

PLANNING AND DESIGN CODE PHASE TWO (RURAL AREAS)

Amendment Validation Process Advice Report

Prepared under Section 73(10)(a) of the *Planning and Infrastructure Act 2016*



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1. Purpose of the report

This report has been prepared by the State Planning Commission (the Commission) for consideration by the Minister for Planning (Minister) in determining whether to adopt the amendment to the Planning and Design Code (the Code) for application to local government areas in rural parts of South Australia – known as the Phase Two (Rural Areas) Code Amendment. It has been prepared in response to a request of the Minister for Planning for advice regarding implementation of the Code pursuant to section 73(10)(a) of the *Planning, Development and Infrastructure Act 2016* (the Act) which enables the Minister to consult the Commission on an amendment to a designated instrument (such as the Code) where the Minister considers the matter significant.

In June 2020 the Commission invited key local government, industry and state agency stakeholders to ‘validate’ an updated Phase Two (Rural Areas) Code Amendment prepared by the Commission in response to the outcomes of consultation using a new online Code platform prepared by the Department of Planning, Transport and Infrastructure. This validation exercise provided participants with opportunity to make suggestions and recommendations as to how the online Code platform could be improved to enhance user experience and functionality. This report provides an account of the experiences and findings of councils, key industry and state agency stakeholders that took up the invitation to participate in this validation.

This report complements and is to be considered in conjunction with the Commission’s *Planning and Design Code Amendment for Phase Two (Rural Areas) Engagement Report* (the Engagement Report). The Engagement Report provides a fulsome account of the outcomes of the engagement and consultation activities undertaken during the public consultation period for the Phase Two (Rural Areas) Code Amendment. Like the Engagement Report, this report provides the Minister with recommendations as to how the updated Phase Two (Rural Areas) Code Amendment policy content can be improved prior to finalisation and potentially being given effect.

Should the Minister agree with the recommendations contained in this report and the Engagement Report, the Minister may proceed to adopt the updated Phase Two (Rural Areas) Code Amendment Code contained in www.code.plan.sa.gov.au.

2. Online testing process

The Commission finalised its Engagement Report in accordance with section 73 of the *Planning, Development and Infrastructure Act 2016* in early June 2020. The Engagement Report documented the Commission's recommended changes to the draft Phase Two (Rural Areas) Code Amendment based on the feedback received during the formal public consultation period between October and November 2019.

After receiving the report of the Commission, the Minister agree to release the Phase Two (Rural Areas) Code Amendment to councils for a period of validation, and then to stakeholders and the community.

This was intended to provide stakeholders and the community with an understanding of how their feedback had been used to refine the Code, as well as to facilitate "hands-on" understanding of how it would function in an online capacity.

To support this process, the Minister agreed to release the Engagement Report, and the Department established a helpdesk support service to assist industry and members of the public to use the Code. Online training, a webinar series for industry, community and councils as well as a range of other tools also supported this process.

To ensure the quality of the updated Phase Two (Rural Areas) Code Amendment, the Commission has embarked on a number of testing and quality assurance activities, including

- A review of the Phase Two (Rural Areas) Code Amendment by Phase Two Council administrations of the spatial extent of Zone, Subzone and Overlay boundaries, through access to the South Australian Property and Planning Atlas along with summaries for each council identifying key issues raised during engagement and alterations recommended to the draft Code in response; and
- Phase Two Council administration and key industry stakeholder review of documentation detailing assessment pathways and policies for key classes of development in core zones extracted from the new Code.

Importantly, the database system was made available to participants of these quality assurance activities. This facilitated the second of the above activities being undertaken in a more user friendly manner that better resembles the ultimate user experience to be supported by the system.

To provide assurance around this process, a clear process was established to identify any issues, categorise them and record decisions:

- Step 1 – Issues formally raised and then logged by DPTI
- Step 2 – Issues categorised and allocated for resolution (eg omissions, knowledge-based, or usability and system issues)
- Step 3 – Resolution and recording of decisions (determination of any amendment required, recording of decision.

