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State Planning Commission
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Re: Assessment Improvements Code Amendment

The Property Council of Australia is the leading advocate for Australia's largest industry – property.

Our members have a direct interest in ensuring that planning reform delivers outcomes that increase housing supply, innovation and flexibility in housing choice for the markets they serve.

We therefore thank the South Australian Government for the opportunity to provide feedback on the proposed Assessment Improvements Code Amendment.

The Property Council made a submission in 2022 to the Planning System Implementation Review Expert Panel (*the Stimson Review*). We understand that this Code Amendment process builds on the work of the Expert Panel along with the Miscellaneous Technical Enhancements Code Amendment.

We thank you for your consideration of this submission.

Bruce Djite
SA Executive Director,
Property Council

Introduction

The Property Council understands that the Code Amendment applies to the whole of South Australia and that it is focused on technical matters related to the policies and wording within the Code related to:

- Part 1 – Rules of Interpretation
- Part 2 – Zones and Sub Zones
- Part 3 – Overlays
- Part 4 – General Development Policies
- Part 7 – Land Use Definitions
- Part 8 – Administrative Terms and Definitions
- Part 9 – Referrals

We also understand that the Code Amendment will assist in the delivery of some of the recommendations outlined in the Final Report of the Expert Panel including:

- Covered Car Parking Spaces
- Heritage
- Language and Consistency
- Definitions
- Policy Applicability
- Car Parking Requirements

The Property Council's submission will focus on a select number of issues under 'Part 4 Investigations' of the consultation paper.

Investigations – 4.1 Rules of interpretation

- Regarding Section 4.1.1 Performance Assessed Development – We note the intention for the proposed clarification of the rules of interpretation relating to Table 3 Performance Assessed Developments. It is however critical that all of the necessary provisions for the assessment of "Table 3 Developments" are in fact included in the Table. To the extent we note the matters of inconsistent policy linkages have been identified and proposed to be corrected in Section 4.2

- General point - The proposed changes in the Code Amendment fail to address the inherent issues that are currently being perpetuated by a conservative or potentially misconstrued reading/interpretation of Part 1 – Designated Performance Features. Under the heading of "Policies - Desired Outcomes and Performance Outcomes", the following text is used for the interpretation of how to apply Designated Performance Features (DPF):

    - *"In order to assist a relevant authority to interpret the performance outcomes, in some cases the policy includes a standard outcome which will generally meet the*

corresponding performance outcome (a designated performance feature or DPF). A DPF provides a guide to a relevant authority as to what is generally considered to satisfy the corresponding performance outcome but does not need to necessarily be satisfied to meet the performance outcome and does not derogate from the discretion to determine that the outcome is met in another way, or from the need to assess development on its merits against all relevant policies."

There is an interpretation being promoted that suggests if you meet a DPF then you may not have necessarily met the corresponding PO because of the use of the words *"generally considered to satisfy the corresponding performance outcome"*.

We submit that this interpretation undermines the structure and intent of the Planning and Design Code and is inconsistent with the worldwide application of Performance Based Planning Policy, which is premised on the basis of, if you meet the corresponding Standard Acceptable Criteria you meet the Performance Based Outcome. If it was to be read otherwise, there would be no role for the fact that the DTS and the DPF represent one and the same criteria.

Some planning authorities assert that even if you meet the standard outcome in a DPF you do not necessarily achieve the corresponding Performance Outcome. It is entirely reasonable for applicants for consent to be afforded the security of knowing that if they design a development which meets a DPF that they will achieve the corresponding PO. To do otherwise defeats the purpose of the DPF.

- Additional General Comment - The Property Council also encourages amendments to be made to the Rules of Interpretation which clarify what consideration is to be given to Character Area Statements. To explain:

    - PO 1.1 of the Character Area Overlay provides as follows: *All development is undertaken having consideration to the valued attributes expressed in the Character Area Statement.*

    - Character Area Statements then contain a table with various attributes in localities. To give an example, in one of the CAS's it says: *Architectural styles, detailing and built form features – still some remaining examples of bungalows west of the railway line.*

  What is the relevant authority to do with this in their assessment? Providing clarification about what Character Area Statements mean, what their intent is and how the relevant authority is to practically give consideration to them a planning assessment will greatly assist.

Investigations – 4.2 Language, Consistency and Policy Applicability

- Regarding 4.2.1, the Property Council would strongly support the recommendation. From a statutory interpretation point of view, clarifying the use of 'And' and 'Or' is critical to ensure the proper and most efficient implementation of the DTS/DPF provisions in all policies.

The clearer the policy is the more consistent the approach is from the relevant authority and will minimise the risk of differing interpretation in decision making under the PDI Act. Whilst the Property Council generally agrees in principle it will of course be necessary to see the details of the where 'and/or' is applied in respect of the specific policies.

- 4.2.5 Without doing a whole of Code audit it is difficult to comment on the specific inconsistencies that have been identified for the amendment, however the Property Council endorses the correction of errors in documentation of policy.

- 4.2.13 The Property Council endorses the clarification of the misconstrued interpretation associated with the application of marked accessible car parking.

- 4.2.14There is an inherent disconnect between the application of *the Planning Development and Infrastructure Act 2016* and the inclusion of policy or tightening of policy associated with the display of third-party advertising.

