

Consultation Template Submission Form

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Page 1: Planning and Design Code for South Australia

Q1 Which part of the Planning and Design Code would you like to make a submission about?(Please click the circle to select which part of the Code you wish to comment on. You can also see which council areas are included in the rural and urban code via the links below.)

My submission relates to Rural code. (click here for council areas)

Page 2: Planning and Design Code for South Australia Personal Details

Q2 Please provide your contact details below (Name, Postcode & Email are mandatory)Please be advised that your submission will be made publicly available on the SA Planning Portal.

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Q3 Which sector do you associate yourself with? **Community Group**

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Q4 Please upload your PDF template for submission here (pdf only)

FOP SA Submission on PDC vs 5.pdf(175.2KB)

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Consultation Template Submission Form

Q5 Please enter your general feedback here

For general feedback, please refer to the attached file.

Friends of Parks SA Submission on draft Planning and Design Code

The combining of all previous state zoning and planning regulations into a single code is a huge task, and we appreciate the difficulty this poses. The effort to extend the planning system to parks and reserves faces unique challenges and we hope that suggestions here will assist that process.

This submission, made on behalf of Friends of Parks (FOP) Inc, has been prepared in consultation with members of the FOP Board, and several FOP groups. However it is not comprehensive. It is undoubtedly true that if we had time to read all relevant documents, incorporate expert planning advice, and consult individually with each FOP member and affiliate group, more issues would be raised. As a result, it is inevitable that as individual developments are considered under the Code, without all issues being resolved, there will be a critical public response. We suggest that extending the consultation period, trialing a new, untested approach to planning, and beta-testing the mapping tool and the online application might minimize this and is strongly recommended

Issue no.	Code Page	Problem title	Problem Details	Solution
1	General	The Code allows uses in Wilderness Protection Areas prohibited under the Wilderness Protection Act 1992 SPP4 4.1	The Code does not carry over equivalent zoning established under previous legislation ⁴ This is a particular concern regarding wilderness protection areas (WPA)s . These comprise large contiguous areas of untouched natural bush-and. In these areas, any development, including roads and tracks disrupts the wilderness character and impacts on threatened species and threatened plant communities through feral animal and weed incursion. The Wilderness Protection Act (WPA)1992 on Page 18, under Section 26 Prohibition of other Activities 1.(b) prohibits <i>“the construction or erection of roads, tracks, buildings or structures (except those that are specifically authorised by the plan of management of the wilderness protection area or zone)”</i> . This is the highest level of protection offered to natural areas in South Australia However no zone/sub-zone in the Code provides the equivalent level of protection. Examples are SPP 4.1 does not cover this level (uses term ‘minimise’ instead of ‘avoid’).	Under Conservation Zone, create a Wilderness Conservation Subzone (WPZ) , where no development can take place unless <i>‘specifically authorized by the Park’s plan of management’t</i> or in the case of Wilderness Protection Areas, <i>‘specifically authorised by the Wilderness Code of Management under the Wilderness Protection Act 1992’</i> In addition to meeting a legislative requirement and implementing state biodiversity policy, this sub-zone has the economic benefit of protecting the state’s most important tourist-attracting assets from incremental degradation

2	SPP4, 4.1 PO*1.2a	Incomplete implementation of State Biodiversity policy - Critical Habitat (SPP4)	<p>Currently the code does not realise SPP4 objective to <i>maintain and improve our state's biodiversity and its life supporting functions</i>.</p> <p>The Native Vegetation Overlay (NVO) includes protection for threatened plants and <i>'significant wildlife habitat and movement corridors'</i> PO1.2, P1520, however this is not included in State Significant Native Vegetation Overlay (SSNVO) which applies to National Parks. Nor does the NVO provide protection for threatened animal species which are dependent on unique ecological communities (plant, animal and/or physical features). Examples are glossy black-cockatoo (feeds only on two species of Allocasuarina), desert animal species such as yellow-footed rock wallaby or inhabitants of caves or rock formations. It is not clear how important fossil deposits on private land, such as on Emu Bay, Kangaroo would be protected or threatened species such as the Bassian Thrush and Black-chinned honey-eater whose range extends over multiple zones in the Adelaide MtLofty Ranges.</p> <p>Protection of critical habitat is a major function of national parks (NPW Act 1972, P37 Objectives), but also extends beyond crown reserves. We suggest it should be represented as its own overlay in addition to the NVO and SSNVO. This would allow such habitat to be protected when it extends over multiple zones and outside parks and reserves.</p>	<p>Create a Critical Habitat Overlay with appropriate assessment provisions to protect vital non-vegetation habitat and plant communities, particularly where they cross zones, such as farming, urban, conservation. DEW's Regional Species Conservation Assessments Fauna and Flora database which quantifies the conservation status of animal and plant species is an excellent source of data for this overlay. Also the DEW's Biological Databases⁶, NPW Act 1972(SA List) and EPBC Act 1999 also can be referred to for this information. A critical habitat overlay would signal this issue at an early stage to a developer.</p>
3	General	Public Good vs commercial interests	<p>A public good is inherent in the objectives of the NPW Act 1972 (<i>"An Act to provide for the establishment and management of reserves for public benefit and enjoyment; to provide for the conservation of wildlife in a natural environment"</i>) and the WPA Act 1992 (<i>"An Act to provide for the protection of wilderness.."</i>). The economist Paul Samuelson defines public good as</p>	<p>A 'Public Good' provision should be incorporated into assessment provisions applied to public lands, particularly the State Specific Vegetation Overlay (or its equivalent).</p>

