

18 December 2020

State Planning Commission  
P O Box 1815  
ADELAIDE SA 5001

By email: [DIT.PlanningReformSubmissions@sa.gov.au](mailto:DIT.PlanningReformSubmissions@sa.gov.au)

Dear Commissioner

**Re: Planning and Design Code – Phase 3 – MCF Response**

The Mobile Carriers Forum (MCF) is a division of the Australian Mobile Telecommunications Association (AMTA). AMTA is the peak industry body representing Australia's mobile telecommunications industry. MCF members include Telstra, Optus and TPG Telecom.

We understand that a further opportunity to provide feedback on the revised draft Planning and Design Code – Phase 3 (the Code) has been provided. This opportunity follows an initial five-month period of public consultation on the draft Code. This additional submission adds to feedback previously supplied by the MCF in submissions on Phase 2 (dated 29 November 2019) and Phase 3 (28 February 2020).

In our submission of 28 February 2020 the MCF provided a detailed response to the initial Phase 3 public consultation of the Code. Phase 3 affects all of metropolitan Adelaide, the outer metropolitan area and the regional cities – in effect, most of the population of South Australia. Planning policy and controls in this area are critical due to the significant demand for telecommunications services and enabling network infrastructure.

The MCF's Phase 3 submission built on the previous Phase 2 submission (along with a range of other MCF submissions and engagements with the Planning Commission and the Department), and continued to focus on a range of important matters relating to the deployment and maintenance of telecommunications facilities.

One of the key issues raised as part of the MCF's consultation submission was the general lack of consistency between zones and the way in which telecommunications facilities were treated through the development application process, as well as a general lack of strategic importance attached to this important and essential infrastructure.

This approach was contrasted against the current system which recognises the need, highlights 'preferred' zones for such infrastructure and has reasonable consistency with respect to public notification requirements.

## **Phase 2**

Upon release of the final version of Phase 2, which is now operational in rural and regional South Australian Councils, it became evident that many of the key issues identified by the MCF remain outstanding.

Further, the Phase 2 version made extensive but unexplained changes to the telecommunications policy within the Infrastructure policy module, which the MCF had worked closely with the Department to prepare and had been made operative in the Phase 1 version of the Code.

The wording changes, which are best described as diminished in their application and utility, were made despite the original policy not having previously been controversial or even, to the best of our knowledge, the subject of a public submission. We note these telecommunications infrastructure provisions remain unchanged in this current consultation version of the Code.

### **Current Round of Consultation**

We have reviewed the current consultation package containing two key documents. The first is the latest consultation version of the Planning Code (dated 16 November 2020) and a document intended to summarise the amendments made following the last round of consultation (dated November 2020). In doing so, we sought to determine whether the MCF's previous concerns have now been addressed and to what extent.

The only place where 'telecommunications' is mentioned in the summary document is on page 10 where it states a change has been made to an administrative definition in the Code (contained in Part 8 of that document) to exclude telecommunications facilities from the policy use of the term '*building height*'. This change is a welcome inclusion.

The MCF had also asked for additional clarity to the definition of *Telecommunications Facility* in Part 7 of the Code (set out on page 9 of the MCF's Phase 3 submission) but this has not occurred.

The current consultation version of Phase 3 shows there has been a re-arrangement of the layout of the Code, which appears to seek to simplify the user's navigation of the voluminous document – currently more than 7900 pages in length.

Upon reviewing the latest consultation document there appear to be new and/or re-named zones, which has increased the total number of zones from 55 to 64.

The following extracts from the Code are noteworthy:

- New zones introduced as part of Phase 3 where a telecommunication facility is not given specific recognition in Table 3 and simply falls into the catch-all category of *All other Code Assessed Development* include:
  - *Adelaide Country Zone*; given this zone is intended to be a near-metropolitan zone and effectively semi-rural in nature (along with promoting tourism), this approach is inconsistent with the need for such infrastructure and the ability for siting away from small townships;
  - *Established Neighbourhood Zone*; as the name suggests, this zone covers established residential areas and would need to rely on nearby centre or other non-residential zones for the siting of such infrastructure;
  - *Golf Course Estate Zone*;

