



COMMUNITY ENGAGEMENT REVIEW OF ZONING OF LAND AT BLACK POINT/PINE POINT

Commences 1 May and Concludes 30 June 2019

The pending introduction of a new Planning System for South Australia is intended to be implemented across Regional Councils by late 2019. This will involve the conversion of the present Council Development Plan to the new format, Planning and Design Code; which will include a comprehensive set of planning rules for development assessment purposes classified into zones, subzones and overlays.

The proposed new system will be very different to the Development Plan provisions now in place, with a series of prescriptive guidelines against which new development will be assessed.

It is likely that the new system will incorporate some planning policies from the current Development Plan, particularly those provisions now applicable to the Settlement Zone and Black Point Policy Area, but is nonetheless intended to be simplified, particularly through a reduction in the number of separate Zones and Policy Areas.

Hence it is timely that the relevance of the Development Plan policies for Black Point and Pine Point be reviewed.

The review will involve more than just a review of the relevant Development Plan provisions but will also include consideration of issues arising from sea level rise and coastal erosion, the need for future protection measures and maintenance of the beach, together with a review of the Crown lease shack sites in the Urban Coastal Zone fronting Black Point.

2.0 BACKGROUND

Before considering the contemporary issues at Black Point it is worthwhile reviewing the background to the present planning controls at Black Point, noting that the settlement can be divided into two parts, the shack leasehold sites on the coastal frontage and freehold sites behind.

The following is a short history.

3.0 SHACK SITE TENURE

The shack area at Black Point generally evolved from a camping licence to the present lifetime tenure.

Early shack licences were annual licences issued under Sections 244 and 246 of the Crown Lands Act. They permitted entry and occupation of land for 12 months and were renewable.

In the years 1917 - 1945 licences generally authorised the camping use of the licensed sites.

In 1945 it apparently became the practice to issue a shack site licence in place of the camping licence for all such new occupations.

During the period 1945 - 1960, upon request from Councils, it became common practice to issue annual licences to individual Councils for shack areas.

In 1960 the Shack Policy was modified to allow new areas approved by the Department of Lands to be licensed to Councils for shack sites. The transfer of these shack areas took place from 1960 to 1965.

The first review of shack sites on waterfront Crown land was undertaken in 1973/74 following which a Cabinet Sub-Committee was formed to determine the Government's Shack Policy.

Criteria were developed to determine those areas of shack occupation that fell within acceptable and non-acceptable sites.

Areas generally within 50 metres of the face of a frontal dune or edge of the cliff along the coast were classified as non-acceptable.

In 1979 the then Government announced its Shack Site Policy which included an undertaking that a review would be made of all non-acceptable shack sites.

The most important aspects of the policy were:

- In acceptable areas, individual shack owners were able, upon request, to apply for a freehold title to their site.
- In non-acceptable areas, some shack owners were issued a 10-year lease.

Persons who were owners of shacks as at 5 November 1979 were given an undertaking that they may retain their shacks for the remainder of their life time plus the life time of any surviving spouse.

Upon the deaths of the present shack owners and any surviving spouse the shack was to be removed.

The 1983 review recommended the creation of three classifications for shack sites:

- Acceptable sites
- 30 - 40 year Miscellaneous Lease sites.
- Life Tenure sites.

The recommendation for 30 - 40-year leases was not proceeded with, because of a change of government.

In November 1989 the Government announced a change in policy for shack sites held under terminating tenure, with terminating dates as outlined in the lease document. This was that unacceptable Crown lease shack sites held under terminating tenure would be granted non-transferable Life Tenure, effective from 4 November 1989.

Under the policy as November 1989 there were two categories of shack sites on Crown Land:

- environmentally acceptable sites that could be converted to freehold;
- environmentally unacceptable sites from which shacks would eventually be removed.

Environmentally unacceptable sites were also divided into two types:

- Life Tenure A - life tenure leases granted before 4 November 1989;
- Life Tenure B - terminating tenure leases granted before 4 November 1989.

Owners of Life Tenure A sites retained their existing right to transfer the lease up until 31 December 1994.

Owners of Life Tenure B sites, held under terminating tenure, would be converted to non-transferable life tenure sites.

Shacks at Black Point fell into both categories but in or about September 1995 all the shack sites at Black Point were converted to category B.