			<p><i>“[goods] which all enjoy in common in the sense that each individual's consumption of such a good leads to no subtractions from any other individual's consumption of that good”</i></p> <p>The restriction of public access to any part of a park for commercial interests and the degrading of a public asset through commercial exploitation both privilege private benefit over public good and do not meet this test .</p>	<p>It should be applied across all categories of developments, but particularly on ‘impact assessed developments’, where</p> <ol style="list-style-type: none"> a. Public access should not be restricted by ‘for profit’ developments b. A development which reduces the conservation value of a park should be denied
4	<p>Technical Discussion Paper p 24</p> <p>PDI Code, Conservation Zone: Procedural Matters P107</p>	<p>Public notification of developments in Parks and Wilderness reserves</p>	<p>We very much appreciate the FOP SA Engagement Charter with DEW – this facilitates engagement at an early stage with volunteers where developments in parks are considered and notes our status as an important stakeholder.</p> <p>The public are the major users and stakeholders in National Parks and wilderness reserves. We suggest that, although not required under the PDI Act, 1992, they should be informed for all categories of code-assessed and impact assessed development. Since they normally don’t live on or adjacent to the park, notification should take a different form to notification for urban and even rural zone developments (currently letter to neighbors or sign on boundary). Online pathways are now the most effective way to inform the public. The NPWS Facebook page has over 49,000 followers</p>	<p>Notification of users of a Park on NPWS Website and Facebook when any category of code- or impact-assessed development is to take place.</p>
5	<p>P24 Technical Discussion Paper</p>	<p>No right of appeal against decisions</p>	<p>The fact that the public have no right of appeal on development decisions on their own land defies natural justice – particularly since developers themselves can appeal multiple times. It gives the distinct impression that the Code has been written with the interests of</p>	<p>A public right of appeal for code or impact-assessed decisions of land use in a national park, conservation park or Wilderness Protection Area should be included in the Code.</p>

			<p>developers preferenced over those of the public (see Issue no 3).</p> <p>Given this is a new code, applied with new processes, using a new online method, with no trialing, problems with decision-making are inevitable. The public own these lands. Their right to involvement in and appeal decisions about their use is paramount. Lack of an alternative path will inevitably to legal challenges and even greater delays</p>	
6	<p>P100</p> <p>P108 PO* 1.1</p>	<p>Tourist accommodation in National, Conservation parks and Wilderness Protection Areas</p>	<p>Even eco-sensitive tourist accommodation in areas of high conservation value can cause alienation and degradation of the area. It therefore needs to be assessed at the highest level. Because each park area is unique, individual impact assessment is required Both Table 3 (Applicable Policies) and Table 4 (Restricted Development Exclusions) use the phrase ‘contemplated by the relevant ‘management plan’ regarding parks and wilderness areas. The word ‘contemplated’ is unacceptably vague. We suggest it is replaced by language used in the WPA Act 1992, page 18, section 26 for this purpose, namely unless <i>‘specifically authorized by the plan of management’</i> and for Wilderness Protection areas <i>‘specifically authorised by the Wilderness Code of Management under the Wilderness Protection Act 1992’</i></p>	<p>Tourist accommodation should be in the highest category of assessment, namely ‘restricted’ and impact assessed . This assessment should include consideration of ‘Public good’.</p> <p>Replace ‘contemplated’ in Tables 3 and 4 with ‘specifically authorized by the plan of management’</p>
7	<p>P100</p> <p>P104 PO* 1.1, DTS**/DPF 1.1</p>	<p>Inappropriate land uses in Conservation Zone</p>	<p>Farming could occur in a Conservation zone which is not a ‘visitor Experience sub-zone’ (p 100). Land division and tourist accommodation could occur as performance assessed development in a conservation zone where PO 1.1, allows <i>‘Small-scale, low-impact land uses that provide for the conservation and protection of the area’</i> eg campgrounds. Deemed to Satisfy provisions allow farming, camp grounds,</p>	<p>Creation of a new zone – ‘Wilderness Conservation Zone’ and new overlay, Critical Habitat Overlay where such land use is not allowed unless specifically authorized under the management plan (Issues 1, 2, 3, 4)</p>