  An advertisement is clearly able to be considered as a "Land Use" by virtue of its inclusion under PO1.1 in most commercial zones relating to the types of land use that are considered to be appropriate in the respective zone. The Development Regulations clearly exempt the change in the content of a sign from the definition of Development.

  The inclusion of Policy seeking to limit "Advertising Content" (PO3.1) in the General Policies Section of the Code and more specifically any changes to such Policy undermines the fundamental framework of the Act and Regulations that do not seek to control the content of advertising signs.

  Given that advertisements are a clearly anticipated land use and that third party advertisements are a legitimate and lawful business operation, explicit acknowledgement of the existence of third-party advertising should be made in the Code via this Code Amendment process.

  We suggest the following changes:

  - PO3.1 should be deleted in its entirety and the control of signage should be limited to a contextual assessment of size and number to manage any concern regarding "Visual Clutter".

  - Explicitly allow third party advertisements by defining the same.

  - Provide guidance to applicants as to appropriate locations for such development which could include limiting third party advertising to:
    - State Maintained Roads
    - Centre Zones
    - Employment/Strategic Employment Zones; and
    - Avoiding Neighbourhood-Type Zones.

  - Ensure there are no DTS/DPF criteria applicable to third party advertising applications to make it abundantly clear to planning authorities that a performance assessed outcome is to occur.

- General Point - Definition – Trade Training Facility: While the Property Council endorses the ability for greater certainty in understanding definitions for land uses, it is noted that "Training Facility" is not defined. The introduction of a sub-category to an undefined Land Use Term, which is referenced throughout the land use tables/PO of the Code, could do with greater explanation.

Investigations – 4.5 Administrative Terms and Definitions

- 4.5.1 – Building Height Definition: The Property Council supports the intent to provide greater clarity to the Building Height Definition in order to avoid ambiguity, however the changes to the definition do not currently provide sufficient clarification. Specifically, where horizontally on a site is the newly identified "reference point" to be identified? Is that to be taken at the lowest natural or finished ground level of the "site", or from the point, directly below the highest point of the building? This is currently not clear from the changes made to the definition. We do not believe that the illustration (Column C) currently affords sufficient guidance to the interpretation of this definition as it fails to include examples associated with cut or fill nor does it include a building to reference the height from. Furthermore, the list of excluded examples for being included in the measurement of building height should be expanded to include roof top plant and equipment, lift overruns and the like, all of which are elements that have previously been excluded by reference in specific Development Plans and are all relatively minor built form elements that are typically located above the finished roof height.

  The proposed amendment to the definition of "building height" is partly helpful, although it does not address lift overruns and fire stairs.

  Lift overruns and fire stairs do not meaningfully add to the visual bulk of buildings, are typically a small fraction of the area of the building and are typically set in from the roof edge so as to not be visible.

  The practical reality of not allowing lift overruns and fire stairs to be excluded is that it discourages the creation of roof top gardens and other future uses of roof areas.

  Having regard to the above, the Property Council strongly encourages further amendment to the definition of "building height" such that lift overruns and fire stairs are excluded from the measurement. This could readily be achieved by the following additions to the list of things that are not included in the existing definition – i.e.

  - *Means the maximum vertical distance between the lower of the natural or finished ground level or a measurement point specified by the applicable policy of the Code (in which case the Code policy will prevail in the event of any inconsistency) at any point of any part of a building and the finished roof height at its highest point, ignoring any antenna, aerial, chimney, flagpole or the like. For the purposes of this definition, building does not include any of the following*:

(a) flues connected to a sewerage system
(b) telecommunications facility tower or monopole
(c) electricity pole or tower
(d) lift overruns
(e) fire stairs
(f) or any similar structure.

- 4.5.2 – Primary Street Frontage Definition: The Property Council is not convinced that the amendments to the definition for Primary Street frontage for Corner Sites are yet to satisfactorily address the need to define primary street frontage. The use of the term primary street frontage is typically used to assist in assessing street setbacks to ensure that where there is need for consistency of street setbacks to maintain character, those setbacks are recognised and responded to accordingly. The proposed changes will undermine the current policy intent.

Investigations – 4.6 Targeted Policy Updates

- 4.6.1 Local Heritage Place Demolition Policy: The proposed wording changes to Local Heritage Demolition Policy undermines the fundamentally hierarchical nature of Heritage Policy which has over time become more blurred. The heritage hierarchy comprising State Heritage Areas, State Heritage Places, Local Heritage Places, Historic Conservation Areas, Representative Buildings, Character Areas. Elevating the demolition policy to include the same wording utilised for the consideration of the demolition of State Heritage items erodes the hierarchy to the extent of questioning whether there is a need to distinguish between State and Local Heritage items. The Property Council supports the need to maintain and distinguish the different values of a State and a Local heritage place and accordingly policy associated with the demolition of such places, where appropriate, needs to be able to distinguish the criteria and reasons as to when such demolition may be warranted.

- In addition and not included within the Code amendment but requiring attention is clarification associated with the terminology "Partial Demolition" where it is used as a trigger for public notification. Currently, the application of this trigger would involve any extent of demolition no matter how minor, associated with changes or amendments to the existing building, including where such demolition may be required to facilitate the restoration and maintenance of the building. This cannot be the intent behind the inclusion of this phrase into the public notification criteria, and as such the Property Council requests that the phrase "Partial Demolition" be further clarified by definition or other means.