3. Recommended Improvements to the Planning and Design Code

The following section provides an account of the issues identified during the validation period. These issues are grouped into the following categories:

- **Mapping improvements** – the application of Overlays, Zones, Subzones or Technical and Numeric Variations (TNVs)
- **Policy improvements** – including policy gaps, editorial issues of significance and policy linkage issues that will affect the Code’s ability to guide development assessment in line with the expectations of the Act, the various Planning, Development and Infrastructure regulations (the Regulations) and commonly accepted principles of policy construction
- **Linkages** – the correct policies being selected for a development type in a particular location

The Department and Commission also heard feedback in relation to the following, however this is not the focus of this report:

- **Usability and system amendments** – including suggestions and recommendations about how the online Code can be improved to enhance user experience
- **Knowledge issues** – issues resulting from a lack of understanding about the new system, the Planning and Design Code or planning in a digital format that may require dedicated communication, education or engagement activities

3.1 Mapping Improvements

The validation process identified opportunities for some key mapping improvements:

3.1.1 Dwelling Excision Overlay in Yorke Peninsula

It was observed that the Yorke Peninsula Development Plan explicitly provides for dwelling excision in certain circumstances, and that for consistency, the Dwelling Excision Overlay should be applied to these areas.

Recommendation:

APPLY the Dwelling Excision Overlay to all of the Rural Zone within the Yorke Peninsula Council.

3.1.2 Technical and Numeric Variation Data

Section 66(4) of the Act allows for local variations that vary or adapt the rules in a specified zone or subzone. Technical and numeric variations (TNVs) are the mechanisms used in the Code to do this. They are often spatially defined (i.e. apply to a specific geographic area). The validation process identified that some TNVs had not been accurately carried over from local Development Plans and as such are recommended for amendment as set out below.

Copper Coast Council

Replacement of the 9m and 2 building levels TNVs applying to 'Areas 2 and 3' identified by Concept Plan CoCo/9 in the Copper Coast Development Plan with a new maximum building height TNV value of 15.1m AHD (this update will preserve views of the Wallaroo Marina for dwellings built away from the waterfront).

Commission's Recommendation:

REPLACE the Maximum Building Height TNV of 9 metres with 15.1m AHD in the Wallaroo Marina Subzone.

Application of a 4.5m above natural ground level building height TNV to the allotments within the proposed Rural Shack Settlement Zone at Otago Road, Wallaroo.

This amendment cannot be accommodated as the Rural Shack Settlement Zone uses a standard building height and does not include the capacity for TNVs to be added. It is considered that this building height policy will suitably guide building height in the Rural Shack Settlement Zone at Otago Road, Wallaroo.

Commission's Recommendation:

No change recommended.

Replacement of the 3.85m AHD minimum finished floor level TNV value applied to the Golf Course Estate Zone in Port Hughes with 2.85m AHD

Commission's Recommendation:

AMEND numerical value of the Minimum Finished Floor Level TNV applied to the Golf Course Estate Zone in Port Hughes from 3.85m AHD to 2.85m AHD.

Creation and application of a new setback TNV to waterfront residential allotments at the Wallaroo Marina to guide building setbacks from the marina revetment wall in line with Copper Coast Development Plan policy and an LMA.

Clarification: TNVs for setbacks do not currently exist within the Code. Noting that the Waterfront Subzone currently requires performance assessment in relation to most forms of development (including dwellings), and that a LMA applies to this land, it is considered that the requested TNV is not required.

Commission's Recommendation:

No change recommended.

Change the unit of measurement used in the Minimum Allotment Sizes TNV for larger allotment size expectations from square metres (m²) to hectares (Ha).

Commission's Recommendation:

AMEND script within TNVs to express larger (i.e. rural) lot sizes as hectares (ha) instead of square metres (m²) for all allotments ranging from 10,000m²/1ha and above.