			<p>renewable energy facilities and more. These provisions fail to reflect that there are areas of land under conservation where NO development can occur without conflicting with the intent of the Wilderness Protection Act 1991 and National Parks and Wildlife 1972.⁵ Overlays are insufficient to uniformly protect all such areas. For example the Native Vegetation Overlay and State-Specific Native Vegetation Overlay require only a declaration that clearance of Native Vegetation is involved. This should be strengthened as a statutory declaration and heavy penalties if it is violated.</p> <p>Conservation Zone Deemed to satisfy provision DTS/DPF 1.1 states <i>“Development comprises one or more of the following land uses: Advertisement, Camp ground, Farming, Public amenity, Renewable energy facility”</i>. All of these developments in a national park, conservation park or wilderness protection area should be assessed and their environmental impact determined. They should not be permitted unless specifically authorized under the park management plan. (We assume the new sub-zone “Visitor Experience” which permits such activities does not include parks: DEW/DPTI meeting with FOP SA 25.11.19)</p>	<p>The Native Vegetation Overlay and State-Specific Native Vegetation Overlay Deemed to Satisfy provisions should replace “declaration” with statutory declaration and indication of penalties that violation could attract.</p>
8	P 104, DO* 1.1	Reduced conservation protection through vague language guiding decision-making	<p>The word ‘prohibit’ is used 27 times in the NPW Act 1972 Act, 25 times in the WPA Act 1992 but 0 times in the entire Planning and Design Code.</p> <p>The Desired Outcome (DO 1) for the Conservation Zone is <i>“The conservation and enhancement of the natural environment and natural ecological processes ... through low-impact recreational and tourism development.</i></p>	<p>The creation of a new zone and overlay with clear and unambiguous protections: Wilderness Conservation Area Subzone, Critical Habitat Overlay (see Issues 1,2) Change DO1 to “The conservation and enhancement of the natural environment and natural ecological processes ... through avoiding</p>

			<p>This statement mis-represents the nature of conservation of the natural environment while permitting activities that will harm it, especially in high conservation-value areas.</p> <p>Many words and phrases used eg contemplate, quality (nature based tourism, ecological sustainability etc) are critical in whether something is or isn't approved and what pathway it takes. All these words and phrases have a variety of meanings and definitions, which are not included in 'Rules of Interpretation'. This lack of precision is unacceptable in a Planning document.</p>	<p>disturbance of untouched areas' and corresponding performance outcome criteria</p> <p>Replace terms in the Conservation zone Assessment Provisions requiring subjective judgement, with terms where meaning is precise or defined under 'Rules of Interpretation'. Replace 'Contemplate' with '<i>specifically authorized by the plan of management</i>'</p>
9	General	Mapping, application not fully functional	<p>It would be helpful to have functionality in the mapping tool so that zones and subzones can be accurately assessed during the consultation period.</p> <p>Zones/Subzones for a particular area were listed in the Attributes table. This was disabled mid-way through the consultation period and not reactivated</p>	<p>Mapping Tool functionality should be completed and tested and declared fit-for-purpose before the consultation period ends</p>
10	105 PO 3.1	Environmental protection in a Conservation zone not adequate	<p>PO 3.1 Environmental Protection states "<i>Development avoids important nesting or breeding areas or areas that are important for the movement/migration patterns of fauna.</i>" This is inadequate protection in a conservation zone. It would be better to refer to the critical habitat overlay here</p>	<p>Add to '...important nesting and breeding' ' and development avoids areas where the Wilderness Conservation Zone or Critical Habitat Overlay apply'</p>
11	General	Conservation zoning not consistent with NPW Act 1972	<p>The application of conservation zoning in the NPW Act 1972 and the Code are different. During the Consultation period, a number of declared Conservation Parks were not zoned 'conservation' by the Code, but 'remote', 'rural' 'peri-urban', 'Hills Face', 'open space' etc with consequent inappropriate land use provisions. Of 38 named Conservation Parks that have Friends Groups affiliated (identified in a rough poll (20.11.19), 17 (45%) were not zoned conservation, but</p>	<p>Classify all Conservation Parks and National Parks in SA (and lands with conservation protection under these acts⁵) under the Conservation Zone. The correct boundaries are provided here This has been promised in an emailed notice ("Information sheet – Tourist accommodation development in parks</p>

