

29 November 2019

Mr Michael Lennon
Chairperson, State Planning Commission
GPO Box 1815
ADELAIDE SA 5001

Dear Mr Lennon

Consultation submission - Planning and Design Code

We refer to the recent release of the Planning and Design Code (the Code) by the State Planning Commission (the Commission) for public consultation.

Our submission is outlined under the following headings.

1. Consultation period

Although Council is extremely disappointed in the time made available to review the Code, with the limited time available to us, we provide the following comments.

2. Go live date

We are of the strong view that rural councils go live as of 1 July 2020, as per other parts of South Australia. This will enable more time to review and be trained on the new State Government Portal and to set up internal and external systems for the operation of the new system. The enormity of this task and the education required cannot and must not be under estimated, particularly given that the Portal is not yet ready and no training or education on the operation of the Portal has yet commenced.

In fairness, we reiterate that the Commission extends our go live date to 1 July 2020.

3. Code zones

Community Facilities Zone

The Community Facilities Zone in the Code needs to recognise the specific policy that was recently agreed to by the Minister in the Townships and Settlements Development Plan Amendment, Phase II, 2018. This supported the Careship Coorong community health development initiative (Dementia Care) at Coonalpyn for integrated community activities centre, expansion of the snail farm activities and ability for associated accommodation and land division options for clients needing care.

Conservation Zone

We support the overarching use of a Conservation Zone as it applies to most of the River Murray areas. However, we seek that the Visitor Experience Subzone be applied to the zone, so as to promote Tourist Accommodation and investment into key areas. The Conservation Zone treats all forms of Renewable Energy Facilities as Performance Assessed. This is of concern as it relates to wind farms and large scale solar farms (not small scale solar), as most of the Conservation Zone applies to sensitive areas along the River Murray and designated Conservation Parks. It is noted that the Significant Landscape Protection Overlay has not been applied to the Conservation Zone in the Coorong Council, meaning that Overlay PO 1.2 that restricts wind farms and large scale solar farms would not apply.

Employment Zone

The Urban Employment Zone in the current Development Plan transfers to an Employment Zone in the Code. We seek that all of the locational and land use policy that was specifically applied to the Urban Employment Zone (via the Townships and Settlements Development Plan Amendment) Phase I, 2017, be incorporated into the Code.

There is an error in the Employment Zone, where General Industry is marked as 'restricted' yet Special Industry is not. We believe this should be corrected and be drafted the other way around.

Given the high intensity activities envisaged in the zone, there is a lack of guiding policy for the assessment of such land uses.

Neighbourhood Zones – equivalent of Residential Zones

There is a drafting error in the General Neighbourhood Zone, where it references the Suburban Neighbourhood Zone in point (b) of the Notification procedure table. This error appears to be replicated in the Housing Diversity Neighbourhood Zone notification procedural table.

Old Tailem Town

We note that Old Tailem Town has been placed into the Rural Zone in the Code. We ask that Old Tailem Town has the benefit of a Sub-zone with policy that recognises the existing use and to ensure ongoing development opportunity for tourism related activity.

River Murray zones

AHD levels

The Code does not currently carry forward Development Plan AHD levels in zoning policy in the Code. The current Development Plan AHD level policy needs to be included into the Code, via suitable Overlays, TNVs or data layers.

Flood mapping

We note that the 1956 flood mapping of the River Murray Flood Plain (that exists in the Development Plan) is not present in the Code. What exists in the Code is a River Murray Flood Plain Overlay, but that area appears to be based on the current River Murray Water Protection Area (or by some other rationale) and not the flood plain. The 1956 flood mapping is crucial to ensure the proper assessment of site constraints and to avoid inappropriate developments occurring in potentially hazardous areas. The mapping must be reinstated in the Code. The name of the River Murray Flood Plain Overlay must also be altered as it is misleading.

River Murray Flood Plain Overlay

Township, urban areas and caravan park zones should be excluded from the River Murray Flood Plain Overlay Area, so as to avoid minor Deemed to Satisfy developments from being tripped in performance assessed. The status quo of the current system should prevail and the new planning system should not be more of a burden with additional red tape.

Rural Zone

Envisaged development

DTS/DPF 1.1 should be amended to include a wider list of envisaged uses and associated performance assessed criteria so that appropriate land uses are not inadvertently overlooked. Some land uses which are not contained within this provision but should be included are wind farm, waste facility, stock slaughter works/abattoir, renewable energy facilities, workers accommodation and caretaker dwellings.

Greenhouses

DTS/DPF 3.1 limits a greenhouse to 250 square metres. Commercial greenhouse developments are usually considerably larger than 250 square metres. We seek that there be no floor area limit on the size of greenhouses, and each case be considered on a performance basis. This is the approach stated in the Rural Horticulture Zone, and we see no valid reason to apply a different criteria/approach in the Rural Zone.