Yorke Peninsula Council

Minimum allotment size TNV for the Neighbourhood Zone and the Rural Settlement Zone is returned as 450m² regardless of the presence of effluent schemes, which may cause confusion for the public with regards to how they interpret that information.

Clarification: the Phase Two (Rural Areas) Code Amendment and therefore the Code generally does not presently incorporate spatial data regarding the location and extent of sewer and other waste water management schemes. This being the case, zones like the Neighbourhood Zone and the Rural Settlement Zone (which both cover land connected and not connected to sewer and other waste water management schemes) has minimum allotment size policy written in a way to address this - i.e. the minimum allotment size TNV value will only apply if the land in question can be connected to a sewer and other waste water management scheme.

Commission's Recommendation:

No change recommended. However, it is recommended that the online Code feature an advisory note that alerts users to policy requiring larger allotment sizes where a connection to sewer or other reticulated waste water management scheme is not possible.

3.1.3 Miscellaneous

The following spatial issues were identified and addressed:

- Local Heritage Places within Phase Three (Urban Areas) were appearing in the Phase 2 Code
- Only Historic Area and Character Area Statements (and no relevant assessment policies) were being returned for properties located in the Historic and Character Area overlays.

These issues have been rectified through improved linkages.

3.2 Policy Improvements

3.2.1 Assessment Pathways

There were some Overlays that were inadvertently excluding particular development types from the Accepted and Deemed-to-Satisfy (DTS) assessment pathways. This was in part a drafting error, and in part an error with some linkages, which required correction.

River Murray Flood Plain Protection Overlay and Rural Zone

The River Murray Flood Plain Protection Area Overlay has in some cases inadvertently altered the assessment pathway for development. In response to feedback from Councils it is recommended that the Rural Zone be altered.

Commission's Recommendation:

AMEND all the Rural Zone as follows:

- Farming should be Accepted Development
- Protective Tree Netting Structure should be Accepted Development
- Open sided structures (carport/verandahs) should be DTS
- Agricultural buildings should not be DTS.

Employment (Enterprise) and Motorsport Park Zones

Development types that would be subject to referral under Part 9 – Referrals were not excluded from the DTS assessment pathway in the Employment (Enterprise) Zone and Motorsport Park Zone.

Commission’s Recommendation:

AMEND DTS/DPF 1.1 within both the Employment (Enterprise) Zone and Motorsport Park Zone to read *“Development (other than where a referral is required under Part 9 - Referrals of the Planning and Design Code) comprises one or more of the following land uses:”*

3.2.2 Policy Drafting Improvements

The validation process identified opportunities for improvements to policy content:

River Murray Flood Plain Protection Area Overlay

The River Murray Flood Plain Protection Area Overlay DTS/DPF 4.1 addresses finished floor levels that should be implemented to mitigate flood risk and calls upon the Finish Floor Level Technical and Numerical Variation (TNV) for the relevant floor level. However, there are some circumstances where a TNV does not exist, and as such the policy needed to be amended for these circumstances.

Commission’s Recommendation:

AMEND River Murray Flood Plain Protection Area DTS/DPF 4.1 [Flood Resilience] to include the following text:

“In instances where no finished floor level value is specified, development incorporates a finished floor level at least 300mm above:

1. *the top of the kerb level of the primary street*
or
2. *natural ground level where there is no kerb*
or
3. *the height of a 1% AEP flood event*

whichever is the greater.”

Windfarm setbacks

Feedback suggested that the expression of the policy describing the distance windfarms should be setback from townships could be clearer.

In particular, there was a concern that the ‘extra 10m per 1m’ guidance given by Infrastructure and Renewable Energy Facilities DTS / DPF 8.1 could be construed to apply to both parts (a) and (b) of criteria 8.1, rather than just (b).