- *Hills Neighbourhood; and*
- *Township Neighbourhood Zone.*
- The City Park Lands Zone appears to have been renamed *Adelaide Park Lands Zone* and there is now clarity around telecommunications facilities NOT being restricted in this zone. This is an **improvement** to the previous version and will likely help provide useful solutions in the future which are simply too onerous and uncertain under the current system.
- The *Employment (Enterprise) Zone* and the *Strategic Employment Zone* (which may have replaced the *Suburban Employment Zone*) are both new additions and both specifically lists *telecommunications facility* in Table 3 (Code Assessed) and list it as a desired use within that zone. This is consistent with the treatment in the *Employment Zone* and is a good (but rare) example of a consistent approach between the same group or type of zones.
- The *Infrastructure Zone* has been improved by specifically mentioning a telecommunication facility as a desired use and also listing the use in Table 3. However, the other two infrastructure zones do neither of these things and whilst an overall improvement, there remains a lack of consistency across a zone group which should, by its nature, be compatible with telecommunications infrastructure.
- The *Local Activity Centre Zone* is a new addition to Phase 3 and specifically mentions telecommunication facilities in Table 3. This is a logical inclusion and is generally consistent with the treatment of centre zones under the current regime.
- The *Strategic Innovation Zone* appears to have placed the *Innovation Zone* and the specific mentioning of telecommunications facilities has been carried over.

Unfortunately, there are no changes to zones which should reasonably be 'preferred' for such infrastructure, just as they are under the current regime. These include:

- *Business Neighbourhood Zone*
- *Capital City Zone*
- *City Main Street Zone*
- *Employment (Bulk Handling) Zone*
- *Motorsport Park Zone*
- *Remote Areas Zones*
- Any of the five *Rural Zones*
- *Suburban Business Zone*
- *Tourism Development Zone*
- Any of the four *Urban Corridor Zones*

Despite these obvious shortcomings, most if not all of these zones contain very extensive and specific policy controls over relatively minor matters such as carports, verandas and outbuildings. This seems to underscore the lack of importance attached to telecommunications facilities generally

throughout the Code, which have the potential to be of much greater significance to the community than a carport, veranda or outbuilding.

The *Masterplanned Neighbourhood Zone* continues to make no specific provision for telecommunications infrastructure in its policy, which is disappointing given the obvious demand for such services in newly developed areas and the general failure of spatial planning and zoning to accommodate the necessary infrastructure.

The *Open Space Zone*, *Recreation Zone* and *Residential Park Zone* also continue to miss the opportunity to allow for new facilities within those zones, which by their very nature often allow for siting of facilities with increased separation from residential and other sensitive uses.

It also remains the case that less controversial and often more-suited zones such as *Remote Areas*, *Resource Extraction* and *Rural* zones still do not specifically recognise telecommunications facilities in their policy, despite those areas often demanding such infrastructure, including for tourism and agri-businesses. This is a glaring inconsistency – particularly with respect to rural-zoned land – with the current policy regime and a likely problematic shortcoming of the proposed system.

As noted above, a small number of zones will have their notification requirements for telecommunications facilities affected by the exclusion from the definition of ‘building height’.

### **Restricted Development**

The *Hills Face Zone* remains the only zone in the State where a telecommunications facility will be a restricted form of development. However, there remains no basis for this restriction.

As has been pointed out by the MCF previously this approach is inconsistent with a recent Environment, Resources and Development Court judgment and given the size and topographical complexity of the *Hills Face Zone* it remains a fact that the zone, its residents and its visitors need adequate and reliable telecommunications services, which is otherwise difficult if not impossible to provide from outside the zone.

Further, placing a facility in the *Hills Face Zone* is likely to place it away from urban residential areas and there are many locations where tree cover or careful selection of colours and finishes would greatly mitigate any visual impact.

Accordingly, the MCF remains firmly of the view that telecommunications facilities should not be restricted in any zone – which is the approach of state planning policy in Victoria.