Up until the early 1990s, previous reports into the shack sites had not favoured the freeholding of the shacks at Black Point.

4.0 THE EVOLUTION OF BLACK POINT

The developer, Prodec Pty Ltd acquired farm land in the late 1980's for the purpose of developing a small coastal settlement south of the original road reserve at Black Point.

At the time, it was intended that a number of freehold sites within this development would be acquired by the Government and sold to individual shack owners as their leases expired.

In 1989, the Government of the day changed the tenure policy for all shacks classified as non-acceptable (not able to be made freehold) and granted life tenure leases over all shack sites.

Prior to the change, all Black Point shack sites were treated as being either transferable life tenure leases, or leases with a term that was due to expire between 1995 and 1999.

After the change, sites were categorised as either Life Tenure "A" or Life Tenure "B", the distinction being that "A" sites could be transferred once, whereas "B" sites were non-transferable.

After 30 June 1995, all "A" sites became "B" sites (no longer permitted to transfer).

At Black Point, the shacks were held as annual licences from what was then the District Council of Central Yorke Peninsula. Council administered each site in accordance with the Government's Policy, even though it was not able to grant life tenure leases.

The change in policy seriously impacted upon the viability of the development. No longer was there an anticipated stream of potentially interested shack owners whose tenure would be due to expire within a decade.

Prodec, the Government, District Council of Central Yorke Peninsula and the Black Point Shack Owners Association entered into negotiations to develop an alternate land division that was partly made up of road reserve owned by Council, Crown land and private land owned by the developer.

The intent of this development was to make land available immediately to the rear of each site for the purpose of relocation over time. A relocation incentive scheme was also implemented.

Planning requirements were finalised in 1994 and Council relinquished care, control and management of the area to the State, effective 30 June 1994.

The State Government issued annual licences to all shack owners on 1 July 1994. The intention was to issue life tenure leases once the boundaries of each shack site were finalised upon completion of the Prodec development.

The land division to accommodate Prodec's revamped development was deposited in the Lands Titles Office and the settlement of the sale of each shack site under contract commenced on 20 September 1995.

At the time of settlement, the Government was in the process of implementing its Shack Site Freeholding Policy. A Committee had been established to assess the merits of offering freehold title to shack owners across the state, subject to compliance with published criteria.

Black Point was excluded from this assessment, due to the fact that it was well advanced towards the provision of freehold title via other means.

Following the settlement of the sale of the majority of the Prodec allotments, the Black Point Shack Owners Association approached the Government to have the shacks assessed at Black Point under the terms of its freeholding policy. The intent of the Association was to extend the freehold boundary of each site to include the existing dwelling thereon.

Neither Council nor Prodec supported the proposal.

A compromise proposal was submitted to all parties by the Government in 1996. The intent of the proposal was to allow shack owners who no longer wished to retain property at Black Point, the ability to realise the value of their structural assets and sell their freehold and leasehold interests in the one package. Under the original arrangement, effectively, if a shack owner wanted to sell their freehold title, the shack had to be demolished.

The Government proposed the issue of 40-year leases over the Crown land sites, with each lease being transferable and held inseparable from the adjoining freehold title.

Prodec and Council agreed with the proposal subject to it only applying to sites where the freehold title was owned in the same interests as the leasehold site. The 40-year lease option was to apply from 1 July 1997.

The Government, the Shack Owners Association and Council then sought to clarify the remaining two outstanding matters, namely future development permitted on the Crown allotment and the rental that would apply for each site.

The former issue is now dealt with in the Council's Development Plan.

As part of the approval of the issue of new Titles for land fronting the coast in the Holiday Settlement zone and specifically where tied to a shack site in the Urban Coastal zone, a Land Management Agreement (LMA) was entered into affecting all of the relevant allotments.

Amongst other things the LMA provides that;

1. The land in the Holiday Settlement (Black Point) zone cannot be developed until the shack and any buildings on the related Crown Land shack site have been removed, or
2. an agreement is in place for the removal of the shack and outbuildings on the related Crown Land within 12 months of building approval being granted for a habitable building on the related land in the Holiday Settlement (Black Point) zone.
3. the owner will be responsible for any reasonable costs for works associated with the reinstatement, removal or protection of existing sea wall and beaches.
4. The Government and Council be indemnified for loss or damage arising from coastal erosion.

