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Friday 29 November 2019

**Re: Comments on the draft Planning and Design Code
(primarily focused on Phase 2 councils (Rural Areas))**

To whom it may concern,

The Conservation Council of South Australia (Conservation SA) welcomes the opportunity to make comments on Phase 2 of the draft Planning & Design Code. Conservation SA is an independent, non-profit and strictly non-party political peak body organisation representing more than 60 of South Australia's environment and conservation organisations. Conservation SA has been a strong advocate for the protection of nature and biodiversity, and the promotion and uptake of sustainable practices in South Australia since 1971 and has a significant ongoing interest in ensuring sustainable planning, design and land use.

Our comments focus on Phase 2 of the Code, but also touch on broader issues relating to the overall Code process and intent.

Ideally, we would have preferred to synthesise the views of our member groups into a consolidated submission representing the conservation and environment sector. However, that has not been possible due to inadequate time: our member groups, and our organisation, have struggled to deal with the enormous complexity and sheer volume of this Code review within the allocated consultation period.

Instead, we endorse the comments of our member groups, including the Nature Conservation Society of SA, National Trust of SA, Friends of Parks Inc. and Community Alliance, as well as the Environmental Defenders Office provided as part of the submission process.

The new Code based system, as the key state document guiding planning decision making, has the potential to address future development in a rapidly changing world, as we face growing challenges including significant biodiversity loss, increasing temperatures and extreme weather events. The challenge is to protect our state assets, both natural and cultural, against destruction in times of environmental and economic stress, and to enable producers and Councils to provide resilient ways for adapting to changing circumstances. It is an opportunity to make the planning system clearer and more certain in direction, and to enable consideration of longer-term impacts on public wellbeing and the environmental resources on which we rely.

We acknowledge the enormous effort by the Planning Commission and DPTI staff in their attempt to meet the legislated Code implementation date of July 1 2020. However, we are deeply concerned the timeframe is simply inadequate for the size of the task.

As a result, the process has become deeply problematic, and community concern is high and growing. There are four main reasons for this concern:

1. A clash of expectations

At the start of the planning reform process, the community was told that there would be a shift away from public input and involvement when development was taking place, and brought forward towards the front end of the planning process when the policies and rules governing land use were being designed. The theory was that this would be a more appropriate point for engagement and reduce the potential for battles later.

From the beginning, we argued this was a flawed premise, as the community, in the main, only tend to engage with issues of land use planning when an actual development is proposed. Therefore, opportunities for meaningful engagement need to be built into all stages of the development cycle, not just the beginning.

However, even if we accept this flawed premise, a clear promise made was that the public would be given an adequate opportunity to engage and create the policies and rules at the start of the process. That time is now when the Code is being created.

Yet the sheer complexity of the draft Code, the lack of time for adequate consultation and the technical nature of the consultation so far have excluded the public from the opportunity of appropriate engagement.

2. Are we dealing with a change in rules or a change in the process?

There have been mixed messages about whether the Code development is merely a 'cut and paste' transfer of the current planning rules across to the new e-portal process, or a 'once in a generation' overhaul of planning rules.

At different times the community has been told both.

It seems with the current drafting that we have a hybrid – with about 90% of the current planning rules imported, alongside changes in other areas. That is deeply confusing for the community. Why have some rules been changed, and not others?

An appropriate process would be either:

- a straight 'cut and paste' of the current rules to a new system, with a longer-term schedule of updating the rules based on detailed and extensive community consultation, or
- a genuine community conversation now about our collective vision for our neighbourhoods and land use systems for the coming decades.

This current process is neither. If there are changes proposed in the planning rules, then why are only some areas on the table for discussion and not others?

3. A moving target

Not only is the Code incredibly challenging for non-planning professionals to navigate and understand, in part because of its novel and complex structure, it is apparent that the process of translating policies from the old system to the new has been limited by time and/or resource constraints, resulting in a significant number of errors, omissions and anomalies.

As the draft Code is a hybrid of imported old and created new drafting this is particularly problematic as the community doesn't know if particularly wording is an intent to change the rules, or merely a mistake which will be remedied in later drafts.

