy to reflect on shack sites.</p> <p>Underfloor Enclosure Council has ongoing instances when illegal development of underfloor enclosures has been debated in Court, and with the lack of strong policy it is hard to defend the intent of the policy.</p>