

Glenunga 1852 001



Town Planning  
Development Advice  
Strategic Management

26 February 2020

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

[DPTI.PlanningReformSubmissions@sa.gov.au](mailto:DPTI.PlanningReformSubmissions@sa.gov.au)

Dear Mr Lennon,

**Draft Planning & Design Code – Phase Three (Urban Areas)**

I make the following submission on behalf of my Client, Mr Marc Kovacic in relation to proposed policies within the draft Planning and Design Code – Phase Three (Urban Areas) as such relate to the future development of land located at 499 Portrush Road, Glenunga.

For reasons I outline below, I am of the view that proposed policies may facilitate a form, scale and intensity of development beyond the actual capacity of this land such that may have profound impact on character and amenity of Mr Kovacic's residence at 82 Sydney Street, Glenunga and the surrounding locality

By way of background, a Development Application for a 2000 square metre Aldi supermarket was refused consent in December 2019 by the State Commission Assessment Panel for reasons including the scale of the proposed development and impacts arising at the interface with the adjoining residential area.

The land is currently zoned Local Centre, with policies in the current Burnside (City) Development Plan providing for shops with floor areas in the order of 450 square metres. That which was proposed was significantly in excess of this envisaged scale and was quite appropriately declined by the planning authority.

As we move forward to the transition into the new planning system, my Client seeks to be assured that the policy intent currently articulated within the Development Plan in respect to scale, intensity and form of development is appropriately translated into the Planning & Design Code to ensure a proper planning outcome.

As I understand, it the transition to the new planning system was to be 'policy neutral' in so far as such relates to the type of development envisaged for designated areas, albeit a more streamlined assessment pathway being provided for. To the extent that change is proposed, such should be transparent and appropriately justified.

**Phillip Brunning & Associates**

ABN 40 118 903 021

26 Wakeham Street  
Adelaide SA 5000



I respectfully submit that policies contained within the draft Planning & Design Code do not follow to this 'like for like' protocol and that changes now proposed are not sufficiently transparent and appropriately justified. It is only on closer inspection that critical policy differences are identified.

Whereas the current Local Centre Zone provides for a range of shops that are small scale and suited to servicing the 'day to day' needs of the local community, the proposed Suburban Activity Centre Zone is to provide for neighborhood scale shopping that provide for most daily and weekly shopping needs of the community.

The subtle yet profound difference is that the function of this centre zone is to be elevated from servicing the day to day need needs of the local community to the weekly shopping needs of the neighbourhood and the surrounding district. This will have the effect of allowing a higher order retail function than currently provided for.

Narrative provided within the current Development Plan under the heading 'Retail and Centres' clarifies this hierarchy of centres is based on the principle that each type of centre provides a proportion of the total community requirement for goods and services commensurate with its role, i.e.

*The degree to which the various facilities can be located within a centre will depend, among other things, upon the size of the centre, the specific policies relating to the centre, the implications of competing centres for the population being served, and the characteristics of the population to be served. Each development proposal for a centre should be evaluated against the defined roles in the centre hierarchy of that centre and other centres.*

*New development in centres or corridor zones should result in the expansion of the total range of retail goods and services available to the population to be served, have regard to the location and role of other existing and proposed centre zones, and be of a size and type which would not demonstrably lead to the physical deterioration of any existing centre zone.*

*The identification of each zone in a hierarchy of centres should be such as to:*

- (a) cater for the existing and future population's shopping and community needs;*
- (b) provide a degree of choice in the location of centre facilities;*
- (c) be safely and readily accessible to the population to be served, particularly by public transport, and obviate the need for unscheduled large-scale traffic and transport works;*
- (d) have minimal adverse impact on residential areas;*
- (e) concentrate development on one side of an arterial road, or one quadrant of an arterial road intersection, and have minimal adverse impact on traffic movement on arterial roads. Linear extension of centre zones or areas along arterial roads is to be minimised;*
- (f) reflect the potential to rehabilitate or extend centre zones or areas, and make effective use of existing investment in public infrastructure, utilities and transport, any costs involved being offset by benefits to the population being served;*
- (g) be of a size and shape suitable for their functions, and provide car parking facilities;*
- (h) have regard to the maintenance of retail employment levels in the area; and*
- (i) have regard to the degree to which existing centres satisfy the above objectives.*

It is apparent that the retail centres hierarchy envisaged under the current Development Plan, which provides for a rational spatial distribution of integrated centres according to role and function, is to be replaced with a less structured framework that does not provide such policy guidance. This is regrettable.