Also, we understand a significant amount of new policy underpinning the Code is still being written. It is very hard, therefore, to assess the true impact of the Code as we try to navigate and respond to a moving target.

4. Truncated timing

Originally, the State Planning Commission proposed 3 staged consultations based on Outback, Rural Councils and Greater Adelaide. Phase 1 Outback has been activated but still retains content to be corrected. By bringing Phases 2 and 3 together, with submission timelines for Phase 2 due by the 29th November, and Phase 3 by February 28, 2020, there appears insufficient time to correct content as well as fully test the electronic system's compatibility with local government IT systems.

Again, we acknowledge the enormous and complex task given to the Commission and DPTI staff. We believe it is unrealistic given time and resource constraints.

We are deeply concerned that the lack of time remaining until the legislated implementation date, and the sheer size and complexity of the reform process, will severely restrict the ability of the Commission and DPTI staff to adequately consider and incorporate changes recommended by us and others through this consultation period.

The risk of inadequate drafting, or inadequate policy out of step with community expectation, is considerable and growing. An incomplete Code will cause confusion and inefficiency, especially as it will need significant alteration by the Minister acting on the advice of the SAPC.

We strongly urge you to advise the Minister for Planning, Transport and Infrastructure that more time is required to ensure appropriate and respectful consultation, and genuine community consent, in such an important policy development process.

If you would like to clarify, or seek further detail, about these comments, please contact me on [REDACTED] or [REDACTED]

Yours sincerely



Craig Wilkins
Chief Executive

Additional Comments:

Please note: these comments are preliminary – we, along with our member groups, are still attempting to fully understand the content and intent of the Code.

We acknowledge and support:

- The proposed new Native Vegetation Overlay, which will provide a formal link between the land-use planning and native vegetation protection regimes. We believe this will lead to more coordinated implementation of current legislative settings and awareness-raising regarding existing obligations, and
- Policies for encouraging more ‘green infrastructure’ and Water Sensitive Urban Design in new developments, particularly by including requirements for trees in the Deemed-to-Satisfy assessment pathway. Encouraging the establishment of the new tree canopy is critical for cooling our city in a warming climate, as well as providing a range of other benefits.

Climate Change

The community needs the Code to set up our state for success over the coming decades. During this time, we will inevitably experience a significant shift in extreme climate variability and natural hazards, with far-reaching impacts. Much of the information about the impacts is known now, and because of the significant lead time between planning and the construction of infrastructure/building/housing etc based on the planning rules that exist at the time when approvals are given, we increase significantly the risk to health, wellbeing and prosperity if we delay necessary changes to later generations of the Code.

We note that the words ‘climate change’ is not specifically referenced in this version of the draft Code, which is a surprising and significant omission. The Code must better articulate the need for climate resilience in all forms of development including consideration of what, where and how we build to adequately mitigate future climate impacts and reduce carbon emissions.

We acknowledge the inclusion of positive approaches to mitigating climate impacts, particularly concerning the greening of neighbourhoods and water sensitive urban design, however, there has been a significant and sustained reduction in tree canopy cover across the metropolitan area, despite growing concerns about the impact on health and wellbeing from heat island effect. While support for new tree planting is essential, this generation of the Code also needs to consider ways to reduce the loss of mature, significant and regulated trees.

There is increasing awareness about the benefits of ‘natural climate solutions’ and the potential for blue carbon and other carbon sinks. When living systems – like bushland, saltmarshes, mangroves and seagrasses – are allowed to recover and expand, they draw down carbon from the atmosphere, reducing the chances of climate catastrophe. Their restoration also increases the resilience of the living systems that underpin our soils, water, pollination and air quality. There are significant opportunities in the Code to strengthen protection for natural spaces in our regional and outer metropolitan areas.

Biodiversity

The Code fails to adequately reflect the State Planning Policy 4 - Biodiversity.