5.0 SHACK RELOCATION PROTOCOLS

In addition to the LMA and the relevant Development Plan criteria relating to the relocation of the Crown Lease Shacks at Black Point, there are a series of relocation protocols contained within the leases for each Crown lease shack site.

Amongst other things the protocols require;

1. Maintain the improvements on the land in good working repair and condition,
2. At the termination of the lease or sooner, surrender the land to the Minister,
3. Comply with the relocation protocols as approved by the Minister,

4. Not transfer or sublet the land without the approval of the Minister,
5. Not carry out earthworks without the approval of the Minister, and
6. Not erect or alter or permit to be constructed any buildings, erections or other improvements, including fencing, external structural alterations and additions without the prior approval in writing of the Minister.

6.0 PLANNING CONTROLS AT BLACK POINT

Black Point is located in the area Yorke Peninsula Council.

Prior to the amalgamation of Councils on Yorke Peninsula, Black Point was in the area of the District Council of Central Yorke Peninsula.

Prior to 1 July 1977, planning was administered by the State Planning Office under the Planning and Development Act 1966.

On the 2nd June 1977, the Yorke Peninsula Planning Area Development Plan (the Plan) was authorised pursuant to the Planning and Development Act 1967 – 76.

The Plan introduced for the first time a series of proposals and general policies for development.

The Plan was relatively thin on specific policy, but did identify areas 'suitable for development', which did not include Black Point.

At page 81, the Plan says that "The existing holiday house development at Black Point is considered excessive and no further development should be permitted in this locality."

On the 1st July 1977 Interim Development Control for The District Council of Central Yorke Peninsula was introduced which continued until December 1982, when the Council adopted a Development Plan under the Planning Act 1982.

The Development Plan remained unchanged then until August 1990, when a comprehensive review of the Development Plan was undertaken.

In the 1990 version of the Development Plan, Black Point was divided into 2 zones, the Urban Coastal zone which accommodated most of the Crown lease Shacks on the foreshore and the land immediately to their rear (i.e. all the land to the North and East of Government Road (now Black Point Drive); and a Holiday Settlement (Black Point) zone which accommodated all land to the south of Government Road.

A plan identified the land generally to the north and south of Government Road in the Urban Coastal zone, to be designated as open space/recreation, with all residential development to be confined to that area in the Holiday Settlement (Black Point) zone to the south of the north-south alignment of Government Road.

The Urban Coastal zone provisions of the Plan designated a (new) Detached Dwelling as a non-complying use in the zone, with the exception of carports, verandahs or pergolas attached to a dwelling and extending no more than 3 metres from the dwellings, and an extension to accommodate a toilet with a maximum floor area of 2m², or a bathroom/laundry of up to 5m².

In 1995 the Council undertook a further review of the zoning affecting the Holiday Settlement (Black Point) zone.

The amendment introduced amended and new objectives for the zone, a more detailed character statement which refers in more detail to the need to relocate the life tenure shacks in the adjoining Urban Coastal zone, introduces additional proposals relating to the relocation of the shacks, and amended principles dealing with the same issue.

The next amendment in August 1998 resulted from the Ministerial Shacks Review DPA. The purpose of which was to allow the freeholding of shack sites across the State.

A significant component of the this DPA was the establishment of specific exemptions applying to Crown lease shack sites in Coastal zones from complying with certain of existing Development Plan provisions that otherwise spoke against land division or the development/redevelopment of dwellings in these zones.

In relation to the Urban Coastal zone at Black Point the changes can be summarised as excluding;

1. the ability to undertake land division for existing dwellings on Crown Land.
2. The upgrading of dwellings, other than as allowed for in respect to a verandah, carport or pergola addition extending no more than 3 metres from a dwelling, and an extension to a dwelling to accommodate a toilet with a maximum floor area of 2m², or bathroom/laundry of not more than 5m².

In 2001 a General Development Plan Amendment was undertaken by the Council, which amongst other things amalgamated the 4 Council Development Plans now forming the District Council of Yorke Peninsula.

