

29 November 2019

State Planning Commission
P O Box 1815
ADELAIDE SA 5001

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

Dear Commissioner

Re: Planning and Design Code – Phase 2 – 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, Vodafone Hutchison Australia and TPG.

Our members have a keen interest in the regulatory and planning frameworks within which they deploy their networks as these have a material impact on the efficiency and timeliness of bringing the significant benefits of mobile telecommunications to the businesses and communities of Australia. As such, the MCF has been closely watching the South Australian planning system reforms over the last couple of years and has made a number of submissions during that time on behalf of our members.

This submission relates specifically to the Planning and Design Code ('P&D Code') Phase 2 consultation, which affects 35 rural Council areas in South Australia. As Phase 3 of the P&D Code is also on consultation (affecting the remaining Council areas in South Australia, in particular the Adelaide metropolitan area and all regional cities) it is intended this Phase 2 submission will highlight the higher-level issues as the MCF see them (applicable to both Phase 2 and 3) along with specific comments on the zones and other policies within the Phase 2 amendment document.

The MCF then intends to submit a very detailed submission on Phase 3 which, on the back of this Phase 2 submission and all previous submissions, draws together all the threads of outstanding matters to ensure the MCF's position is summarised clearly and concisely.

Previous Submissions

To fully understand the content of this submission on Phase 2 it is helpful to briefly re-visit the previous submissions made by the MCF, the policy changes (requested and already accommodated) and further changes we believe are necessary and desirable. The previous submissions are summarised below.

Original Submission – October 2018

In October 2018, the MCF made a substantial (unsolicited) submission to the State Planning Commission with the objective of assisting the South Australian Government in devising and implementing an efficient and effective planning framework for the future deployment of this essential infrastructure.

The submission, amongst other things, considered the existing BDP policy modules for Infrastructure and Telecommunications Facilities (set out in section 6) and devised a single Infrastructure policy module which sought to formalise and rationalise the essential nature of telecommunications together with other types of recognised essential infrastructure. This approach thereby dispensed with the separate and unnecessary controls for telecommunications and ensures equality of treatment across items of essential infrastructure while removing potential arguments relating to discrimination.

The MCF's members have, over the last two decades or so, had extensive experience in deploying network infrastructure in South Australia, which has (at times) included the need for judicial decision making. It is through the many decisions of the Courts that clarification and interpretation of 'telecommunication facilities' has been framed, allowing effective and timely delivery of services and the recognition of such services as 'essential'.

The October 2018 submission concluded that the planning reforms currently underway should make a range of changes. These are listed in the table below along with the current status of those suggested changes.

Change Suggested in Oct 2018 Submission	Current Status (Nov 2019)
Inclusion of telecommunications infrastructure as essential infrastructure, in line with repeated Court findings	Not yet included – this should be incorporated into the Infrastructure module of the P&D Code and in the associated regulations
Incorporate all telecommunication facilities policy provisions into the 'Infrastructure' module (with appropriate wording and additions), dispensing completely with the separate telecommunications facilities module currently in use	Change included in Planning and Design Code Infrastructure module
Ensure that the definition of 'telecommunications facility' is specifically defined and tied to the provisions for essential infrastructure in the nature of 'communications infrastructure', and that term be aligned with the Commonwealth 'telecommunications facility' definition in the <i>Telecommunications Act 1997 (Cth)</i> .	Partly included - the definition included in the Planning and Design Code ties it to the Commonwealth <i>Telecommunications Act 1997</i> but there are still inconsistencies in the draft Development Assessment Regulations that need revision and clarification to avoid inevitable confusion and potential for judicial interpretation. There is no clear link between telecommunications facilities and 'essential infrastructure' in the draft regulations, nor in the P&D Code. There is also potential further undermining or confusion through the use of slightly different terms throughout the documents to describe (presumably) the same thing, raising the question of which term prevails.

