Dear Sir/Madam

Re: Planning and Design Code in the Outback – Land not within a Council Area – Phase One

Please find below the Town of Gawler (Council)'s response in relation to the Planning and Design Code (the Code) in the Outback (land not within a Council Area) – Phase One, which will eventually become a part of the statewide overarching framework under the Planning, Development and Infrastructure Act 2016 (the Act). We have endeavoured to accumulate feedback from Council Staff and Elected Members to provide professional and meaningful comment regarding this draft Code.

Although the Town of Gawler will transition to the Code as part of the final collection of Councils, which is anticipated to be on 1 July 2020, after reviewing Phase One of the Code, there appear to be some components of this document which will eventually be of importance to the Town of Gawler. As a result, and due to the size of the draft Code, our feedback is targeted to specific sections of interest.

The below commentary is provided under relevant subheadings:

Hazards (Bushfire Protection) Overlay

There are no Referral Bodies provided in this overlay. It seems appropriate that a fire authority such as the Country Fire Service (CFS) should be a referral body for certain types of development in this section of the Code, as is currently required by the Development Regulations 2008.

Clarification as to how the referral system currently in place will be dealt with in the Code is essential. Fundamental requirements such as rainwater tanks when constructing a house or commercial development are not dealt with. This is of great concern for bushfire areas.

In regards to the figure provided in this particular overlay, which illustrates measurements of lengths for roads in such areas, this is an extract from the Minister's Code for
Undertaking Development in Bushfire Protection Areas. If it is the intention of the State Government to maintain the Minister's Specifications as well as the Planning and Design Code, it may be beneficial to cross reference the latest version of the Minister's Code with the Code whenever they are updated; this way the most up to date provisions are being referenced.

**Prescribed Watercourses Overlay**

Council is supportive that there are no 'Deemed-to-Satisfy' requirements in this overlay.

A comment which we do have albeit likely minor, however potentially confusing is in relation to Procedural Matters and more specifically Referrals. The overlay states that there are no Deemed-to-Satisfy criteria applicable however, the Referral section goes on to state 'Except where all Deemed-to-Satisfy criteria for all policies relevant to this referral are met'. It is appreciated that the Code is new and that it may take some time for practitioners to become familiar with the document's language however, this is a theme which appears throughout the Code and could potentially be simplified to eliminate confusion.

**Sloping Land Overlay**

The Town of Gawler has a significant amount of greenfields land located in areas of undulating land and understands the challenges it can present. Council is pleased to see policy inserted into this overlay which encourages development to work with the lay of the land (preserve the natural form of the land). This is a matter which Council has endeavoured to incorporate into our Development Plan in recent times via DPA.

However, Council also wishes to raise concern with Deemed-to-Satisfy requirement 3.1 under the earthworks section, which states 'Earthworks undertaken that are limited to a maximum depth or height no greater than 1.5 metres'. This figure of 1.5m is greater than anticipated, with previous discussion papers as well as the Design and Siting section of this Code speaking of 1 metre being considered Deemed-to-Satisfy. Although 0.5m may seem inconsequential, in areas of significant undulation, issues with overlooking can quickly develop and create issues within the community. Council wishes to suggest that this figure be reduced to 1 metre.

**State Heritage Overlay**

The Town of Gawler became South Australia's first regional settlement and has a long and rich history closely aligned with that of South Australia. The Church Hill State Heritage Area, derived from a plan devised by Light, Finniss and Co. and is one of the best examples of mid-nineteenth century town planning in South Australia. To this end Council is pleased to see no Deemed-to-Satisfy provisions within the State Heritage Overlay.

We do have some concerns with the overlay in regards to demolition. Performance Outcome 2.1 states:

> Buildings, structures and any other elements are not demolished, destroyed or removed in total or in part unless either of the following apply: (a) a portion of any building and/or structure has been determined to not contribute to the heritage value.
In instances where a referral is not required, who becomes responsible for determining if a building or portion of a building contributes or not to the heritage character? An accredited heritage professional is considered to be best placed to determine whether an activity falls into this category; otherwise there could be differences in opinion regarding the heritage value of such structures. Council engages the services of a heritage architect to support our Planning team to assist with such matters. It would be hoped that experienced professionals will still play a pivotal role in assessing development in areas of heritage and character significance.

In relation to Referrals, the table provided states that a referral is required where alterations or additions to a building that:

(i) are visible from a public street, road or thoroughfare within the State Heritage Area;
(ii) are visually dominant within the State Heritage Area; or
(iii) involve substantive physical impact to the fabric of significant buildings;

This approach is considerably weaker than current provisions and has the potential to create ambiguity. Sometimes even the most apparently innocent activities can lead to an adverse impact on heritage value.

For example, there are many pitfalls in salt damp repair, re-roofing, gutter replacement, post replacement and window replacement which can be harmful to a Heritage Place. These are activities that appear straightforward but which, when undertaken without due care, could put a heritage property at risk. Ill-considered but well intentioned routine maintenance can sometimes lead to a deterioration in historic fabric and also heritage value.

Whilst it is understood that this draft version applies specifically to areas outside of Council, it is recommended that these provisions be more detailed when the Phase 2 and Phase 3 Codes are switched on.

In Council areas such as Gawler, State Heritage places and areas are particularly highly valued in an increasingly suburban environment. There is a reliance on heritage professionals such as the State Heritage Branch to provide guidance on the potential heritage impacts of development involving State Heritage Places or Areas.