			<p>had alternative zoning or none at all according to the mapping tool (all conservation parks not searched). Development allowed through inappropriate zoning in parks can carry irreversible conservation impacts and negative community reaction² Even low level native vegetation clearance in a Conservation Park and not included in the management plan, is not consistent with the Act establishing the park.</p> <p>It would be much easier to ensure the Code does not conflict with the NPW1972 Act (and other Conservation-related acts⁵), if the zoning in the Code was consistent with them⁴</p>	<p>and the new Planning and Design Code”) received from DEW 21.11.19</p>
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*PO Performance Outcome **DTS Deemed to Satisfy

¹ Prohibited uses in Wilderness Protection Areas

Table 3 – Applicable Policies for Performance Assessed Development indicates that you can have farming, land division and tourist accommodation in a Conservation Zone, and presumably a Wilderness Protection Area, (because this is nowhere specified) providing they are consistent with multiple overlays! However, under the Wilderness Protection Act 1992 “Grazing and primary production is prohibited, as are the construction of roads, tracks, buildings or structures, unless specifically authorised by the plan of management for the particular wilderness protection area or zone” ([Legal Services Commission of SA](#)) Thus a Visitor Experience Subzone permitting any of these activities is in conflict with the requirements of the WPA Act 1992.

² Comments from President Friends of Parks Para Wirra regarding omission of conservation zoning of Para Wirra Conservation Park

“I am very concerned and absolutely amazed that Para Wirra is zoned everything but Conservation, after the years and tears of lobbying and finally winning the Conservation status for the park. Para Wirra has flora and fauna which are disappearing fast in this state alone, and needs to be carefully protected from over-use of Recreation activities, such as camping (heaven knows why this was passed as a suitable activity in such an area of high value and high fire danger - even if the "fire pits" are locked down for summer, the high possibility of loss of life of not only the native plants and animals but the higher numbers of visitors (as now experienced in Para Wirra due to the Department's advertising) in a widespread bushfire at a time when Department and CFS crews are already fighting at full capacity elsewhere is horrendous to contemplate”.

³ Visitor Experience (VE) Subzone

Community Guide P 79: “The Code will include a Visitor Experience Subzone in the Conservation Zone where tourism accommodation is envisaged, subject to minimisation of detrimental impacts.” It is not clear what terms like ‘envisaged’, ‘minimisation’ in the Guide in the Code actually mean. We have been assured by the Code development team (25.11.19) that no VE subzone will be included in a national park or wilderness protection area

⁴ Use of the terms Wilderness Areas, Conservation Parks and National Parks should be consistent with that established in NPW Act 1972⁵

‘Under the [National Parks and Wildlife Act 1972](#) (SA) reserves for the benefit and enjoyment of the public and for the conservation of wildlife in a natural environment are created. .. The Act also covers the protection of native animals throughout the State and native plants within reserves. The Act establishes five categories of reserve.

National Parks - are areas of major national scientific or ecological value also suitable for public use.

Conservation Parks - areas not necessarily of national significance but of particular scientific or ecological value. Camping and other recreational activities are permitted but are not encouraged

Game Reserves - areas used for controlled hunting (eg. duck shooting)

Recreation Parks - areas set aside for mainly recreational use

Regional Reserves - multiple use areas, in which conservation takes place beside other controlled land use such as mining and grazing. Reserves have a fairly secure status with any abolishment or boundary change requiring a resolution of both Houses of Parliament.'

⁵ The main South Australian Acts dealing with the protection of the natural environment are the [National Parks and Wildlife Act 1972](#) (SA), the [Native Vegetation Act 1991](#) (SA) and the [Natural Resources Management Act 2004](#) (SA). Also important are the [Wilderness Protection Act 1992](#) (SA), the [Coast Protection Act 1972](#) (SA) and the [Marine Parks Act 2007](#) (SA). The Commonwealth [Environment Protection and Biodiversity Conservation Act 1999](#) (provides for the protection of Commonwealth protected areas and nationally-listed threatened species. The Code needs to be consistent with all of this legislation.

⁶ [The SA Regional Species Conservation Assessment Project](#) and [other biological databases](#) can contribute threatened species and ecological community data



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To Whom It May Concern,

The Wilderness Society South Australia Inc. supports the Friends of Parks (FOP) Inc. submission on the draft Planning and Design Code.

Yours sincerely,

Peter Owen
Director.