Introducing a range of exempt, complying, accepted ¹ and deemed to satisfy ² complying development for telecommunications facilities, subject to certain performance and siting criteria. This might include a combination of facility height, zoning and the type of facility – akin to provisions for other forms of infrastructure such as railways (which have long been accommodated, allowing certainty to the industry and decision makers)	Has not occurred – see detailed Phase 2 analysis below.
Ensuring there are no zones or areas (including character preservation areas or other special legislative schemes) where telecommunications facilities are excluded absolutely by way of being restricted ³ , non-complying, prohibited or similar	Partly achieved - telecommunication facilities do not appear to be restricted types of development in any zone (at least not for Phase 2), but there are potential issues with prescribed building height limits and overlays that need specific consideration so as to avoid unintended exclusion for telecommunication facilities
Ensuring that no Overlays adversely impact on the development of any essential infrastructure, including telecommunications facilities	Partly achieved - some Phase 2 overlays appear to be problematic – see Phase 2 detailed analysis below.
Ensure there are no proximity-related policies which unnecessarily restrict or constrain the placement of telecommunications facilities (such as arbitrary buffer zones as occur in City of Port Adelaide Enfield which have effectively precluded deployment in the past) to ensure the community can be adequately served	Partly achieved - there do not appear to be arbitrary separation distances nor classification as ‘restricted’ development, but overlays and height restrictions DO appear to create difficulties for servicing residential areas in particular.
Removal of Councils as the relevant planning authority (for most applications) and have all applications assessed by the State Commission to ensure consistency in approach.	Has not occurred – should be considered as it would ensure a consistent and equal approach to such infrastructure

Effective and timely delivery of services are critical imperatives to ensure State-wide access to reliable and high-quality telecommunications service, which are important for business and the State to ensure competitiveness and to foster hi-tech industries. Meeting ever-increasing demand for wireless telecommunications services and providing widespread and reliable access to telecommunications across Adelaide and South Australia will be a key part of achieving economic and social outcomes desired by the State.

Accordingly, the outstanding issues in the table above provide a clear focus for re-visiting issues that the MCF sees as problematic both in terms of consistency and unintended outcomes.

¹ As per the meaning contained in s104 of the *Planning, Development and Infrastructure Act 2016*

² As per the meaning contained in s106 of the *Planning, Development and Infrastructure Act 2016*

³ As per the meaning contained in s110 of the *Planning, Development and Infrastructure Act 2016*

Productive Economy Policy Submission

In February 2019 the MCF made a submission on the *Productive Economy* policy discussion paper. One of the central tenets of the discussion paper is the provision of the necessary infrastructure to enable the continuing growth and diversification of the South Australian economy and allow it to attract and take advantage of new opportunities and emerging technologies.

The key points of the MCF submission were:

- The economic impact of telecommunications in today's modern economy cannot be disputed or ignored. The on-going evolution of services, which at the moment are focussed around the roll-out of 5G, requires a nimble and responsive policy regime that recognises the essential nature of mobile telecommunications infrastructure and the on-going improvements to technology which allow new ways for services to be delivered.
- Although the Courts have, over many years, treated mobile telecommunications as essential forms of infrastructure, the importance of using the P&D Code to formalise that as the State's position should not be understated, as it will allow more timely and efficient provision of telecommunication services in South Australia.
- It is necessary to recognise the key role mobile telecommunications play in the international education and tourism sectors – two incredibly important sectors for the future of the South Australian economy - as well as most of the others listed in the discussion paper including defence industries, health and medical, knowledge and creative industries and professional and IT services.
- Mobile telecommunications are also extremely important to regional South Australia and good access to a similar level of service to that experienced by the metropolitan population is critical if the regions are to stay competitive and connected, despite shrinking populations.

The discussion paper recognises:

“Evolving technology and communications continue to change the way business is conducted, how we live our lives, and how our urban and regional environments are shaped.”

It also touches briefly on 'Smart Cities' where it is noted *“the emphasis is on the integration of public infrastructure, data technology and the internet to improve the quality of life for people living, visiting and working in the area.”*

- The MCF agrees entirely with these observations, but stresses none can reach their highest potential unless the economic importance of mobile telecommunications infrastructure is fully recognised in the State's planning policy. This has not been well recognised in the past through the allowance of very restrictive policies in some zones (particularly the non-complying designator) which have denied entire communities' levels of services and data speeds being experienced in most other places and created other network problems such as congestion.
- With the globalisation of the world's economy, changes in work practices (particularly working from home, hot-desking and working 'out of the office' generally) require reliable and ubiquitous access to high-quality telecommunications and data services is essential.

However, such access is only available where the necessary infrastructure can be deployed. This must, by definition, include areas where more sensitive uses are present such as residential areas and areas with heritage values. An inability to deploy services in 'sensitive' areas places pressure on surrounding network facilities, lack of effective service levels and leads to user frustration and dissatisfaction.

