3 December 2019

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Via email: DPTI.PlanningEngagement@sa.gov.au

Dear Ms Elding

Draft Planning and Design Code for Phase Two (Rural Areas)

Thank you for the opportunity to provide this submission regarding the Draft Planning and Design Code for Phase Two—Rural Areas (the Draft). Our primary interest is in ensuring the integrity of the activity centre hierarchy is not undermined by the wording of the final Code.

The Shopping Centre Council of Australia (SCCA) represents the interests of Australia’s major owners, managers and developers of shopping centres. Our members own and manage close to 700,000 m² of retail floorspace in South Australia. A full list of our membership is available at http://www.scca.org.au/about-us/members/.

The SCCA works on retail, activity centres, and planning policy in each jurisdiction. We have recently been engaged in the Existing Activity Centres Development Plan Amendment process across 2015-2016 and the 2014 Harper Competition Policy Inquiry, which made a range of recommendations regarding planning systems and competition. Most recently, we provided a submission to the South Australian Planning Commission (SAPC) providing comment on the Productive Economy Discussion Paper for South Australia which informs the Draft.

As you may know, the SCCA is a strong proponent of centres-based planning and supports the South Australian Government’s commitment to activity centre planning through their adoption of the Key Principles of Retail Planning reinforced in the State Planning Policy 9: Employment Lands (SPP 9), specifically:

• the recognition that existing activity centres, main streets and mixed-use areas should provide the primary place for commercial and retail activity;

• the necessity to allow for the expansion of existing designated centres at edge-of-centre locations; and

• the need to protect higher-order centres that support a productive settlement pattern.

The agglomeration of activities in centres, including retail uses and development, supports many public good outcomes sought by planning systems. These include choice for consumers, transport/infrastructure efficiency and productivity, environmental and heritage protection, resource protection, employment concentration, and the minimisation of land-use conflict.

We have read and considered the documents on exhibition and note the transition from the existing activity centre hierarchy to the proposed one. We remain concerned that as the existing zones under the former hierarchy transition into their proposed new categories, the existing activity centres will be undermined, and that out-of-centre retail may ultimately undermine retail in-centre. Further, there is a lack of retail planning policy for out-of-centre development to guide the assessment of appropriate development and limit inappropriate development.

We also broadly observe that the use of selective and outdated references to so-called ‘new retail entrants’ has been used as a basis to justify policy change despite arguments outlined in our earlier submission. It is our position that using this basis to inform planning policy will undermine centres-based planning policy.
Whilst we have a variety of concerns with the Draft, we have limited our commentary at this point to the areas below:

- zones that permit out-of-centre retail at a scale (floor space) that undermines Existing Centres and Higher-Order Centres i.e. in Employment Zones, Suburban Employment Zones;
- the term “periphery” is unclear and jeopardises the application of SPP 9 for in-centre retail development i.e. in Activity Centre and Main Street zones;
- the Draft changes new Gross Leasable Floor Restrictions when compared to current Development Plans which is unjustified and unexplained; and
- no consistent approach to the public notification of Performance Assessed retail development that doesn’t meet the Deemed to Satisfy floor space criteria.

Zones that permit out-of-centre retail at a scale (floor space) that undermines Existing Centres and Higher-Order Centres i.e. Employment Zones, Suburban Employment Zones

The failure to transition relevant policies from the General Centres and Retail Development modules of existing Development Plans and the State Planning Policy Library into the Draft leads to a significant gap in planning policy. Our substantive issue and concern is that there is a lack of policy guidance for the assessment of out-of-centre retailing that exceeds the floorspace criteria for Shops in zones which are not the primary place for retail development i.e. Employment Zones and Suburban Zones. This has the serious and undeniable potential to undermine SPP 9 and gives rise to the need to incorporate Performance Outcome focussed policy that reinforces the Principles of Retail Planning in SPP 9 in out-of-centre locations. This is particularly relevant to the assessment of retail development located outside of the identified zone framework where retail development is the primary focus.

As distributed as part of the Productive Economy Discussion Paper consultation, the State Planning Reform Fact Sheet identifies that the Code seeks to support retail activity through the following: (1) Encouraging shops in ‘activity centre’ and ‘main street’ zones, but allowing small shops in other areas; (2) Reducing red tape by allowing new businesses including shops, offices and consulting rooms to move into existing commercial premises without lengthy planning approvals; (3) Promoting above-ground-level apartments in activity centres, where residents benefit from convenient access to shops, services and transport; (4) Promoting ‘main street’ areas with a focus on good design, interesting shopfronts, sheltered pedestrian footpaths and areas for visitors to meet, relax and entertain; (5) Enabling shopping centres to expand by allowing shops opposite/adjoining existing centres and improving the range of shopping options in convenient locations; (6) Removing barriers to innovation and efficiency by allowing business to install things like solar panels without planning approval; and (7) Enabling bulky goods outlets (such as home furniture stores) to operate in industrial type areas which are suited to large-size warehouse-style buildings.

Accordingly, we are of the opinion that general planning policy should be incorporated into the Draft for the assessment of out-of-centre retail which exceeds the performance based Deemed to Satisfy (DTS) criteria. This will facilitate greater alignment with SPP 9. We submit that such policies should include:

1. shop or group of shops that exceeds the “Deemed to Satisfy” floor area criteria for a zone should be located within an Activity Centre or Main Street zone.

2. A shop or group of shops located outside of an Activity Centre or Main Street zone should:
   a. be of a size and type that will not hinder the development, function or viability of any centre zone;
   b. not demonstrably lead to the physical deterioration of any designated centre;
   c. be developed taking into consideration its effect on adjacent development.

