28 February 2020

The Chair
State Planning Commission

By email: DPTI.PlanningReformSubmissions@sa.gov.au

Attention: Mr M Lennon

Dear Michael,

Re: Submission - Draft Planning & Design Code (Phase 3 Urban Areas)

1. INTRODUCTION

We write in relation to Phase Three (Urban Areas) Planning and Design Code ("the Code").

Established in 1922, Adelaide Development Company ("ADC") is a property development company approaching a century of experience in the South Australian property sector. ADC has direct and ongoing interest in multiple land parcels and building assets across Greater Adelaide which will be affected by the introduction of the Code.

To inform this submission, as best we could we have undertaken extensive research of the draft version of the Code, particularly the Zone and Policy framework proposed to apply to ADC holdings, as well as a comparison of the Code framework relative to existing planning ordinance.

As an outcome of this analysis, we have identified a number of 'generic' issues that are likely to affect multiple ADC asset holdings, as well as future development opportunities more generally in this State. These concerns warrant further consideration and revision of the Code and any associated legislative amendment.

2. CONSULTATION PROCESS

We are aware of the magnitude of the work required to reform the State planning system, and the considerable efforts made by the State Planning Commission and Department for Planning, Transport & Infrastructure personnel to consult with all parties on this reform. Despite these efforts, in our view, public consultation for the Code has not yet delivered on key 'performance outcomes' of the State Planning Commission Community Engagement Charter. In particular:

- An 'E-planning' version of the Code was not available for review and 'testing' during the consultation period. A draft version of the Code was provided in PDF format only. It extends to some 3,031 pages and fails to include 'simple' wayfinding tools such as 'headers and footers', hyperlinks etc. Any analysis of the Code has been extraordinarily time consuming, confusing and cumbersome. It has been especially difficult to confirm the proposed policy framework that will apply to land holdings and make comparisons between policy areas. This has been further compounded by the draft Code containing many drafting errors, incorrect references and apparent omissions (as acknowledged within the Phase Three – Update Report).
• The Planning and Design Code Consultation Map Viewer, which provides some spatial representation of the Code, is not appropriately automated to determine zones, sub-zones, overlays, technical and numeric variations etc. which apply to large individual sites. It has been an extremely time-consuming process to fully determine all relevant overlays and their extents on a large site. The options currently available to owners of large sites are:
  o Multiple 50m radius searches over a parcel; and/or
  o Progressively switch on/off all individual overlays.

There needs to be functionality to enable a holder of a large site to be clearly presented with all relevant overlays and their extents by merely referencing their site (whether by polygon area or title reference or similar). Combined with the ‘paper’ version of the Code, this has further exacerbated the difficulties in confirming the proposed policy framework that will apply to individual land holdings.

• The Phase Three – Update Report and some associated updating of Code Classification Tables was produced in December 2019. Some proposed updates are profound but are not yet reflected on the Planning and Design Code Consultation Map Viewer or draft Code. The updated Code Classification Tables had no page numbers or hyperlinks making referencing very difficult and time consuming. There may be other substantial proposed updates that we are not aware of and that could affect our holdings.

Given the difficulty in navigating the draft ‘paper’ version of the Code, we are concerned that we may have missed some policy details or changes that may impact on our holdings, and hence have been denied an opportunity to be informed or comment on such.

To address this we wish to be consulted on the next iteration of the Code (ie ‘Version 2’) and in parallel have the opportunity to utilise a live version of the e-Planning, electronic lodgement and assessment system, to allow us to effectively and efficiently understand and test the application of the new Code, enabling us to provide further feedback.

3. ‘GENERIC’ ISSUES

The following ‘generic’ issues have been identified. These are common issues which are likely to affect multiple ADC holdings across the Phase Three Code area, as well as future development opportunities more generally.