The MCF submission highlighted the following statement:

- ***It would be difficult to imagine a world without mobile telecommunications and the ability for that network to continue to grow as necessary to serve the ever-growing demand. However, the discussion paper is, noticeably, almost silent in anticipating workable policies to meet mobile telephony need and expectations.***
- As such, the MCF's key concern was the policy paper's greater focus on more traditional infrastructure such as power, water and gas (all of which can be undergrounded) and not envisaging a policy scheme by which mobile telecommunications infrastructure can be deployed without undue difficulty, delay or expense. In essence, whilst recognising the importance of telecommunications to the community and the economy, the policy paper demurs on the 'how' part of the equation – which should be a key outcome for the current legislative overhaul.
- Despite being provided by the private sector, mobile telecommunications is very much public infrastructure and should therefore enjoy a very similar if not identical policy regime to other forms of 'traditional' public infrastructure. Further, it is the Commonwealth that controls the paramount telecommunications legislation in Australia and the carriers deploy infrastructure in South Australia as a result of the Commonwealth regime through associated carrier licences. To that end, the State should deliver planning policy that strives to achieve the objects and objectives of the Commonwealth regime, so as to ensure that deployment processes are streamlined, investment in this infrastructure continues and efficient and timely service delivery occurs throughout South Australia.
- The current (Development Plan) policy regime, which has been tried and tested in South Australian Courts many times over the last two decades is well understood in terms of its application and its limitations. As such, there is more than sufficient knowledge for policy surrounding mobile telecommunications to be more aggressively aligned with the outcomes sought by the *Productive Economy* policy and to give effect to existing judicial guidance.
- The MCF is also keen to ensure, with all the resources expended over the last two decades, that any new policy doesn't introduce retrograde steps (either intentionally or unintentionally) or create confusion about the important role mobile telecommunications plays in a modern, creative and productive economy but instead recognises the need for timely, non-cumbersome approval processes to expedite deployment.

The policy paper submission also contained a number of considered suggestions on specific types of telecommunications infrastructure that would be considered 'exempt' or 'complying' either by regulation or in the Code itself (to be termed 'accepted' and 'deemed to comply'), which would be similar with existing legislation provisions in other States. The suggestions included:

Exempt/Accepted Facilities

- Replacement of a tower or facility associated with a tower to enable collocation
- Extension of a tower or facility to enable collocation

Complying/Deemed to Comply Facilities

- New monopoles up to 25 metres in height where located in a centre, commercial or like zone and more than 25 metres from a residential zone
- New monopoles up to 40 metres in height where located in an industrial or rural zone and more than 50 metres from a residential zone
- New monopoles and towers up to 50 metres in height where located in a rural zone and more than 100 metres from a residential zone

The MCF notes NO such approach is reflected or even hinted at in the Phase 2 consultation documentation, with the practicalities of infrastructure provision seemingly a low priority.

The submission concluded:

The discussion paper recognises the need for infrastructure and its vital role in enhancing liveability, as well as its contribution to the economy. However, the MCF is of the view that the discussion paper fails to sufficiently recognise the key role telecommunications plays and even less the unique challenges faced by the carriers in deploying the necessary infrastructure. The paper should be enunciating the State's position that mobile telecommunications is essential infrastructure and like electricity, water, rail and gas, needs a policy regime that balances the important need for that infrastructure with the community's expectations and demands. The existing policy regime is too onerous, cumbersome and inefficient and much has been learnt over the last two decades in this regard.

As of November 2019, this remains a key area of concern, with the question of how to appropriately and practically address it by way of the P&D Code and associated legislation regrettably outstanding.

Draft Development Assessment Regulations Submission

Also in February 2019 the MCF made a submission on the draft *Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019*. As at November 2019 the regulations remain in draft form.

A key part of the MCF submission stated:

The drafting of new regulations for a 'contemporary coordinated way of delivering infrastructure'⁴ provides opportunity for guidance to carriers about future development of telecommunication facilities in our State. It was hoped that clear and specific steps for efficient, effective and timely development of Telecommunications Facilities would be anticipated and laid out in the Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 ('the draft regulations'), but a reading of the 'Draft for comment' version of the regulations reveals that this is **not** so. There remains, in the MCF's view, a much greater emphasis on 'traditional' infrastructure such as

⁴ https://www.saplanningportal.sa.gov.au/planning_reforms/new_planning_tools/infrastructure_schemes

electricity, water and gas and deficiencies in the way telecommunications facilities are dealt with, despite also having been held by the Courts as essential infrastructure.