The following alternative wording seeks to clarify this issue:

Commission's Recommendation:

AMEND Re-order parts (a) and (b) of Renewable Energy Facilities DTS / DPF 8.1 as follows:

Wind turbine generators are:

(a) set back at least 2,000m from the base of a turbine to any of the following zones:

- i. Settlement Zone;*
- ii. Township Zone;*
- iii. Rural Living Zone; or*
- iv. Rural Neighbourhood Zone*

with an additional 10m setback per additional metre over 150m overall turbine height (measured from the base of the turbine); and

(b) set back at least 1,500m from the base of a turbine to non-associated (non-stakeholder) dwellings and tourist accommodation.

3.2.3 Assessment Pathways

The recent finalisation of the schedule of fees and charges has highlighted a need to amend the referrals to the EPA contained in the Code – to ensure these are aligned to and enable implementation of the schedule of fees and charges.

Part 9 of the Code in particular requires amendment to this end. Activities in this Part that need to be referred to the EPA need to be categorised into low and high risk activities to enable implementation of the schedule of fees and charges.

3.3 Policy Linkage Improvements

Some errors as a result of migrating the Code into the SA planning database were not unexpected given the extent of policy and the high number of policy linkages required for the online Code to operate effectively. An outline of the linkage errors and omissions that were identified and addressed in the online Code during validation follows.

3.3.1 Bushfire (Hazards) overlays

The policies required for bushfire safety that apply to all 'habitable buildings' were not applied to Tourist Accommodation in all zones where the General, Medium, High, Regional and Outback Bushfire (Hazard) overlay applies. As Tourist Accommodation is a habitable building, these policies should be applied.

Recommendation:

APPLY the following Performance Outcomes and DTS/DPF criteria to tourist accommodation (habitable buildings) within the Caravan and Tourist Park Zone, Conservation Zone, Infrastructure (Ferry and Marina Facilities) Zone, Rural Zone, Rural Horticulture, and Tourism Development zones:

- Hazards (Bushfire – Medium Risk) Overlay: PO and DTS/DPF 3.1, 3.2 and 3.3.
- Hazards (Bushfire - High Risk) Overlay: PO and DTS/DPF 4.1, 4.2 and 4.3.
- Hazards (Bushfire - Regional) Overlay: PO and DTS/DPF 3.1, 3.2 and 3.3.
- Hazards (Bushfire - Outback) Overlay: PO and DTS/DPF 1.1.

3.3.2 Demolition

Demolition was being returned as a performance assessed development in all zones, irrespective of whether or not the Historic Areas, Local Heritage Place or State Heritage Place Overlay applied. Demolition only requires planning consent when it is proposed within the area of these overlays.

Recommendation:

REMOVE system linkages to Desired Outcomes (DO) and Procedural Matters (PM) relating to demolition within zones.

3.3.3 Duplicate Driveway and Access Policy Linked to Outbuilding (in the form of a garage) and Carport

Duplicate policy regarding driveways and access was linked to outbuilding (in the form of a garage) and carport.

Commission's Recommendation:

REMOVE linkages between Transport, Access and Car Parking General Development Policy module PO / DTS/ DPF 3.1 and PO / DTS / DPF 3.5 and outbuilding (in the form of a garage) and carport from all zones.

3.3.4 Native Vegetation Overlay Policy Links

Native Vegetation Overlay policy has been incorrectly linked to development types across zones.

Recommendations:

APPLY linkages between PO / DTS / DPF 1.1, 1.2, 1.4 of the Native Vegetation Overlay and all performance assessed land uses besides land division.

APPLY linkages between PO / DTS / DPF 1.3 of the Native Vegetation Overlay and the following development types:

- horticulture
- intensive animal husbandry
- dairy
- commercial forestry
- aquaculture
- horse keeping.

REMOVE the linkage between PO 1.3 of the Native Vegetation Overlay and all development types besides:

- horticulture
- intensive animal husbandry
- dairy
- commercial forestry
- aquaculture
- horse keeping.

3.3.5 Telecommunications Facility Policy Links

Policy regarding access for people with a disability from the Transport, Access and Parking General Development Policy module has been incorrectly linked to telecommunications facility.

