

South Australia Planning, Development and Infrastructure ACT 2016

Representation on Application

First name:

Last name:

Email: *

Consultation Document Submissions

Part 4 - General Development Policies > Land Division > Assessment Provisions (AP)

- Support
- Oppose
- Amend

Your Feedback

I had a phone conversation with Sharon from Plan SA today, 17 December 2020, and she strongly recommended that I provide feedback about an apparent omission in the Revised Planning and Design Code for Public Consultation regarding the Land Division provisions.

Sharon was surprised when she looked up the Land Division provisions relating to my address in the Established Neighbourhood Zone, Historic Area ChSt17 Cheltenham West. She expected to see different forms of land division to select from (eg battleaxe) but there was none there. She thinks this may be an omission through oversight and strongly suggested that I supply this feedback.

My specific concern is that there appears to be no provision in the Revised PDC that stipulates that the minimum site area for group dwellings must EXCLUDE the area of the common driveway or common property (sometimes called the 'handle' in battleaxe allotments). Such a provision is currently included in Charles Sturt Council's Development Plan:

Land Division PDC7;

7 Allotments in the form of battleaxe configuration should:

(a) have a site area of at least the minimum specified for the zone or policy area (excluding the area of the 'handle' of such an allotment)

I submit it is essential to include such a provision in the PDC so that minimum site areas for group dwellings comply with the legal authority set by Justice DeBelle in CITY OF MITCHAM V TERRA EQUITIES PTY LTD [2007] SASC 244 (4 July 2007).

It appears to be normal practice by some Council planning assessment officers (certainly in Charles Sturt Council) to calculate site area by simply dividing the total area of the allotment by the number of dwellings without excluding the area of the common driveway/common property. This is in direct contrast with the Supreme Court authority quoted above.

In CITY OF MITCHAM v TERRA EQUITIES (para 20), DeBelle J said:

'In my view, a common driveway used by the occupants of other dwellings on the development site is not to be included in the site of a dwelling....A common driveway is not an area capable of being used and enjoyed exclusively by occupants of a dwelling. Another reason for excluding the area of a common driveway when calculating site area lies in the fact that it is capable of producing a quite misleading result, for example in a residential development which has a very substantial driveway.'

It certainly does produce a misleading result if the common driveway area is not excluded from dwelling site area calculation because it falsely inflates the site area for each dwelling. I am aware of examples in my area where site area calculations were so skewed by including the common driveway that the dwellings appeared to meet or even exceed the minimum site area when in fact they were well below. This results in over-development to the detriment of residents in the new development and contributes to general negative effects caused by over-development such as street congestion, loss of trees and amenity, and loss of permeable surfaces which exacerbates flood risk.

DeBelle J said the practice of simply dividing the allotment size by the number of dwellings was not appropriate and should be discontinued:

'...an automatic, if not mechanical, practice of this kind which determines an average site area is not appropriate and should be discontinued.' [para 25]

There needs to be a very specifically worded provision in the PDC to give effect to the legal authority set by the Supreme Court of South Australia.

As Sharon from Plan SA noted during our phone conversation, one planning assessment officer's interpretation of planning provisions will differ from another's, so it is imperative that the Planning and Design Code provisions make it crystal clear that in the case of group dwellings, the calculation of dwelling site area must EXCLUDE the common driveway area.