High speed, reliable mobile telephony and wireless data accessibility are expected by most South Australians, and by visitors to our State, many of whom have no fixed services for delivery of telephone and data connectivity. Students, tourists and business focussed non-residents rely on access to mobile telephone coverage that is enabled by Carrier supplied telecommunications facilities. It is imperative that future provision of telecommunication services be provided for in the new planning regime.

The submission also detailed key issues for the MCF including:

- Inconsistent terminology – in particular the use of the words ‘telecommunications facility’ (which is not defined in the draft regulations), the term ‘communications networks’ (which appears but is not defined in the draft regulations nor does it appear in the Commonwealth *Telecommunications Act 1997*), and other variations such as ‘telecommunications system’ and ‘telecommunications infrastructure’.
- The MCF is concerned that without a clear definition, not only will future delay follow potential argument and court proceedings (because wording within the regulations and P&D Code are inconsistent and undefined), but in addition, unnecessary cost will be incurred in the attempt to understand the intention of Government in drafting these new planning provisions.
- All references to development in the form of telecommunications should be related back to the meaning and definitions as prevails in the Commonwealth Telecommunications Act, 1997, with any additional forms of ‘communication network’ specifically defined in the draft regulations (if [on closer interrogation], it is deemed necessary that they remain). Correct and consistent use of descriptors for the telecommunications facilities would assist in removing uncertainty.

The submission specifically highlighted (and in some cases re-highlighted from the MCF’s October 2018 submission) key areas of concern for the MCF arising from the draft regulations:

- Provisions to enable providers of other forms of ‘essential infrastructure’ are not readily available to Carriers for development in the nature of telecommunications facilities.
- Appropriate consideration of the relationship between Federal and State Law relating to the provision of Telecommunication Services and in particular that the draft regulations must not conflict with the intention set out in the *Telecommunications Act 1997* (Cth).
- Appropriate and clear regulations are required to ensure telecommunications facilities are essential infrastructure ‘of a prescribed class’ within the meaning of ‘Sec 130 – Essential infrastructure - alternative assessment process’, and that the Commission be the prescribed authority for the assessment of telecommunications facilities.

As of November 2019, these key areas of concern and how they are to be appropriately addressed remain outstanding. In particular, the term ‘communication network’ needs to be clearly defined or deleted from the State regime.

Planning and Design Code – Phase 2

In the context of all the previous submissions made by the MCF on the planning reforms, as briefly set out above, the MCF has carefully reviewed the Phase 2 consultation documents and had an opportunity to interrogate the mapping tool.

Following this review, the **KEY ISSUES** for a practical and workable policy regime for essential infrastructure in the form of telecommunications facilities and infrastructure are as follows:

- Telecommunications facilities specifically defined and linked back to the Commonwealth *Telecommunications Act 1997* definitions and provisions;
- No zone having telecommunications facilities as ‘restricted’ forms of development;
- Telecommunications facilities appropriately and specifically classified as ‘accepted’, ‘deemed to satisfy’ or ‘performance based’ depending on the appropriateness (i.e. the ‘preferred’ nature) of the zone, with careful consideration of when notification should or should not occur;
- Ensuring planning policy NOT intended to capture telecommunications facilities (such as building height limits) is clear in its proper application (i.e. blanket exclusions need to be critically considered so as not to inadvertently apply to telecommunications facilities); and
- Ensuring applicable overlays are (a) relevant to telecommunications and (b) not unnecessarily restrictive given services must still be provided, even in more ‘sensitive’ areas.

The MCF is pleased that ‘telecommunication facility’ is defined in Part 7 of the P&D Code and is tied back to the Commonwealth definition. It also seems, upon examination of all the new zone regimes, that no zone proscribes telecommunications as a ‘restricted’ form of development.

Part 2 – Zones

The MCF has prepared a table of all zones contained in the Phase 2 which sets out the assessment pathway and notification requirements as currently proposed by the consultation document. As this table is lengthy, it is attached as **Appendix A** to this submission.