3.1 STATE AGENCY REFERRALS

In comparison to the existing policy framework, we note that under the Code, there is an increased number of State Agency Referral ‘Triggers’ identified within Overlays. For example:

• Native Vegetation Council – for specified development types within the Native Vegetation Overlay;

• Environment Protection Authority (EPA) – change in use of land to sensitive use or more sensitive use, except where a site contamination audit report under Part 10A of the EPA Act 1993 (within 5 years of the application) has been prepared in relation to the land; and

• SA CFS – increased number of development types require referral as identified within the Hazards (Bushfire – High Risk Overlay).
In addition, we also note the Code provides for increased ‘power' for State Agencies as outlined within Schedule 9 of the *PD1 (General) Regulations 2017*. For example:

- State Heritage – Agency now has power of ‘Direction’ (previously ‘Regard’);
- Commissioner of Highways - Agency now has power of ‘Direction’ in respect of all development affecting arterial roads (previously ‘Regard’ in many instances); and
- Environment Protection Authority (EPA) – Agency now has power of ‘Direction’ in respect of all activities of environmental significance (previously ‘Regard’ in certain instances).

We are concerned that the increased number of referral pathways, coupled with increased ‘power' of ‘Direction' for certain State Agencies, will result in longer and protracted assessment periods, more onerous Agency requirements and reduced certainty and confidence for the development industry.

State Agencies should be consulted (where directly relevant) and provide their expert assessment as ‘Advice', for consideration and inclusion by the Relevant Authority. The Relevant Authority can then make a ‘balanced' decision taking into consideration all factors of the application, including the advice of the relevant Referral Agencies. The ‘power' of ‘Direction' raises the profile and emphasises single issues above all other planning considerations resulting in a partisan, rather than objective determination.

The rationale that Referral Agencies will be more accountable when applying the ‘power' of ‘Direction' (particularly with respect to defending decisions in the ER&D Court) is unsubstantiated noting that a Relevant Authority comprising professional, experienced and accredited professionals will be making a determination based upon all information available in support of the application, and should remain accountable for their decision, irrespective of the advice provided by a Referral Agency.

If a Referral Agency provides a ‘Direction' that is unreasonable, the Relevant Authority must accept it in providing its determination. The only mechanism available for applicants is to seek appeal to the ER&D Court. It is plausible that an applicant may need to seek appeal on the Direction given by multiple Referral Agencies, thus increasing the time, cost and effort. The unbalanced power/resources of Referral Agencies versus applicants could make appeals uneconomic or success unlikely (no matter the unreasonableness of the 'Direction') and serve to reinforce a Referral Agencies power in making further unreasonable ‘Directions'.

The frequency/opportunity for Agency Referrals needs to be reviewed and reduced. The ability for an Agency to apply the ‘power' of ‘Direction' should only apply as it currently does under the *Development Regulations 2008* (i.e. no change) to ensure a streamlined and balanced development assessment process and outcomes.
3.2 PUBLIC NOTIFICATION

We note that under the Code, it is likely that more types of development will be publicly notified due to onerous and extensive notification criteria listed within many of the proposed zones. For example:

- Within the Capital City Zone – 'all other Code assessed development' requires public notification, whereas under the current Development Plan, all development is Category 1;
- In many instances, notification is required where the site of the development is adjacent a different zone, even if the adjacent zone is not for residential (sensitive) purposes; and
- For residential development, where there is an exceedance of specified design criteria (building height, setbacks, site area etc.) – with no regard to the extent or amenity impact of such a departure, or the context of the locality more generally.

Further, there are numerous instances where land uses which are 'envisaged' or 'contemplated' by a Zone, require public notification. For example:

- Tourist Accommodation within the Capital City Zone; and
- Shops, offices and consulting rooms exceeding 2,000m² GLFA within the City Main Street Zone.

We are of the view this approach to public notification is at odds with the overarching intent of the planning reform to deliver a quicker, simpler and more streamlined development assessment process. This approach will result in longer and protracted assessment periods and reduced certainty and confidence for the development industry. Further, it is likely to foster 'unreasonable' public expectation, particularly where residents are afforded an opportunity to comment on those types of development that are envisaged, entirely reasonable and aligned with the performance outcomes of a zone.

Based on a recent workshop of the Department with the UDIA held on 19 February 2020, we understand that the State Planning Commission ('SPC') is considering an arrangement where "specific classes of development will be excluded from notification rather than excluding all development and listing exceptions". We do not support this approach as we believe this will result in unintended consequences of an even larger number of applications requiring public notification (i.e. all forms of development not specifically and implicitly excluded from notification).