Significant amendments to the DPA affecting the Crown Lease shack sites in the Urban Coastal zone at Black Point included;

An amendment to the exemptions and non-complying provisions to;

1. provide for the enclosure of any lawfully developed carport, verandah or shed which existed on the land on 17 November 1996 and which adjoins an existing habitable dwelling, except where the enclosure would occur on the northern (seaward) side of the dwelling;
2. provide for the incorporation of a lawfully developed garage into and to form part of an existing habitable dwelling provided the garage existed on the land on 17 November 1996 and abuts the existing dwelling, and excludes any garage located on the northern (seaward) side of the existing dwelling.
3. list a (new) dwelling as a non-complying use in the zone at Black Point.

The Development Plan also introduced the concept of the retention of coast protection works in front of those shacks that had been relocated to the land at the rear, and their ultimate coordinated removal.

More recently the Crown Shacks at Black Point were rezoned to include the land in a Coastal Open Space Zone (foreshadowing the final intended use of the land as open space once the shacks are removed), with separate precinct provisions relevant specifically to the Crown Lease Shack sites.

That was the last significant amendment to the Urban Coastal one affecting the Crown shacks at Black Point.

7.0 CONTEMPORARY ISSUES AT BLACK POINT

Not all of the issues at Black Point are matters that can necessarily be dealt with under the Development Act, and in 2003 the then The Department of Environment and Heritage commissioned a report which was intended to lead to the adoption of a Management Plan under the Coast Protection Act 1972.

Issues identified to in that report include;

1. Management of the shack relocation process to minimise the likelihood of erosion and subsequent property loss.
2. Management of pedestrian and vehicle access to the beach.
3. Preservation and restoration of the coastal foredune.
4. Control/management of private use of the foredune area for recreation, access and other purposes.
5. Enhancement of recreational opportunities for residents, visitors and tourists to the area.

Beach erosion at the time was noted as an ongoing issue although reports at the time noted that erosion and accretion was seasonal and that loss of sand in winter was often replaced with offshore replenishment in summer simply through natural coastal processes.

A report from Terry Magryn and Associates noted that something in the order of 0.3m x 10m x 2300m, or 7000 cubic metres has been eroded from the beach between 2000 and 2003 with some areas of the beach up to 700mm lower in 2003 than 2000. It was noted that this sand may have been moved offshore and was likely to return over a quieter period when accretion, rather than erosion, is the dominant trend. The report went on to suggest trial sand carting to preserve the beach.

Coastal erosion is a significant issue for all beachside communities and as part of the proposed Management Plan, it was intended to identify the most appropriate location and alignment of future coast protection works.

This is still a significant issue and one that needs to be addressed in concert with the Community and Coast Protection Board sooner rather than later.

In relation to the relevant Development Plan issues, matters that need to be addressed include;

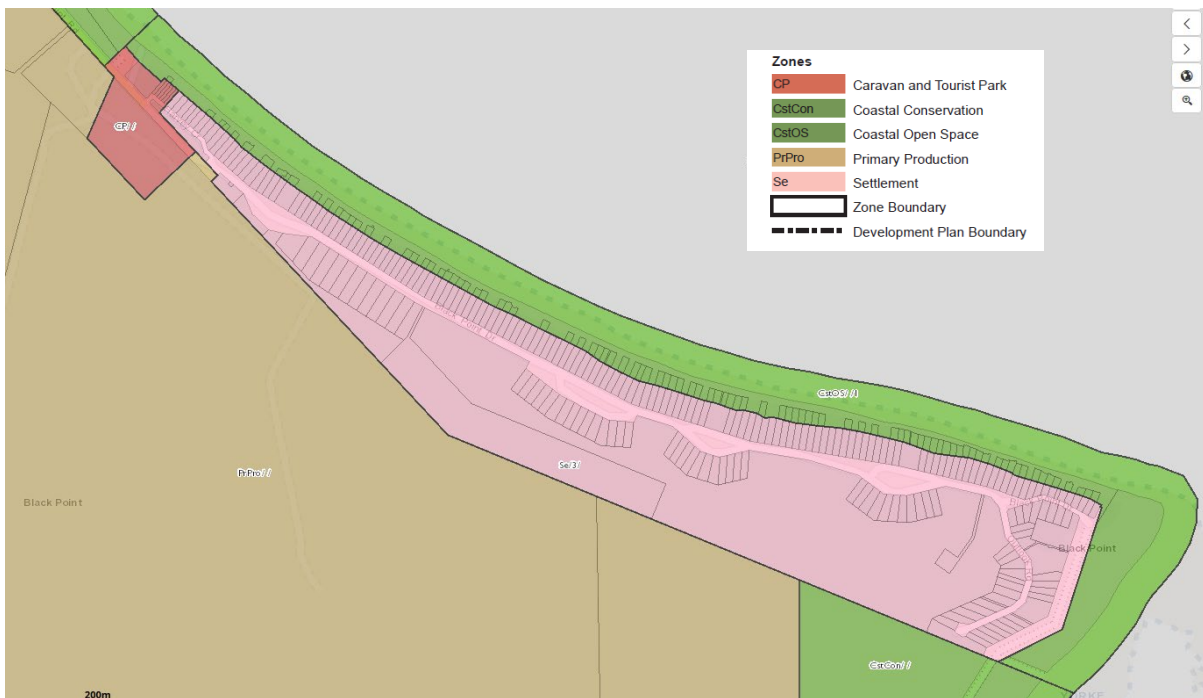
1. The relevance and need for the Black Point Design Guidelines to be retained.