Based on the table it appears:

- In all of the forty (40) zones listed in the document, ‘*telecommunications facility*’ is intended to follow the ‘performance based’ assessment pathway, either by specific mention (only in the case of eight (8) of the zones) or by default (captured by the ‘All other Code Assessed Development’ class of development in Table 3).

That is, there are no ‘Accepted’ or ‘Deemed to Satisfy’ opportunities. For an essential piece of infrastructure to go unmentioned in 80% of the zones is not appropriate and inconsistent with the State’s high level statements relating to the need for infrastructure;

- Only one zone out of the forty – the Employment Zone - specifically lists telecommunications facility in the Assessment Provisions as an envisaged/desired form of development;

- There are inconsistencies in the approach between the same type of zones (such as the employment, suburban and township zones) and the same class of zones (broadly residential and non-residential);
- The use of building heights (particularly when stated in metres) throughout the zones and on the relevant technical and numeric overlay is confusing as it is most likely not intended to apply to telecommunication facilities. Exceeding the maximum stated building height is also often a trigger for public notification when it should not be in some zones for telecommunication facilities (such as Business Neighbourhood Zone);
- The notion of such structures being '*sited unobtrusively*' and '*below hilltops and ridgelines*' is common throughout the document, which is not a realistic requirement for telecommunications facilities, particularly in rural areas;
- A number of the overlays required to be considered (either specifically or by default) are completely irrelevant to telecommunications facilities; and
- The policy contained within some overlays (generally heritage/character protection type overlays) runs contrary to the notion of telecommunications facilities being essential infrastructure needing to be provided.

In short, there is an over-reliance on the 'catch all' at the bottom of Table 3 in too many zones, which does not assist in certainty of outcomes or policy intent nor is it consistent with the notion of the timely and efficient provision of essential infrastructure. This is particularly so in zones where it is clear the provision of infrastructure will be very important (and consistent with the Desired Outcomes), such as employment, infrastructure and rural zones.

Overall, there is a low level of emphasis on infrastructure and how it will be provided – as noted above only one zone (Employment Zone) actually mentions telecommunication facilities in the Assessment Provisions; even the Infrastructure Zone doesn't include them.

This approach disproportionately impacts telecommunications facilities as they are almost exclusively provided by the private sector and as currently written – particularly in more sensitive zones – the MCF is very concerned legal arguments and appeals will be necessary to deploy telecommunications facilities. This is not only completely contrary to the State's higher level recognition of the need for telecommunications it is costly, time-consuming and undoes nearly two decades of work, including many Court judgments.

As such, the following zones – which are of types under the Development Plan regime would be considered as 'preferred' zones for such infrastructure – should always have telecommunications facilities specifically listed (at a minimum in Table 3 but consideration could be given to using Table 2 in some zones where certain conditions are met) and should avoid notification of an application wherever logical to do so:

Zone Name/Type	Suggested listing	Suggested Notification
Business Neighbourhood Zone	Specifically list in Table 3 and mentioned in Assessment Provisions as an envisaged use	No notification
Caravan and Tourist Park Zone	Specifically list in Table 3	No notification
All employment zones (2 of)	Generally speaking these were previously industrial zones or similar and as such TF should be in Table 2 or Table 3. Should be specifically mentioned in the Assessment Provisions as an envisaged use (already included in Employment Zone)	No notification
All infrastructure zones (3 of)	These are zones where this infrastructure should be explicitly encouraged (and anticipated) and therefore Table 2 should be used. Should be specifically mentioned in the Assessment Provisions as an envisaged use	No notification
Home Industry Zone	Specifically list in Table 3	None or by a specific trigger
Motorsport Park Zone	Specifically list in Table 3 Should be specifically mentioned in the Assessment Provisions as an envisaged use	No notification
Open Space Zone	Open Space zones are often very useful areas to consider infrastructure. The zone should specifically list TF in Table 3.	None or by a specific trigger
Recreation Zone	Similar to Open Space Zones, Recreation Zones are often very useful areas to consider this type of infrastructure (sporting ovals and the like). The zone should specifically list TF in Table 3.	None or by specific trigger
Remote Areas Zone	This zones recognises infrastructure being generally required so TFs should be listed in Table 2. Should be specifically mentioned in the Assessment Provisions as an envisaged use	No notification