Rural Industry

DTS/DPF 4.1 limits industry, storage, warehousing and transport distribution activities to a floor area of 250 square metres and allotments at least 20 hectares. The floor area and minimum allotment size are both considered problematic and not realistic for rural/agricultural areas. The 250 square metre floor area should be increased and that some consideration be given to having separate Deemed to Satisfy and Performance Assessed criteria for floor areas. The 20 hectare minimum allotment size is considered too large and may "lock out" smaller primary industry developments from developing such facilities. Again, consideration needs to be granted to having separate Deemed to Satisfy and Performance Assessed criteria for allotment sizes.

Secondary dwellings

DTS/DPF 5.2 requires that a secondary dwelling on an allotment is "located on an allotment not less than 40ha in area". This size requirement is considered unworkable and will inhibit the implementation of secondary dwellings as envisaged by PO 5.3. Furthermore, the term secondary implies a second dwelling only, whereas PO 5.3 promotes more than one dwelling in the case of farm hands, managers residences and aging in place. The term secondary dwelling should be replaced with the term more than one dwelling.

Tourist accommodation

DTS/DPF 6.3 outlines a 100 square metre limit for tourist accommodation . This should be revisited as it will limit the ability for large scale tourism development, innovation in design and developments where more than one type of tourist accommodation facility is proposed.

Further, the phrase "*in relation to the area used for accommodation*" is not entirely clear. Whilst we read it as being the total area used for guest rooms, it could be interpreted more broadly. The phrase may also lead to confusion in developments that propose more than one form of tourist accommodation, for instance, a development that contains hotel-style rooms together with detached, self-contained tourist accommodation buildings. We recommend that this provision be reviewed and amended so that it is entirely clear and does not inadvertently discourage tourism development.

Agricultural buildings

DTS/DPF 12.1 outlines a total floor area limit of 250 square metres and minimum allotment size of 10 hectares. This provision may result in acceptable, performance assessed buildings being refused. Put simply in the context of rural/agricultural farms needing very large machinery sheds, shearing sheds, hay sheds and the like, a 250 square metre policy is not realistic and must be altered. Again, creating separate Deemed to Satisfy and Performance Assessed criteria for agricultural buildings is considered an appropriate mechanism to “balance” the need for relatively conservative Deemed to Satisfy criteria and more facilitative Performance Assessed criteria.

Land division policy

One of the key policies applicable for the assessment of land division application is PO 1.1 of the Rural Land Division general module, which is applied to ensure allotments are suitable for their intended purpose taking into account physical characteristics of the land and the like. However, PO 1.1 of the Rural Land Division module is not called up in the corresponding Performance Assessed table. This must be included in the assessment table.

Dwelling excisions

Land division dwelling excisions may, under the Dwelling Excision Overlay, be permitted regardless of when an allotment was created and where multiple ongoing excisions could occur over time. We urge the Commission to include date criteria into the Code (ie. the date of the authorisation of the Code) or some other method to avoid unwarranted repetitious use of this policy. We also seek that the Coorong District Council excision policy in the current Development Plan be included in the Code not a generic SA wide version.

Rural Living Zone

We raise concern that the locational specific land division policy for Rural Living Zones has not been transferred into the Code through the Technical and Numeric Variation data layers. We understand the Commission is rectifying this matter as a high priority.

Solar farms

The DTS/DPF 9.2 provision in the Rural Zone refers to a “panel” size of 80 square metres per structure. Given that the community’s understanding of what a panel is (i.e. each individual panel), we suggest that this term be revisited to avoid confusion.

Suburban Greenfield Neighbourhood

The Code needs to recognise the locational specific policy of the Warrengie Marina Development Area at Meningie that is contained in the Development Plan. This should include AHD level policy and the Concept Plan Map CooD/3 that contains important site specific data for management of AHD levels, hazards and the like.

General matters

There is a drafting error in the Notification Table of the Suburban Employment Zone, with no exceptions listed as prompted by the drop down points.

We ask that there be a more practical approach to Notification requirements in rural and regional areas. Firstly, we note that in the notification tables for Zones, Performance Assessed development where “the site of the development is adjacent to land in a different zone” must be notified. This appears to be an overly onerous requirement where the proposed development adjoins a similar use or is of a lesser intensity than a development it abuts. We ask that appropriate exclusions to the

notification “trigger” should be considered to avoid needless notification. Secondly, the need or placement of Notification Signs on land in rural areas is not practical or sensible and that requirement needs to be altered/refined. The balance between what is Restricted Development and Performance Assessed in zones is out of kilter. There is often little policy guidance (or a silence) to assess what may be a poor project in a particular zone, where the refusal of such is likely to lead to a higher number of appeals, and confusion and indecision with the Courts and authorities on interpretation.

4. Code mapping, overlays and concept plans

We are concerned that important Development Plan Concept Plans have not been transferred in to the Code, and ask that they be reinstated into the Code.

5. Deemed to Satisfy versus Designated Performance Function criteria

We question the use of Deemed to Satisfy criteria for Performance Assessment developments, via use of the same Designated Performance Feature. The manner in which Deemed to Satisfy criteria is expressed could lead to Performance Assessed development applications being refused due to a lack of guidance as to what variations from Deemed to Satisfy criteria are and are not appropriate in a Performance Assessment.