Recommendation:

REMOVE linkage between Transport, Access and Parking PO / DTS / DPF 4.1 and 5.1 and telecommunications facility from all zones.

3.3.6 Land Division in the Employment (Bulk Handling) Zone

Policy from the Land Division General Development Policy module linked to land division in the Employment (Bulk Handling) Zone is not consistent with that linked in other employment zones.

Recommendation:

APPLY the following PO / DTS / DPF links to land division in the Employment (Bulk Handling) Zone:

- Land Division General Development Policy 1.1, 1.2, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6.

3.3.7 Solar PV Panels (roof mounted) in the Motorsport Park Zone

In the Motorsport Park Zone Accepted Development classification table, the following criteria has been applied to some but not all references to Solar PV Panels (roof mounted):

"1. The development will not be contrary to the regulations prescribed for the purposes of section 86 of the Electricity Act 1996"

Recommendation:

AMEND Accepted Development Table reference to Solar PV Panels (roof mounted) in the Motorsport Park Zone to include the following assessment criteria:

1. *The development will not be contrary to the regulations prescribed for the purposes of section 86 of the Electricity Act 1996*

3.3.8 Retail Fuel Outlet in the Employment Zone

Applicable policies for performance assessment development for a Retail Fuel Outlet should be applied within the Employment Zone.

Recommendation:

APPLY the standard set of links to Retail Fuel Outlets in the Employment Zone.

3.3.9 Deemed-to-Satisfy Criteria for South Australian Housing Trust (SAHT) Development

Policy from the Housing Renewal General Development Policy module not relevant to the assessment of South Australian Housing Trust (SAHT) dwellings in rural areas of the state were incorrectly linked to a DTS assessment pathway for such development in the following zones:

- Rural Neighbourhood Zone
- Neighbourhood Zone
- Remote Areas Zone

Clarification: Assessment provisions for SAHT dwellings are contained within the Housing Renewal General Development Policies and therefore are not made part of zones. It is for this reason that these policies are not identified by classification tables as zone policies relevant to assessment of SAHT development.

Commission's Recommendation:

REMOVE Housing Renewal General Development Policy PO 2.2 from the Remote Areas Zone and listings within Table 2 Deemed to Satisfy Classification.

4.0 Conclusion

The recommendations of both this report and the Engagement Report have been incorporated into an updated version of the Code housed in the online Code platform. This version of the Code can be found at www.code.plan.sa.gov.au. Given the breadth and complexity of the draft Phase Two (Rural Areas) Code Amendment, the creation of this updated version of the Code provides a much more accessible and legible way of communicating the changes the Commission recommends be made to the draft Phase Two (Rural Areas) Code Amendment as a result of the validation exercise the subject of this report.

The Commission has made best endeavours to ensure the updated Code containing the updated Phase Two (Rural Areas) Code Amendment is free of omissions and errors. The Commission is confident that the Code will provide a sufficiently robust and comprehensive policy regime to guide development assessment and good development outcomes across the 33 Phase Two Council areas and the out of council Phase One areas. This confidence is to a large degree derived from the results of the validation process.

In addition to endeavouring to remove omissions and errors from the updated Code, the Commission has sought to work with the Department to refine the online Code platform to enhance the experience this provides all users. The Commission is confident that the experience provided by the online Code at this juncture is positive. Whilst it can be further improved – in some instances through further policy reform that recognises and exploits the practicalities of the technology – the Commission is of the view that the online Code can reasonably be seen as a realisation of a core ambition of the new planning system reform agenda.

The assistance that key local government, industry and state Agency stakeholders provided in this context has been constructive, insightful and ultimately indispensable – without it the Commission could not develop the confidence it now has in the updated Code and the online Code. The Commission expresses its sincere gratitude for this contribution.

If the Minister agrees with the changes the Commission recommends to the Phase Two (Rural Areas) Code Amendment by both the Engagement Report and this advice report, the Minister may adopt the Amendment pursuant to section 73(10)(c) of the Act. The Commission commends the Amendment to the Minister for adoption.