I note more specifically that the current floor area limit of 450 square metres GLA expressed as a Principle of Development Control within the Development Plan for the Local Centre Zone has been dispensed with. The proposed Suburban Activity Centre Zone does not express such floor area control.

Notwithstanding the above, my Client's primary concern is around the externalities arising from the development of this land such that may diminish amenity and impact the much valued character of the adjoining residential area. Considerations in respect to form, bulk, scale and intensity are relevant in this regard.

In so far as the current floor area limit of 450 square metres seeks to regulate the scale and intensity of retail shop uses in terms of economic function, this policy setting also has a role to play in relation to the physical form of buildings within this relatively shallow Local Centre Zone.

The form of building mooted for this land is significantly in excess of this size such that will have profound amenity impacts on adjoining land in terms of the bulk and visual scale of the structure relative to the rear gardens of adjacent residential properties. This fundamental planning consideration should not be overlooked.

Current Development Plan policy also speaks to development being of *'a high design standard and appearance that responds to and reinforces positive aspects of the local environment'* and that *'development sited close to a side or rear boundary should minimise visual impact and overshadowing of adjoining properties'*.

This is reinforced Council Wide Principle of Development Control 236.

- 236** Development located within any centre zone should be designed and located to minimise its impact on existing or potential dwellings in an adjacent zone due to:
- (a) vehicular access, egress and circulation within the site of the development;
  - (b) the location and arrangement of service, refuse and waste storage and collection facilities;
  - (c) the scale, height and bulk of buildings where located close to the boundaries of the zone;
  - (d) unreasonably adverse visual impact when viewed from the site of any dwelling;
  - (e) loss of privacy or overshadowing; and
  - (f) the generation of noise, odour, light or particulate matter.

The recent development application by Aldi failed these fundamental planning tests.

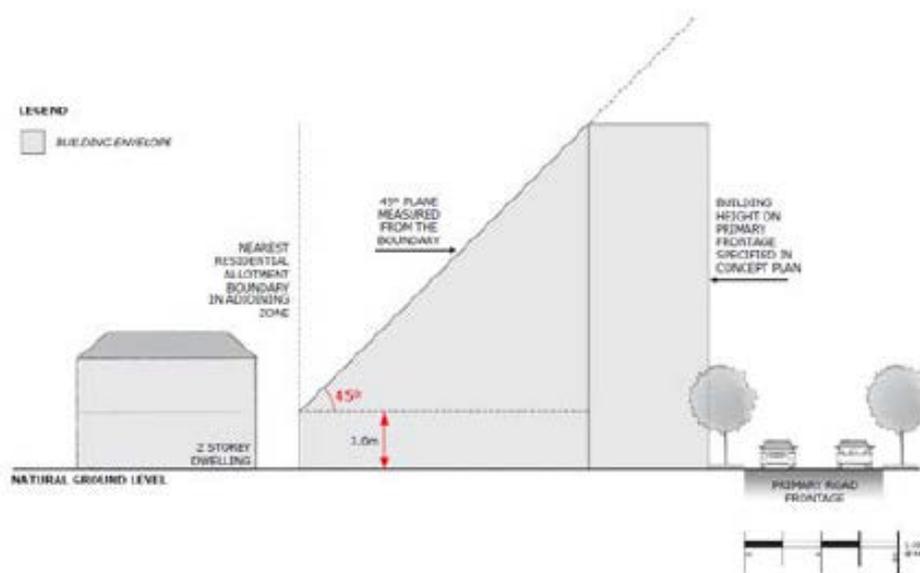
Reassuringly, the draft Planning and Design Code does include policies that deal with this issue of amenity at the interface with adjoining zones. Suburban Activity Centre Zone Performance Outcome 3.1 seeks *'a range of low to medium rise buildings, with the highest intensity of built form at the centre of the zone and lower scale at the periphery'*.