The Guidelines are exceptionally detailed to the point of being somewhat too complicated and stifling some forms of contemporary building design. That said, they have had a role in ensuring that the level of development at Black Point has created a very different beachside character to other Holiday Settlements in the Council area.

2. Determine the extent to which Black Point should be located in a separate Policy Area, the policies for which are additional to the wider policies applicable to the Settlement Zone.

Black Point is not unique in the issues it presents, and many of the current Policy Area provisions are reflected in the Settlement Zone provisions or have equal relevance to other Settlements. Any review of the zoning should avoid repetition of policy and seek to incorporate relevant policy from the Policy Area into the zone provisions.

3. Review the relevance of the Caravan and Tourist Park Zone at the western end of Black Point.



Black Point Current Zoning

Source: Property Location Browser

The Caravan and Tourist Park Zone was added to the Zoning of Black Point as part of a general review of the Development Plan in 2012 and resulted from a submission from the land owner which included a re-alignment of Black Point Drive to the east of the Zoned land and the development of a tourist park facility. The development has clearly not occurred and the relevance of the zoning of the land to the east of the current alignment of Black Point drive needs to be determined in discussion with the land owner. Limited water supply may be a constraining factor in the development of the land.

4. Review the zoning of land between Pine Point and Black Point.

There is small section of land zone Rural Living, Precinct 3, which is located at the intersection of the Yorke Highway and Black Point Drive. Present Development Plan policies do allow further sub-division of the land. Access to the land is from side roads and not directly from the Highway. There have been previous approaches to Council regarding including this land in an extension of the Settlement Zone. The slope of the land and its attributes generally are not conducive to its closer settlement for Residential sized allotments.

Services such as power and water supply need to be investigated to determine if the land is suitable for more intense land use.



Zoning between Pine Point and Black Point showing the Rural Living 3 Zoned land

8.0 REVIEW OF DEVELOPMENT CONSTRAINTS

Limitations around water supply and power are two issues constraining the development of land at Black Point. Power less so now with technology that permits on site power generation and storage. Water supply issues are addressed by a requirement for on-site storage with limited mains supply and a combination of stormwater and mains water storage distributed to each dwelling by on site pumps. Recent upgrading of mains supply to Yorke Peninsula and its impact on supply of mains water to Black Point should be reassessed, especially in light of the review of zoning as suggested above of the Caravan and Tourist Park Zone and Rural Living 3 zone.

The impact of water supply on development will also affect the nature of the envisaged land uses in the zone, noting that at the present time all dwellings other than a single detached dwelling per allotment are listed as being non-complying land uses in the Black Point Policy Area.

INQUIRIES AND FURTHER INFORMATION

The Council is keen to hear from anyone with particular concerns or views on how development at Black Point can be managed and if any matters need to be taken into consideration as part of the review.

Contact David Hutchison from Access Planning (SA) Pty Ltd – Phone (08) 8130722 or at dhutchison@accessplanning.com.au

SUBMISSIONS

Written submissions should be sent marked “Review of zoning at Black Point”
Yorke Peninsula Council
PO Box 57, MAITLAND, SA 5573.
Alternatively email to: admin@yorke.sa.gov.au

Should you wish to appear before Council on this matter please contact;
Mr Roger Brooks
Director Development Services
Phone 08 8832 0000 or by email: admin@yorke.sa.gov.au

Submissions close 30 June 2019.