Public notification triggers should be reviewed and removed where current inclusions are overly onerous and have little regard to the external impacts of the development. In particular, land use activities which are 'envisaged' or 'contemplated' should not require notification. We do not support specific classes of development being excluded from notification, rather than excluding all development and listing exceptions.
3.3 OVERLAYS

We are concerned the imposition of a large number of locality specific ‘Overlays’ and ‘Technical and Numeric Variations’ (T&NV), will dilute the overall importance and primacy of individual ‘zones’.

This means that policies in a zone may not be applied consistently across the Phase Three Urban area, with a large number of variations applied by Overlay and T&NVs, which ‘trump’ relevant Zone provisions. We are concerned this has the unintended consequence of reducing the ‘legibility’ of zones, and provides for inconsistent planning rules which reduces certainty in decision making. In particular, zone ‘parameters’ which apply in one location, may not apply in another.

We are of the view this level of uncertainty will reduce developer confidence, and lead to an inconsistent approach towards development assessment by geographical location.

Further, we are of the view there are too many instances where ‘Accepted Development’ and ‘Deemed to Satisfy’ pathways are unnecessarily ‘blocked’ by the imposition of Overlays. In particular, we note there are numerous instances where the imposition of Overlays (for example Sloping Land, Bushfire Risk or Native Vegetation) will prevent relatively straightforward development types (such as dwellings and outbuildings) from being classified as Accepted or Deemed to Satisfy.

We note this issue appears to have been acknowledged within Section 8.3 of Phase Three – Update Report, and we look forward to further amendment of these provisions to ensure a more streamlined development outcome for ‘straightforward’ development types.

There should be a review and refinement of the number and spatial application of Overlays, to ensure their application does not unreasonably prevent simple and expected classes of development from following ‘Accepted’ or ‘Deemed to Satisfy’ assessment pathways.

3.4 MULTI-HECTARE DEVELOPMENT SITES

We are of the view there has been a missed opportunity to include strategically located, large land parcels (ie multiple hectare) within more flexible ‘greenfield’ zones, proposed under the Code.

There should be an in-depth review of strategically positioned and relatively large land parcels across the Phase Three urban area, as there are too many occasions where future large development sites are simply zoned to match the adjacent existing lower density residential zones (eg ‘Suburban Neighbourhood Zone’).

Such large parcels provide an excellent opportunity to accommodate future urban growth, an increase in housing diversity and density, and yet still provide an appropriate interface with adjacent existing residential areas.

Greenfield and large infill master-planned developments (especially by well-known and reputable developers) provide excellent housing outcomes at a significantly higher standard than individual small lot infill development in existing residential areas. Large development sites should not be burdened by the drivers behind improving the standard of small lot infill development in existing suburban areas.
All significantly large (ie multiple hectare) development sites should be classified as ‘Greenfield Suburban Neighbourhood Zone’.

Strategically positioned large land parcels within the Phase Three urban area should be zoned ‘Greenfield Suburban Neighbourhood Zone’. The ‘Greenfield Suburban Neighbourhood Zone’ should allow maximum flexibility for housing diversity and density, and the simplest planning approval processes for development envisaged in these areas.

3.5 ASSESSMENT PATHWAYS

We welcome the intent to introduce streamlined assessment pathways, via Accepted Development and Deemed to Satisfy (DTS) criteria.

However, we are of the view that DTS triggers should be expanded within residential zones, particularly ‘greenfield’ zones, to include ‘land division’ (subject to meeting relevant design and service-based criteria). This is a highly appropriate outcome for zones where residential development is clearly a contemplated and anticipated form of development.

The inclusion of ‘land division’ within the DTS pathway would ensure increased certainty for the development industry, and in turn, allow for the delivery of efficient and coordinated development of strategic land parcels in the future.

Section 7.7 of the Phase Three – Update Report identifies that the State Planning Commission intends to expand DTS pathways for land division in neighbourhood zones to include the division of land that reflects the site or allotment boundaries on a valid development authorisation (where the allotments are used, or proposed to be used, solely for residential purposes) and the application does not create more than six (6) allotments. While we welcome the intent of this inclusion, we are of the view this should be further expanded to include all land division, regardless of scale, subject to the division meeting specific design and service-based criteria.