This Performance Outcome is informed by a Deemed to Satisfy/Designated Performance Feature which makes reference to various maximum building height overlays which regrettably are not operational using the Planning and Design Code Consultation Map Viewer provided online.

This technical issue has frustrated my Client's ability to make an informed submission on this issue of maximum building height and should be remedied forthwith. I would even go so far as to say that the consultation period should be extended to allow for further review and supplementary submissions.

Performance Outcome 3.2 for the Suburban Activity Centre Zone seeks that *'buildings mitigate visual impacts of building massing on residential development within a neighbourhood zone'*. This Performance Outcome is informed by the following Deemed to Satisfy (DTS)/Designated Performance Feature (DPF).

Buildings constructed within a building envelope provided by a 45 degree plane measured from a height of 3 metres above natural ground level at the allotment boundary of a residential allotment within a neighbourhood zone as shown in the following diagram (except where this boundary is a southern boundary in which case DTS/DPF 3.3 will apply, or where this boundary is the primary street boundary):



The planning purpose of this provision is patently clear with any departure away from this building envelope only contemplated where it can be demonstrated that the penetration will not have a deleterious effect on the character and amenity presently enjoyed by low scale residential development within the adjoining zone.

I can not stress enough how important this provision is in this circumstance.

I do however question the appropriateness of allowing on boundary construction at the interface between the proposed Suburban Activity Centre Zone and the adjacent Suburban Neighbourhood Zone (currently the Residential Zone) and would have thought that a minimum set back of 3 metres would be necessary.

Whereas the current policies for the Local Centre Zone only allow for single storey development (with an exception for undercroft car parking) there is no such control proposed under the Suburban Activity Centre Zone within the draft Planning & Design Code. This represents a significant policy shift.

In combination, the proposed policy framework would allow for multi level development (no limit specified) in close proximity to low scale residential development adjoining to the west far in excess of that presently provided for. This is of serious concern and ought to be reviewed and amended accordingly.

This is not an Urban Corridor Zone and therefore should not be provided with the ability to pursue multi level development (no limit) in a location that has limited physical capacity and without the attributes enjoyed in designated areas in terms of access to public transport, community facilities and the like.

The current policy setting is to my mind is an anomaly that must be corrected.

In addition to that expressed for the Suburban Activity Centre Zone, the draft Planning & Design Code calls up various General Development Policies in relation to 'Design in Urban Areas' and 'Interface Between Land Uses' which I represent and comment on below.

## Design in Urban Areas

Assessment Provisions (AP)

Desired Outcome (DO)

### DO 1

Development that is:

- (a) contextual – by considering, recognising and carefully responding to its natural surroundings and positively contributing to the character of the immediate area;
- (b) durable – fit for purpose, adaptable and long lasting;
- (c) inclusive – by integrating landscape design to optimise pedestrian and cyclist usability, privacy and equitable access, and also promote the provision of quality spaces integrated with the public realm that can be used for access and recreation and help optimise security and safety both internally and within the public realm, for occupants and visitors alike; and
- (d) sustainable – by integrating sustainable techniques into the design and siting of development and landscaping to improve community health, urban heat, water management, environmental performance, biodiversity and local amenity and to minimise energy consumption.

While the intent of this provision is understood, I question why there is reference to '*natural surroundings*' when addressing context given that the character of urban areas are by their very nature not natural? Can I respectfully suggest that the word '*natural*' be removed else it may be interpreted and applied in a limiting manner.

### PO 1.5

The negative visual impact of outdoor storage, waste management, loading and service areas is minimised by integrating them into the building design and screening them from public view (such as fencing, landscaping and built form) taking into account the form of development contemplated in the relevant zone.

### DTS 1.5

None are applicable.

Landscaping

### PO 3.1

Landscaped (including trees), permeable open spaces incorporated to:

- (a) minimise heat absorption and reflection;
- (b) maximise shade and shelter;
- (c) maximise stormwater infiltration; and
- (d) enhance the appearance of land and streetscapes.

### DTS 3.1

None are applicable.

Can I suggest that this provision be amended to include words to the effect that a landscaped buffer of say 3 metres in depth should be used to reduce the visual impact of buildings, in particular where adjoining land is a different land use zone that accommodates low scale residential dwellings.

Earthworks

**PO 7.1**

Development, including any associated driveways and access tracks, minimises the need for earthworks to limit disturbance to natural topography.