Zone Name/Type	Suggested listing	Suggested Notification
All rural zones (7 of)	Should be listed in Table 3 as a minimum but several of the zones could consider Table 2. Should be specifically mentioned in the Assessment Provisions as an envisaged use in most.	No notification
All suburban zones (5 of)	Specifically list in Table 3. Should be specifically mentioned in the Assessment Provisions as an envisaged use.	No notification, or by specific zone
All township zones (3 of)	Specifically list in Table 3. Should be specifically mentioned in the Assessment Provisions as an envisaged use.	None or by specific trigger

The remainder of the zones not listed above (fifteen in all) should all have telecommunications facility specifically mentioned in Table 3 with careful consideration needs to be given as to whether notification is required absolutely or only in certain circumstances. In some zones it will also be appropriate to specifically mention telecommunications facility in the Assessment Provisions as an envisaged use.

In short, no zone should rely on the Table 3 catch-all statement of ‘All other Code Assessed Development’ as the importance of the provision of infrastructure should not be understated and the applicable policy regime and assessment pathway should be as clear and certain as possible. The key non-residential zones should make assessment much more straightforward whilst within residential zones the need for infrastructure means the assessment pathway requires more careful consideration than it appears to have given.

Building Height Limits

Building height limits are used extensively throughout the consultation document and are also applied by the relevant technical and numeric overlay in the mapping portal.

Building heights are sometimes discussed in conjunction with wall heights and are no doubt intended to apply to buildings in the traditional sense of the word. This is obvious where the term ‘storey’ is used to limit building height but less so where a metre measurement is used.

Building heights are also often a trigger in various zones for public notification to occur. Often this trigger height is only around 9 metres. In the Open Space Zone and Recreation Zone the height limits are set at between 3 and 5 metres for some types of development.

It is unrealistic to have such a provision relate strictly to infrastructure which requires height as a key characteristic – this applies equally in urban and regional areas.

Although it’s quite possible this building height limit was not intended to capture infrastructure such as telecommunication facilities, the consultation document does not make this clear and this will undoubtedly lead to confusion and argument.

In *Telstra Corporation Limited v City of Marion (SAERDC 69 [2000])*, the ERD Court was asked to consider whether a provision in the City of Marion Development Plan that deemed a building greater

than two-storeys or ten metres in height as non-complying was applicable to a 25m-high telecommunications facility.

Her Honour Judge Trenorden concluded at paragraph 11:

The proposed 25 metre high tower is a structure, but not a "building" as that term is used in the phrase "buildings with a height greater than two storeys or ten metres", expressed to be a non-complying kind of development in the provisions for Commercial (South Road) Zone in the relevant Development Plan. It follows that the proposed development is not a non-complying kind of development, on account of its height.

Accordingly, the MCF is concerned that, as currently written, the building height limitations imposed throughout the consultation document and in most (if not all) of the zones will undo this legal precedent, which has been long held.

As such, in keeping with past judicial interpretation the P&D Code must explicitly state that such building height limitations do not apply to telecommunications facilities (or, put another way, telecommunications facilities are excluded in the use of that term) throughout the P&D Code, which must also include the associated technical and numeric overlay.

Other Policy Issues

With the sheer size of the consultation document and the range of policies within the zones and subzones it's not possible to consider and detail all the potential issues. However, by way of the issues raised in this submission and the MCF's previous submission (and the Phase 3 submission yet to come before 28 February 2020), the flavour and intent of what the MCF has identified as potential issues and the desired policy outcomes it would welcome should be fairly apparent.

However, set out below are some of the matters specifically identified which the MCF believes require further consideration to ensure zone policy doesn't undermine the important requirements for infrastructure.

Non-Residential Development

It is common under the current Development Plan scheme for some zones, particularly small centre zones and some residential zones, to envisage limited non-residential development that "serves the local community" or similar wording.

Under the current regime telecommunications facilities sat comfortably within that description, however the meaning of similar wording in the consultation document works more actively to exclude such infrastructure by more precisely setting out the nature of the development intended (and by inference the nature of development *not* intended), thereby rendering approval for telecommunications facilities more difficult and unlikely.