‘Land division’ should be identified as a form of ‘Deemed to Satisfy’ development within neighbourhood zones, particularly those intended to support ‘greenfield’ expansion.

3.6 GENERAL NEIGHBOURHOOD ZONE – BUILDING LEVELS / HEIGHT

The ‘General Neighbourhood Zone’ is intended to ‘encourage a range of dwelling types to increase housing diversity and supply’ and applies to most of the residential land in Greater Adelaide, intended to replace existing ‘residential zones’ (Guide to the Planning and Design Code).

Desired Outcome (DO) 1, Performance Outcome (PO) 4.1 and DTS/DPF 4.1 of the General Neighbourhood Zone, limit building height within the Zone to 2 building levels and 9 metres.

We contend that the General Neighbourhood Zone should allow for residential development up to three (3) levels. We recognise that a building height of two (2) levels is likely to be the most common ‘maximum’ building level for the majority of the Phase Three urban area, but it would be reasonable to identify a maximum building height of up to three (3) levels – especially on larger
development sites - as there will be instances where an increased building height is appropriate having regard to local conditions, the context of the existing locality and provision of greater housing diversity and affordability.

**DO 1, PO 4.1 and DTS/DPF 4.1 of the General Neighbourhood Zone should be amended to allow for a maximum building height of up to three building (3) levels in appropriate circumstances.**

### 3.7 LAND USE AND LANGUAGE CLARITY

We welcome the inclusion of Part 7 (Land Use Definitions) and Part 8 (Administrative Definitions) within the Code, but we are of the view that all land uses identified within the Code should be clearly defined to remove possible ambiguity. In addition, we note there is a risk that the language adopted for many ‘Performance Outcomes’ (PO) remain vague and open to interpretation.

For example:

- The Code does not define an ‘Apartment’, yet it is often listed as a ‘contemplated’ land use. Is this different to a Residential Flat Building which is often used concurrently within Zones?
- The ‘Master-Planned Suburban Neighbourhood Zone’ refers to ‘Suburban Activity Centres’ and ‘Urban Activity Centres’ however, these are not defined;
- The Code uses descriptors such as ‘higher order roads’ to identify the appropriate location of certain development types, however the criteria for such roads is unclear; and
- Performance outcomes often refer to the ‘scale’ of development e.g. ‘small scale’, however we are of the view this is liable to be interpreted differently across various Relevant Authority jurisdictions. While we recognise that such performance outcomes are often supported by a DTS/DPF criteria (or ‘guideline’), which nominate a ‘floor cap’ to address the question of scale, it is unclear if such criteria will be ‘rigidly’ applied – in which case, the use of such language as ‘small scale’ is likely to be rendered somewhat irrelevant.

**We request the following amendments:**

1. All land use classifications, including ‘Apartments’, should be clearly defined within Part 7 of the Code.
2. The language style for Performance Outcomes relating to land use intensity should be reviewed to remove ambiguity.
3. We wish to be consulted on ‘Version 2’ of the Code, as well as any subsequent Practice Directions which seek to clarify the relationship between Performance Outcomes and DTS/DPF criteria.
4. UDIA SUBMISSION

We are aware of and familiar with a detailed submission by the Urban Development Institute of Australia. We support the issues and recommendations contained within that submission.

5. PLANNING & DESIGN CODE IMPLEMENTATION

We commend the decision of Minister Stephan Knoll and the State Planning Commission to extend the implementation date of the Planning & Design Code beyond 1 July 2020.

The e-Planning system must be made available as soon as possible to enable the development industry and assessment authorities sufficient time to properly test drive the system, gain familiarity and iron out any issues in the Planning and Design Code before this fundamental change to the new planning system goes 'live'.

However, we are concerned that during this delay there will be a slowdown or delay to any rezoning / code amendments. To prevent such delays (which is a delay to investment and jobs in this State), we encourage minimising delay of the implementation date as much as possible, but without compromising testing of the system by the development industry and assessment authorities.

Should you have any further queries or wish to discuss details of our submission then please contact me.

Yours faithfully

Lael Mayer
General Manager