6. Definitions

Ancillary accommodation

We support the inclusion of the new definition for Ancillary Accommodation in the Code, so as to provide greater clarity on defining housing options for granny flats and dependant accommodation. However, we do not support the definition restricting ancillary accommodation not having more than 1 bedroom or room or area capable of being used as a bedroom. This is simply not a practical or reasonable proposition, say for a family member (aging in place) wishing to have an ancillary study/sewing room and/or guest room for grandchildren or visitors. The definition should be amended to say not more than two bedrooms.

Tourist accommodation

We support the new definition of Tourist Accommodation in the Code, however there is opportunity for the Code to provide clearer land use definition and policy guidance where boutique style tourist accommodation is envisaged, so as to avoid confusion where such development often has a similar form to a dwelling in riverine, rural and landscape/scenic settings.

Non-defined activities

Land uses that are stated in the explanatory columns of the Code definition table need definition (for example Private Bushfire Shelter).

7. Wastewater

Under the Zones and Subzones

- **Generally**, there is an accepted development classification criteria that states : *The development will not be built, or encroach, on an area that is, or will be, required for a sewerage system or waste control system.*
 - This needs to be re-worded to include ‘the setbacks away from structures must be met’.
- Under **Caravan and Tourist Parks, Community Facilities & Employment Zone** – there is no consideration given to wastewater for land divisions. There needs to be some requirement for the connection of ablutions, cabins and businesses to a CWMS or on site

wastewater system and that the capacity is sufficient to accommodate this additional loading.

- **Home Industry Zone** states that *DTS/DPF 4.1 Allotments have: (a) an area being the greater of the following:*
 - i. where there is no established land division pattern, 750m²; or ii. no less than an adjacent residential allotment, or the average of adjacent residential allotments where there is more than one adjacent allotment, used for residential purposes in the zone;*
 - This should clarify that 750 m² must be connected to a CWMS or SA Water sewerage network.

Under the General Development Policies

- Under the **Design in Rural Area DTS / DPF 6.1 Effluent disposal drainage areas do not:**
 - (a) encroach within an area used as private open space or would result in less private open space than that specified in Design in Rural Areas Table 1 - Private Open Space;*
 - It is unclear what this means, however there are minimum sizes required for onsite wastewater disposal systems which are dictated by soil profiles. The 'or would result in less open space.' should be removed.
 - And still under *DTS/DPF 6.1 (c) encroach within an area used for on-site car parking or would result in less on-site car parking than that specified in Transport, Access and Parking Table 1 - Off-Street Car Parking Requirements.*
 - The section that states "or would result in less on-site car parking" should also be removed due the requirement to have an onsite wastewater system which can vary in size due to different soil types.
- Under the **Infrastructure and renewable energy facilities**, PO 12.1 talks about the requirement for wastewater services however there is no legislation that is referenced in this section. The section needs to either reference to South Australian (Wastewater) Regulations 2013 or SA Health's On-site Wastewater Systems Code and the CWMS Code.
- Under the **Infrastructure and renewable energy facilities**, DTS, DPF 12.1 - there are some setbacks listed that have been taken from the On-site Wastewater Systems Code however not all setbacks. This should be removed and re-worded to 'meet the setbacks of the On-site Wastewater Systems Code'
- Under the **Infrastructure and renewable energy facilities** and also **Land divisions in Rural Areas, DTS/DPF 4.2 Each allotment can be connected to any of the following: (a) a waste water treatment plant that has the hydraulic volume and pollutant load treatment and disposal capacity for the maximum predicted wastewater volume generated by subsequent development of the proposed allotments; or (b) a form of on-site waste water treatment and disposal that meets relevant public health and environmental standards.**
 - The wastewater legislation must be reference in this section. It needs to replace 'meets the relevant public health and environmental standards'.
- **Generally**, consideration needs to be given to the On-site Wastewater Systems Code that states land divisions are not to be approved with the use of holding tanks.
- **Generally**, consideration also need to be given to the business activities that require trade waste approval from SA Water or Council.
- **Generally**, Land division sizes in regional areas must remain at a minimum allotment size of 1200m² if not serviced by SA Water Sewerage or a CWMS, and only an on-site wastewater system.

8. Need for audit

We urge the Commission to undertake a thorough audit of the Code before it goes live . This is considered critical to resolving errors, anomalies, inconsistencies, incorrect formatting and policy labelling, policy issues and running-in issues before the new Planning System goes live.

It is far too important and poses serious risks if the Commission allows the system to go live in the absence of thorough road testing . The Commission needs to allocate more time to testing, verification and running in of the new system in a safe 'non-live' or 'testing environment'.

Likewise, the Commission is strongly urged to allocate more time towards the equally critical task of road-testing a draft Portal and to allow more lead time to the training and education of users of the Portal being the community, businesses, councils and agencies.

Please do not hesitate to contact me if you have any further queries regarding Council's submission.

Yours sincerely

David Mosel
ACTING CHIEF EXECUTIVE OFFICER