**DTS / DPF 7.1**

Development does not involve either:

- (a) excavation exceeding a vertical height of 1m;
- (b) filling exceeding a vertical height of 1m; or
- (c) a total combined excavation and filling vertical height of 2m or more.

The quantitative measures in relation to earthworks and retaining walls are noted and supported. Can I suggest that there should also be a Deemed to Satisfy/Designated Performance Feature included which addresses the combined height of retaining walls and fences atop, particularly on sloping land.

**Interface between Land Uses**

Assessment Provisions (AP)

<b>Desired Outcome (DO)</b>
<p><b>DO 1</b></p> <p>Development located and designed to mitigate adverse effects on neighbouring and proximate land uses to reduce potential for conflict.</p>

The intent of this provision is clear and goes to the heart of the assessment of development at the interface with low scale residential zones such as in this instance. I am however unclear as to why a different presentation format has been utilised in relation to this policy. This ought to be clarified prior to implementation.

<b>General Land Use Compatibility</b>	
<p><b>PO 1.2</b></p> <p>Development adjacent to a site containing an existing sensitive receiver or zone primarily intended to accommodate sensitive receivers designed to minimise adverse impacts.</p>	<p>None are applicable.</p>
<b>Hours of Operation</b>	
<p><b>PO 2.1</b></p> <p>Non-residential development does not unreasonably impact the amenity of existing sensitive receivers or an adjacent zone primarily for sensitive receivers through hours of operation having regard to:</p> <ul style="list-style-type: none"> <li>(a) the nature of the development;</li> <li>(b) measures to mitigate off-site impacts;</li> <li>(c) the extent to which the development is desired in the zone; and</li> </ul>	<p><b>DTS/DPF 2.1</b></p> <p>Consulting room, office and shop hours of operation are limited to 7am – 9pm Monday to Friday and 8am – 5pm Saturday inclusive.</p>
<ul style="list-style-type: none"> <li>(d) measures that might be taken in an adjacent zone primarily for sensitive receivers that mitigate adverse impacts without unreasonably compromising the intended use of that land.</li> </ul>	

These provisions are supported and will be of critical importance in the assessment of higher intensity non-residential land uses when proposed adjacent existing low intensity residential development so as to mitigate unreasonable impact arising. Interestingly, I note that shop hours are sought to be restricted on Sundays.

<b>Overshadowing</b>	
<p><b>PO 3.1</b></p> <p>Overshadowing of habitable room windows of adjacent residential land uses not unreasonably interrupted to maintain access to direct winter sunlight.</p>	<p><b>DTS/DPF 3.1</b></p> <p>North-facing windows of habitable rooms of adjacent residential land uses receive at least 3 hours of direct sunlight over their surface between 9.00 am and 3.00 pm on 21 June.</p>
<p><b>PO 3.2</b></p> <p>Overshadowing of the primary area of private open space or communal open space of adjacent residential land uses not unreasonably interrupted to maintain access to direct winter sunlight.</p>	<p><b>DTS/DPF 3.2</b></p> <p>Development maintains 2 hours direct sunlight between 9.00 am and 3.00 pm on 21 June to adjacent residential land uses in accordance with the following:</p> <ul style="list-style-type: none"> <li>(a) for ground level private open space, the smaller of the following:               <ul style="list-style-type: none"> <li>(i) half of the existing ground level open space; or</li> <li>(ii) 35m<sup>2</sup> of the existing ground level open space (with at least one of the area's dimensions measuring 2.5m);</li> </ul> </li> <li>(b) for ground level communal open space, at least half of the existing ground level open space.</li> </ul>
<p><b>PO 3.3</b></p> <p>Development does not unduly reduce the generating capacity of existing rooftop solar energy facilities taking into account:</p> <ul style="list-style-type: none"> <li>(a) the form of development contemplated in the relevant zone;</li> </ul>	<p>None are applicable.</p>
<ul style="list-style-type: none"> <li>(b) the orientation of the solar energy facilities to operate effectively and efficiently; and</li> <li>(c) the extent to which the solar energy facilities are already overshadowed.</li> </ul>	

Whereas north facing windows are more specifically addressed by Deemed to Satisfy/Designated Performance Feature 3.1, I submit that east facing windows within adjoining residential properties ought to be provided with a similar level of protection in so far as this is the primary orientation for habitable areas.