**Part 4 – General Development Provisions – Advertisements**

Council was hoping to see greater guidance on the matter of ‘Variable Message Signs’ (VMS) in the Code.

This is a matter which has created a great deal of confusion for Councils across the State and consequently caused avoidable compliance and safety issues in many circumstances.

This draft version of the Code continues to lack clarity on this particular matter and Council would be appreciative of new policies being developed to better manage this practice and inserted into future iterations and refinements of the Code.
Part 4 – General Development Provisions – Design and Siting

Council is pleased to see this section seeking environmentally conscious and sustainable solutions through the Desired Outcomes. However Council wishes to see more ambitious policy which sincerely endeavours to promote sustainability in our built environments. Planning has the ability and opportunity to play a significant role in reducing and mitigating our footprint as we develop and grow as a society.

Council wishes to stress the need for the Planning and Design Code to genuinely endeavour to mitigate the impacts of climate change, particularly due to the absence of such provisions (to date) in the draft Regulations and Practice Directions.

In relation to 'Site Earthworks' and in particular Deemed-to-Satisfy policy 12.1 (b), Council is of the opinion that this policy is unclear and requires some refinement:

Development that does not involve:

(a) either excavation exceeding a vertical height of 1m, or filling exceeding a vertical height of 1m, or
(b) if the development involves both excavation and filling, the total combined excavation and filling not exceeding a vertical height of 2m.

Would (b) permit an applicant to hypothetically be able to seek 0.2 cut and 1.8 fill on a site and still be categorised as Deemed-to-Satisfy? If this is the case, there would be concern with the possibility of such dramatic cut and fill falling into the Deemed-to-Satisfy categorisation.

Part 4 – General Development Provisions – Interface Between Land Uses

Council’s comments in regards to this particular section of the Code could also be applicable to numerous examples throughout the document. Council is not necessarily making a criticism in this respect however, the level of detail in some of the Deemed-to-Satisfy criteria is surprising, as per the example below:

DTS 3.2

Adjacent primary open space receives direct sunlight for a minimum of 2 hours between 9.00 am and 3.00 pm on 21 June in accordance with the following:

a) for ground level private open space, the smaller of the following:
   (i) half of the existing ground level open space; or
   (ii) 35m2 of the existing ground level open space (with at least one of the area’s dimensions measuring 2.5m).

b) for ground level communal open space, at least half of the existing ground level open space.

The above Deemed-to-Satisfy provision is likely to require investigation and assessment in its own right, which may have to be undertaken prior to a hypothetical application being appointed into a category.

In this instance a shadow diagram will likely be required to demonstrate all requirements have been met. Who is likely to be responsible for the preparation of such work?
Further to this in some instances, particularly in fast growing greenfields areas, there may be a considerable number of approved structures which are yet to be built which, if not allowed for, could be affected by impacts such as overshadowing.

**Part 4 – General Development Provisions – Land Division**

Council wishes to query Deemed-to-Satisfy clause 3.1:

**DTS 3.1**

_A minimum of 12.5% public open space (to be vested in the council or the Crown) is provided for land division that creates more than 20 allotments and where 1 or more allotments is less than 1ha in area._

Council recognises the importance which open space plays within a community, particularly as we see densities increase and private open space decrease.

There is a plethora of literature demonstrating the direct links to improved physical and mental health with exposure to quality open space. Nevertheless, in some circumstances, a payment into an open space fund may in fact be more appropriate in areas where a good provision of quality open space already exists.

Land divisions, particularly large scale land divisions, are complex and require negotiation with developers around numerous matters including open space, stormwater infrastructure and roads. Land Division Consent plays a pivotal role throughout the process and clarification is required as to its future role and implications for Council.

Regarding the vesting of open space to Council through the land division process, confusion remains in relation to Council’s role and powers in this space. The Act states:

_Where land is to be vested in a council or other authority—the council or authority consents to the vesting_

as in the _Development Act 1993_, however the wording in the Code appears at odds with this.

**Part 6 – Land Use Definitions & Part 7 – Administrative Definitions**

There appears to be a handful of terms used throughout the Code which are missing in Part 6, such as outbuilding or apartment. Also, some administrative definitions are now outdated, such as ARI (Average Recurrence Interval) which has been succeeded by AEP (Annual Exceedance Probability). Perhaps both could be included as there is always a transition period where people have to become familiar with new terminology.

The ‘South Australian Planning Policy Library Terminology List’, last updated in 2011, is a useful document which the Development Assessment team still find valuable and a solid foundation which could be utilised through the Code’s development process.

Some definitions which Council would like to see refined or incorporated into the Code include:
Dwellings – the number of dwelling types (e.g. detached, semi-detached, group, row etc.) should be reduced and simplified.

Cafes and Restaurants – own definition required

Markets - own definition required

Pop Ups - own definition required

Gyms – own definition required

Home activity – previous understanding of how a home activity operates (e.g. home office) has changed considerably in recent years

Other matters

After reviewing this first iteration of the Code, a matter which caused confusion in some instances was where a Performance Outcome or Deemed-To-Satisfy provision contained multiple requirements which were separated via a semi colon.

In most instances a semi colon is followed by either and, or, or and/or. There seems to be some inconsistency in this regard which could in turn create confusion and potentially result in legal challenge. Some guidance from DPTI on this matter is likely to be of benefit to planning practitioners.

Council thanks the Department and the Commission for the opportunity to provide feedback again through this transition and drafting period. If there are any questions in relation to this submission please contact Ryan Viney - Manager Development, Environment and Regulatory Services on (08) or via e-mail...

Yours faithfully

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