For example, PO 1.3 of the General Neighbourhood Zone states:

Non-residential development provides a range of services to the local community primarily in the form of:

(a) commercial uses including small scale offices, consulting rooms and personal or domestic services establishment;

(b) community services such as educational establishments, community centres, places of worship, pre-schools, childcare and other health and welfare services;

(c) services and facilities ancillary to the function or operation of supported accommodation or retirement housing;

(d) open space and recreation facilities

Notwithstanding residential zones and areas are not the first choice or preference for telecommunications infrastructure, their deployment in such areas is nonetheless required to ensure appropriate levels of service, particularly in new areas of development.

PO 1.4 continues this theme, stating:

Non-residential development compatible with the residential character and amenity of a neighbourhood.

Similar wording is repeated in the Suburban Neighbourhood Zone.

As such, this is an unwelcome policy implication that starts to undercut the essential infrastructure nature of telecommunications facilities and the higher level statements of State policy that recognise the need for good access to telecommunications services.

Residential Zones

In the Residential Park Zone, PO 1.2 is very specific in expressing the types of development desired and to limit permanent structures. Given Councils will often be the owners of such land (and therefore quite possibly suitable for a telecommunication lease) this provision has the effect of unnecessarily excluding telecommunications facilities.

In the Residential Neighbourhood Zone, there is very little by way of policy for non-residential development and it doesn't mention the restrictions in the General Neighbourhood Zone noted above (despite apparently being a more 'sensitive' zone). If telecommunications facilities are to be effectively excluded from the Residential Neighbourhood Zone (which would be an unwelcome policy inclusion given the vast contiguous areas of residential across South Australia) then they must be more easily permitted in the General Neighbourhood Zone so as not to cripple the effective provision of telecommunications to residential areas.

Part 3 - Overlays

Upon inspection of the range of overlays in the consultation document, only about half of the 58 available overlays are readily and/or usefully applicable to the development of a telecommunications facility. These generally fall into the categories of hazards, matters associated with airfields and character preservation/heritage issues. Overlays such as advertising near signalised intersections, housing, noise or emission exposure or transport-related overlays are simply not applicable.

However, the default position within the consultation document – particularly where telecommunications facilities are simply swept up in the catch-all provision at the end of Table 3 in most of the zones (32 out of 40 zones, or 80%) - is that it is necessary to consider ALL overlays.

In the eight zones where telecommunications facilities are specifically mentioned in Table 3 there are also far too many irrelevant overlays listed (and in some it defaults to 'All'). In some instances, an overlay to be considered is inconsistent with a performance outcome (such as Employment Zone PO 1.1).

This issue can be overcome by ensuring telecommunications facilities are listed in either Tables 2 and/or 3 in each zone, with careful consideration of the overlays it is reasonable to apply. This will create a more straightforward assessment pathway for these essential infrastructure facilities.

As always, the MCF welcomes engagement with government on these important issues and encourages careful consideration of this submission and all previous submissions. The October 2018 submission in particular meticulously sets out all of the relevant issues and provides a clear pathway forward.

The Planning and Design Code is a great opportunity to get this important policy regime right and ensure South Australia and its communities have access to the latest and most reliable mobile telecommunications networks available.

As mentioned above, the MCF will also be making a submission on the Phase 3 consultation documents, which is expected to further expand on the issues raised in this and previous submissions.

Please don't hesitate to contact me on [REDACTED] or Mark Baade (planning consultant) on [REDACTED] [REDACTED] should you have any immediate questions about these important issues so the State can ensure the new planning system responds appropriately.

Yours sincerely,



Ray McKenzie

Manager, Mobile Carriers Forum

Australian Mobile Telecommunications Association

Attached:

Appendix A – Comparison of Zones Assessment Pathways and Notification

Appendix A

Part 2 – Zones and Sub-Zones

Zone	Assessment pathway	Notification/other comments
Business Neighbourhood Zone	Performance assessed – not specifically mentioned	DPF 3.1 12m height limit may trigger public notification
Caravan and Tourist Park Zone	Performance assessed – not specifically mentioned	Notified by default
Community Facilities Zone	Performance assessed – not specifically mentioned	Notified by default DTS/DPF 2.1 may trigger public notification
Conservation Zone	Performance assessed – not specifically mentioned	Notified by default
Coastal Waters and Offshore Islands Zone	Performance assessed – specifically mentioned	Specifically requires public notification
Deferred Urban Zone	Performance assessed – not specifically mentioned	Notified by default
Employment Zone	Performance assessed – specifically mentioned Telecommunications facility is also a 'desired' use	Excluded from notification (unless adjacent different zone) ALSO THE ONLY ZONE WHERE TELECOMMUNICATIONS FACILITY IS MENTIONED IN THE ASSESSMENT PROVISIONS AS AN ENVISAGED/DESIRED USE
Employment (Bulk Handling) Zone	Performance assessed – not specifically mentioned	Notified by default (Should be consistent with Employment Zone given nature of BH zone)
General Neighbourhood Zone	Performance assessed – not specifically mentioned	Notified by default <i>and</i> potentially captured by building height DTS4.1
Greenfield Suburban Neighbourhood Zone	Performance assessed – not specifically mentioned	Notified by default <i>and</i> potentially captured by building height DTS/DPF8.1
Home Industry Zone	Performance assessed – not specifically mentioned	Notified by default <i>and</i> potentially captured by building height DTS/DPF2.1
Housing Diversity Neighbourhood Zone	Performance assessed – not specifically mentioned	Notified by default and potentially captured by building height. Also captured by 'non-residential development' exclusion.

Zone	Assessment pathway	Notification/other comments
Infrastructure Zone	Performance assessed – not specifically mentioned	Notified by default TF not listed in PO1.1/DTS/DPF 1.1
Infrastructure (Airfield) Zone	Performance assessed – not specifically mentioned	Notified by default
Infrastructure (Ferry and Marina)	Performance assessed – not specifically mentioned	Notified by default
Motorsport Park Zone	Performance assessed – not specifically mentioned	Notified by default
Open Space Zone	Performance assessed – not specifically mentioned	Notified by default Severe building height restriction and other policy impacting on ability to place TFs in this zone.
Recreation Zone	Performance assessed – not specifically mentioned	Notified by default Severe building height restriction and other policy impacting on ability to place TFs in this zone.
Remote Areas Zone	Performance assessed – not specifically mentioned	Notified by default. This zone recognises infrastructure is required to service this area – but TF not listed/included.
Residential Park Zone	Performance assessed – not specifically mentioned	Notified by default.
Residential Neighbourhood Zone	Performance assessed – not specifically mentioned	Notified by default Possibly captured by other notification requirements.
Resource Extraction Zone	Performance assessed – not specifically mentioned	Notified by default
Rural Aquaculture Zone	Performance assessed – not specifically mentioned	Notified by default
Rural Zone	Performance assessed – not specifically mentioned	Notified by default
Rural Horticulture Zone	Performance assessed – not specifically mentioned	Notified by default
Rural Intensive Enterprise Zone	Performance assessed – not specifically mentioned	Notified by default
Rural Shack Settlement Zone	Performance assessed – not specifically mentioned	Notified by default

Zone	Assessment pathway	Notification/other comments
Rural Living Zone	Performance assessed – not specifically mentioned	Specifically exempt from notification
Rural Settlement Zone	Performance assessed – not specifically mentioned	Notified by default and potentially by building height limit (9m).
Suburban Employment Zone	Performance assessed – <i>specifically mentioned</i>	Exempt from notification absolutely
Suburban Activity Centre Zone	Performance assessed – <i>specifically mentioned</i>	May be caught by notification requirements (related to setback/building height)
Suburban Business and Innovation Zone	Performance assessed – not specifically mentioned	Notified by default and potentially by building height limit (12m)
Suburban Main Street Zone	Performance assessed – <i>specifically mentioned</i>	May be caught by notification requirements (related to setback/building height)
Suburban Neighbourhood Zone	Performance assessed – not specifically mentioned	Notified by default and potentially by building height limit.
Township Zone	Performance assessed – not specifically mentioned	Notified by default and potentially by building height limit (9m)
Township Main Street Zone	Performance assessed – <i>specifically mentioned</i>	May be caught by notification requirements (related to setback/building height)
Township Activity Centre Zone	Performance assessed – <i>specifically mentioned</i>	May be caught by notification requirements (12m)
Tourism Development Zone	Performance assessed – not specifically mentioned	Notified by default
Urban Activity Centre Zone	Performance assessed – <i>specifically mentioned</i>	Notification triggered due to a specific provision relating to height of facility (>30m) and distance from neighbourhood zone (<100m) – otherwise exempt from notification
Urban Renewal Neighbourhood Zone	Performance assessed – not specifically mentioned	Notified by default