Likewise, east facing rear private open space on adjoining residential properties should be provided with suitable solar access during the nominated times which reaffirms the importance of ensuring that the scale of development in the Suburban Activity Centre Zone is not excessive.

Similar consideration is appropriate in terms of solar access to roof top solar panels.

<b>Activities Generating Noise or Vibration</b>	
<p><b>PO 4.1</b></p> <p>Development that emits noise (other than music noise) does not unreasonably impact acoustic amenity at the nearest existing sensitive receivers.</p>	<p><b>DTS/DPF 4.1</b></p> <p>Predicted noise at the nearest existing sensitive receiver achieves the relevant Environment Protection (Noise) Policy criteria.</p>
<p><b>PO 4.2</b></p> <p>Areas for the on-site manoeuvring of service and delivery vehicles, plant and equipment, outdoor work spaces (and the like) are designed and sited to not unreasonably impact the amenity of adjacent sensitive receivers and zones primarily intended to accommodate sensitive receivers due to noise and vibration by adopting techniques including:</p> <p>(a) locating openings of buildings and associated services away from the interface with the adjacent sensitive receivers and zones primarily intended to accommodate sensitive receivers;</p> <p>(b) when sited outdoors, locating such areas as far as practicable from adjacent sensitive receivers and zones primarily</p>	<p>None are applicable.</p>
<p>receivers;</p> <p>(c) housing plant and equipment within an enclosed structure or acoustic enclosure; and</p> <p>(d) providing a suitable acoustic barrier between the plant and / or equipment and the adjacent sensitive receiver boundary or zone.</p>	

Non residential development such as supermarkets are served by large scale air conditioning and refrigeration plant and equipment. The location and performance of this plant should be informed by provisions such as that outlined above. The inclusion of these provisions within the Planning & Design Code is supported.

<b>Light Spill</b>	
<p><b>PO 6.1</b></p> <p>External lighting positioned and designed to not cause unreasonable light spill impact on adjacent sensitive receivers.</p>	<p><b>DTS/DPF 6.1</b></p> <p>None are applicable.</p>

In much the same manner as Deemed to Satisfy/Designated Performance Feature 4.1 it would be appropriate to refer to the relevant technical standard in relation to external lighting as such relates to amenity, i.e. AS 4282—1997 Australian Standard. *Control of the obtrusive effects of outdoor lighting.*

The external lighting of buildings for security and occupational safety can have a profound impact on the amenity of adjoining residential properties in terms of light spill and glare, far beyond that ordinarily experience within residential areas. This reinforces the need for landscaped set backs at the interface.

Solar Reflectivity / Glare	
<p><b>PO 7.1</b></p> <p>Development designed and comprised of materials and finishes that do not unreasonably cause a distraction to adjacent road users and pedestrian areas or unreasonably cause heat loading and micro-climatic impacts on adjacent buildings and land uses as a result of reflective solar glare.</p>	<p><b>DTS/DPF 7.1</b></p> <p>None are applicable.</p>

Given the orientation of land within the Suburban Activity Centre Zone to the west there is significant potential for solar glare arising from highly reflective finishes on buildings towards the rear yard areas of adjoining residential properties. Greater policy guidance should be provided in this regard.

In conclusion, it would appear that the proposed policy framework for this land at Portrush Road, Glenunga falls well short of community expectation in terms of affording adjoining residents with suitable amenity and protection from the obtrusive effects of large scale and intensive commercial development.

Can I encourage you to consider the matters that I have raised above and take appropriate action to remedy the situation by introducing policies that afford suitable balance between the interests of property owners on both side of the zone boundary. The current draft policy fails to achieve such balance in my view.

As provided for, I request the opportunity to appear before the State Planning Commission to speak further to these policy submissions. Can you please confirm of the time and date of the public hearing, and my ability to attend and present?

As a courtesy, I have provided a copy of this submission to the City of Burnside.

Yours faithfully

**PHILLIP BRUNNING & ASSOCIATES PTY LTD**



**PHILLIP BRUNNING** RPIA  
Registered Planner

cc. City of Burnside