### **Summary of Zoning**

Based on the most up-to-date analysis of the zoning policy within the current consultation document, an updated summary table similar to that used in the MCF Phase 3 submission is shown below:

Phase	Total Number of Zones	Zones where TF captured by Table 3	Zones where TF specifically mentioned in Table 3	Zones where TF specifically mentioned in assessment provisions	Zones where TF is a restricted form of development

2	40	40 (100%)	8 (20%)	1 (3%)	0
3	55 (15 additional)	54* (98%)	9 (16%) (1 additional)	1 (2%) (0 additional)	1
3 v2	64 (9 additional)	63 (98%)	12 (19%) (3 additional)	3 (5%) (2 additional)	1

Although this analysis shows a small improvement, there remains an over-reliance on the ‘catch-all’ provisions of Table 3, continuing inconsistency between the same type/group of zones and under-recognition of zones long seen as ‘preferred’, such as rural zones.

### **Other Issues**

In terms of other issues raised by the MCF in its submissions (particularly the Phase 3 submission), there continues to be no indication that a Practice Direction or Practice Guideline is to be created. Use of such an instrument could have a similar impact to the Victorian Telecommunications Code of Practice and provide an opportunity to clarify certain matters and force the development of improved telecommunications-specific policy than currently contained in the Code.

There also remains concern over the impact of historic overlays and character area statements, however unintentionally, on Commonwealth powers and immunities, which could be particularly problematic for the installation of otherwise minor facilities or complicate maintenance.

These issues were also raised during the MCF’s presentation to Department staff in April 2020, with examples of how the extensive overlays affected a very significant extent of the metropolitan area, particularly the inner and older suburbs. The MCF has suggested clarifications within the Code (such as in Parts 7 and 8 which contains land use definitions and administrative definitions) as a potentially appropriate remedy, or alternatively these matters be cleared up through the use of a Practice Direction or Guideline.

The seemingly unnecessary re-wording of the Infrastructure module (noted above) also remains an issue, as the previous policy was non-controversial and there was no engagement with the MCF about any of the changes and how they might impact deployment. No changes to that re-wording are proposed by the latest consultation version of the Code.

### **Summary**

Although the latest version of the Phase 3 Code appears to have addressed the issue of building heights being applied to telecommunication facilities and there has been a small improvement in the number of zones more specifically dealing with telecommunications, these are really only incremental changes which remain inconsistent in their application across the Code and lack the necessary emphasis as to the essential nature of telecommunications infrastructure and services.

Accordingly, there remains a considerable gulf between the existing Development Plan regime and its known and well-understood positions (with many of those positions arising from two decades of judicial comment) and where the draft Phase 3 Code potentially leaves the industry and the State.

In short, the majority of concerns laid out in the MCF’s initial submission remain and particularly those set out in the four dot points on page 2 of that letter.

Specifically:

- Still more needs to be done to apply policies consistently across the same type or groups of zones, particularly those zone types which could be expected to support telecommunications infrastructure;
- The rural (and rural-type) zones in particular have again been neglected and make no specific effort to accommodate telecommunications infrastructure;
- A general lack of recognition of the importance of telecommunications infrastructure, even in rural and remote areas; and
- A missed opportunity to use Parts 7 and 8 of the Code to clarify many of the definitional concerns raised by the MCF.

The COVID-19 pandemic has underscored the importance of mobile telecommunications to the community and the South Australian economy seeks, through various policy positions including the Code's *Productive Economy Policy*, to rely on reliable and robust access to that technology to drive jobs and innovation in the State. However, as the MCF has pointed out, exactly how the State will enable the necessary infrastructure to be deployed in an orderly and economic way is not fleshed out.

In short, a more declarative position from the State on the essential nature of telecommunications infrastructure teamed with a more resolute policy regime is needed. This would effectively result in aligning the Code with the well-understood meanings and policy positions of the current Development Plan regime and would go a considerable way to ensuring the necessary changes to the Code are made and the State can more readily benefit from new telecommunications infrastructure and services.

As always, the MCF welcomes engagement with government on these important issues and encourages careful consideration of this submission and all previous submissions.

Community expectations for the provision of a reliable next generation mobile telecommunications service may be partially unrealised or significantly delayed without regard to the matters contained in this and other MCF submissions.

Please don't hesitate to contact Matt Evans on [REDACTED] or via email [REDACTED] should you have any immediate questions about these important issues.

Yours sincerely,



**Ray McKenzie**

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Australian Mobile Telecommunications Association