

In reply please quote our reference: ECM 673716 SPS/CG

26 March 2019

Jason Bailey
Project Lead, Planning and Design Code
Department of Planning, Transport and Infrastructure
GPO Box 1815 Adelaide SA 5001

Emailed: DPTI.PlanningEngagement@sa.gov.au

Dear Jason

RE Local Government Association of South Australia: Submission on the Planning and Design Code in the Outback (land not within a council area) - Phase 1

Please find below the Local Government Association of South Australia (LGA) comments in relation to the Planning and Design Code (the Code) in the Outback (land not within a council area) - Phase 1.

The LGA understands that Phase 1 will eventually become a part of the overarching state framework under the *Planning, Development and Infrastructure Act 2016*.

In developing this submission the LGA has sought feedback from councils on key issues relating to the Code. The LGA understands that a number of councils will be providing more detailed comments on specific aspects of the Code.

Consultation

Whilst it is understood that Phase 1 relates to the Outback (land not within councils), many of the provisions within Phase 1 of the Code will relate to local government as Phase 2 and 3 are introduced. A more comprehensive consultation process, including enabling access to the Code through the ePlanning system, will enable regional and metropolitan councils to more thoroughly examine the Code and provide opportunity for improvement. This will be critical with more complex issues which will arise in Phases 2 and 3.

It would be also useful if mock development assessment (DA) examples could be developed with the next phase of the Code, so people can try to follow the process themselves. Feedback has been provided that it is difficult for practitioners to clearly understand the mechanics of the Code. It is considered that releasing some mock DA examples would assist this understanding and interpretation and ultimately improve feedback.

Desired Outcomes

Council feedback reflects that Desired Outcomes often lack effect when attempting to cover a wide scope with simplified and limited content.

Desired Outcomes are critical to providing a fundamental and clear understanding of the objective, reasoning and therefore are the ultimate test for appropriate development assessment. For example the Desired Outcome Statement relating to the interface between land uses the terminology – *minimise adverse effects*, this terminology is considered unclear and will lead to differing interpretations.

It is recommended that the Desired Outcomes should be written to be comprehensive, explicit and clear statements of what is desired to be achieved by development in the applicable context, and readily understandable by all. It is also noted that the Rules of Interpretation state that Desired Outcomes should apply to all applications, it is therefore recommended that the Desired Outcomes be listed within the classification tables against all development types.

Performance Outcome Policy

The performance outcome policy provisions lack detail, are limited and simple which may result in misinterpretation. There is not adequate clarity of meaning, actual requirements and outcome. It is recommended that to enable proper understanding of reason for requirement and the desired outcome the performance assessment policy be written to be clear on:

- what the issue is and requirement(s); and
- why the outcome is sought; and
- how the outcome can be achieved.

It is also recommended that policies need to be clear, definitive on what is required and consistent across the Code. The use of words such as 'consider', 'similar', 'preferable', 'where possible', 'promote', 'encourage' which are subjective should be deleted.

Terminology

A range of key design terms are variously used, potentially leading to different scenarios and confusion. A few are defined, but most are not and most do not have a ready, easy or clear 'common meaning' (Rules of Interpretation) or 'ordinary meaning' (Part 7 Administrative Definitions) as a reference. The variety of administrative, technical and design terms are critical to be singularly defined and then used consistently. Consistent use of such defined terms would then clarify and streamline understanding, interpretation, outcomes and therefore assessment.

Deemed to Satisfy Provisions (DTS)

The Deemed-to-Satisfy provisions are limited in number but several are not clear, qualitative and are open to interpretation, for example Interface between land uses DTS 3.1, terminology 'over portion of the land' is not quantifiable. The LGA understands that a DTS provision must be quantitative and unambiguous, given they convey automatic approval. If a Deemed-to-Satisfy principle cannot be written in such a way, then that component of the development should not have a deemed-to-satisfy principle associated with it. Writing unclear deemed-to-satisfy policies will lead to misinterpretation, or abuse of a provision which will ultimately lead to a poor and possibly detrimental outcome.

The LGA would highlight two specific Deemed to Satisfy Provisions in the new Code which have been identified as current issues for local government:

Advertising on pay phone booths (DTS 1.2)

The LGA would highlight a significant concern with the Deemed to Satisfy provisions relating to Advertising and in particular DTS 1.2 relating to advertising on public payphones. Given the very real and current concerns that a number of metropolitan councils have with Telstra's current roll out of pay phones across metropolitan Adelaide in relation to size, location and third party advertising, the LGA does not support this DTS provision and recommends that public telephone booths be removed.

Residential Livability – Carparking (DTS 6.1)

The length of a 2019 Ford Ranger (i.e. the 4x2 XLT Double Cab Pick-up Hi-Rider 3.2 Diesel model) is 5.426 metres. If a driver of this vehicle parks in a front driveway, the vehicle will extend onto the road reserve, unless the driver leaves a gap smaller than eight centimetres between the front of the vehicle and the front wall of the garage door. It is recommended that in order to avoid

the obstruction of footpaths by long vehicles, that the Deemed-to-Satisfy requirement is increased to six metres.

Land Use Definitions

The land use definition table is predominately a transfer from the Development Act and/or the South Australian Planning Policy Library. It does not reflect comments provided through previous submissions made by the LGA and local government.

Whilst it is noted that Phase 1 of the Code will be a transitional document, rather than a reform document, the need to get the fundamentals right from the start is critical. Amending land uses in future generations of the Code is not a suitable solution. A holistic and thorough examination of land use definitions should be undertaken now to set strong foundations for the future of the Code.

Feedback provided following the land use discussion paper provided responses about misinterpretations or outdated definitions that do not reflect the impacts of technological advancements. The feedback provided also suggested that case law should be looked to assist with clarifying definitions. There are also a number of definitions which could have been simplified, for example, the Code has maintained four definitions for different types of industry. Whilst there may be need for different definitions based on the intensity of the industry, the current definitions for these are unclear and outdated and should be updated with reference to feedback made on the earlier land use definitions discussion paper.

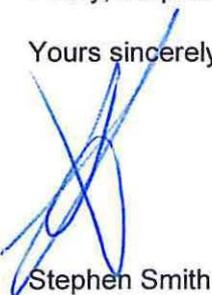
Additionally, it was previously understood that an umbrella term for 'residential' was being explored, however, the Code still has definitions for detached dwelling, dwelling, group dwelling, row dwelling etc. The Code could utilise a form-based model such that these different definitions are not required.

It should be noted that the format of the table, having columns for 'includes' and 'excludes' is a good approach and is supported by the LGA. Although in some instances this hasn't been followed. For example, 'educational establishment' appears to list the 'inclusions' within the definition itself.

On a technical note, it is suggested that all land uses in the 'includes' and 'excludes' columns are listed in alphabetical order, for ease of reference.

Should you wish to discuss any aspects of this submission further, please contact LGA Director Policy, Stephen Smith at [REDACTED]

Yours sincerely



Stephen Smith

Director Policy

Telephone: [REDACTED]

Email: [REDACTED]