3. Bulky goods outlets located within centre zones should;
   a. complement the overall provision of facilities;
b. be sited towards the periphery of those zones where the bulky goods outlet has a gross leasable area of 500 square metres or more.

The term “periphery” is unclear and jeopardises the application of State Planning Policy 9 for Activity Centre Zones i.e. Activity Centre and Main Street zones

For proposed Activity Centre and Main Street zones we have the following concerns. Firstly, we note that the SAPC carries the term “periphery” from Country Development Plans into the Draft. This approach unfortunately also carries uncertainty over this term from the current instrument to the Draft. The Draft allows Shops to generally be approved within Activity Centre or Main Street zones via the Performance Assessment Pathway with Gross Leasable Area restrictions. Bulky Goods retail can be Performance Assessed however the policy provides guidance encouraging this type of land use on the “periphery” of a zone if it exceeds 500 square metres. Given the term “periphery” is not defined in the Draft, nor are there any supporting guidelines, our concern regarding its ambiguity now applies across all Activity Centre Zones and Main Street zones. Given the huge difference in size and complexity across different Activity Centre Zones and Main Street zones, we submit that the term lacks proportionality to the zones it proposes to regulate and is too vague and unclear for the purposes of guiding a consent authority.

Secondly, it is unclear whether the term “periphery” is used to locate bulky goods retail in-centre (i.e. on the inside-rim of the zone), whether there is any ratio or special requirements (i.e. within 100m of the inside-rim of a zone), or edge-of-centre in the absence of sufficient space (i.e. adjoining an Activity Centre or Main Street zone).

It is for these reasons that we submit that a more prescriptive wording is required to keep retail development:

(1) in-centre; and
(2) within a defined inside-edge of an Activity Centre or Main Street zone.

The Draft changes new Gross Leasable Floor Restrictions when compared to current Development Plans which is unjustified and unexplained

It is apparent in the review of some zones that there has been an adoption of a significantly higher floor space allowance for shops in the out-of-centre zones than that expressed in existing zone policy for Rural Areas.

The Draft increases the floor area restrictions (exponentially in some cases when compared to some current local/country development plans) without explanation, justification or proportionality. We seek clarification and consultation on how these new restrictions have been identified, how they have been calculated, and why they remain the same across Activity Centre zones and Main Street zones.

For example, we draw attention to the proposed Employment Zone, which is understood to represent a transition from the existing Industrial Zones in the current Council Development Plans. In a sample review of the current Development Plan Provisions it is noted that shops are listed:

- in the Light Industry Zone of the Barunga West Council Development Plan as Non-complying without a nominated floor space exemption;
- in the Industry Zone of the Copper Coast Council Development Plan as Non-complying with a nominated floor space exemption of 150 square metres;
- in the Industry Zone of the Grant Council Development Plan as Non-complying with a nominated floor space exemption of 80 square metres;
- in the Industry and Light Industry Zones of the Kingston Council Development Plan as Non-complying with a nominated floor space exemption of 250 square metres; and
- in the Industry Zone of the Lower Eyre Peninsula Council Development Plan as Non-complying with a nominated floor space exemption of 80 square metres.

The Employment Zone under the Draft identifies a DTS floor space criteria of up-to 500 square metres for shops under the Performance Assessed pathway resulting in a significant change in planning policy and accordingly does not represent a simple transition of policy between existing Development Plans and the Planning and Design Code.
There has been no justification or evidence produced as part of any investigations to warrant such a change in policy direction which we argue is contrary to SPP 9 and will have dire impacts on the existing centres in Rural Areas.

It is for these reasons that we submit that the final Code include a clear, proportional and equitable GLA restriction for zones that are out-of-centre.

No consistent approach to the public notification of Performance Assessed retail development that doesn’t meet the Deemed to Satisfy floor space criteria

There are two concerns with the notification procedures in the Draft. Firstly, we understand that the Draft intends to provide a consistent approach to public notification policy whereby, if a performance assessed development does not meet DTS criteria then the development should be subject to the relevant Notification Procedures. Our review identifies numerous inconsistencies in notification requirements for shops out-of-centre. As an example, a Shop in an Employment Zone which exceeds the DTS criteria of 500 square metres is listed as requiring notification. Surprisingly, the Urban Renewal Neighbourhood Zone has a performance assessed DTS of 100 square metres for Shops but does not include the same notification trigger.

We submit the following Zones require review and incorporation of public notification criteria for shops that exceed the specified performance assessed DTS, to ensure consistency of the notification requirements with the Draft Code: (1) General Neighbourhood Zone; (2) Greenfield Suburban Neighbourhood Zone; (3) Suburban Employment Zone; (4) Suburban Neighbourhood Zone; and (5) Urban Renewal Neighbourhood Zone.

Secondly, the draft currently generally excludes notification for performance assessed retail development in Activity Centre Zones unless:

- a site is next to/adjoins a dwelling;
- includes development defined as ‘all other code assessed development’ in the relevant Zoning Table; or
- fails to comply with relevant Deemed-to-Satisfy provisions.

Such a scenario would see a retail development in a centre zone being required to notify any adjoining dwelling. This is unreasonable on the basis that Activity Centre Zones promote residential development and would create a disproportionate notification requirement for our members and retail development more broadly. On this basis we submit that this clause be removed from the procedural matters for notification in activity centre zones

The SCCA would be pleased to meet with relevant staff to discuss this submission in more detail. Please do not hesitate to contact me at [redacted] or on [redacted] to discuss further.

Yours sincerely,

Sahil Prasad
Deputy Director