RECOMMENDATIONS

1. The Code is reviewed to contain an overarching biodiversity policy (e.g. Desired Outcome) and includes important policies included in Development Plans and the Planning Policy Library.
2. Consider a Biodiversity Overlay for the Conservation Zone, including all areas proclaimed under the National Parks and Wildlife Act 1972 and Wilderness Act 1992, (p.154 Guide to Draft Planning and Design Code, Attachment 2: Alignment of the Planning and Design Code with State Planning Policies)
3. Include the definition of biodiversity in all key zones and overlays and the new general provisions:
 2. Include the full definition of biodiversity is found in State Planning policy; namely the variety of all living things; the different plants, animals and micro-organisms, the genetic information they contain and the ecosystems they form. Biodiversity is usually explored at three levels – genetic diversity, species diversity and ecosystem diversity. These three levels work together to create the complexity of life on earth.
3. Include Native Forest Reserves (16,000 hectares in total) in the Conservation Zone. These areas are managed by Forestry SA for conservation purposes.
4. Ensure mapping to accurately zone existing reserves as Conservation (this applies to all Phases of the Code).

Trees & Loss of Native Vegetation

The excessive removal of native vegetation within South Australia needs to be addressed by the Code: We support the referrals to the Native Vegetation Council for direction.

For all phases of drafting and reviewing the Code, consideration of economic and social benefits of trees in combating predicted temperature rises, extreme weather events and public health impacts needs to take into account information on the benefits of trees in our urban environment and the costs of not having them for the following benefits:

- Increased shading = lower power bills, what is the average saving?
- What is the economic benefit of trees producing clean air?
- What is the \$\$ benefit to mental health from trees?
- What is the economic benefit of reducing the urban heat island effect?

RECOMMENDATIONS

1. Propose State Policy 4.1 references to the ongoing protection of trees in areas to include 'to minimize impacts of development on areas of recognized natural character and values'.
2. Include 'the retention of all large, long-lived and drought-resistant trees' within the context of biodiversity policies.
3. The City Of Melbourne has an Exceptional Tree Register where the trees are assessed against clear criteria. A similar approach should be considered in the Code.
4. Regulated trees overlay policy to include:
 - a) reference for regulated trees in general to indigenous to the local area and important habitat for native fauna being criteria for considering retention;
 - b) reference for significant trees to indigenous to the local area, an important habitat for native fauna, part of a wildlife corridor and importance to the maintenance of biodiversity being criteria for considering retention;
 - c) Retention test "Significant Trees should be preserved" rather than "where they make an important visual contribution to local character and amenity"; and
 - d) test for significant trees of "all other remedial treatments and measures have been determined to be ineffective".

Heritage

RECOMMENDATIONS

Replace current demolition controls in Historic Area Overlay with:

1. A Contributory Item should not be demolished or removed, in total or in part unless:
 - a) the part of the item to be demolished or removed does not contribute to the heritage value, historic character or desired character of the zone; or
 - b) the condition of the item is structurally unsound and substantial rehabilitation work is required to an unreasonable extent; and
 - c) in either of the circumstances described above, the demolition of that building, or that part of a building, is part of a development involving erection of a substitute building, or part of building, or addition to that building, in a manner which does not diminish the level of contribution to the historic character of the zone made by the building on the site of the demolition.
2. The poor appearance of a contributory item should not serve as justification for its demolition or significant modification.
3. Heritage Area Statements for State Heritage Areas and Historic Areas should contain detailed policy in line with those that currently apply.
4. The Heritage Overlays should clearly express the importance of preserving heritage values.
5. Remove deemed to satisfy provisions for conservation work.
6. Include public notification provisions in Heritage Overlays.
7. Clarify which policies apply to properties within the State Heritage, Local Heritage and Historic Area Overlays and which apply to adjacent sites.
8. Clarify what are acceptable changes in the Historic Area Overlay.
9. Clarify what is suitable development for applications involving alterations and additions to properties in the State Heritage Area and State Heritage Places Overlays.
10. State Heritage Place Overlay should refer to the preservation of whole landscapes.
11. Define or clarify the phrase “extent of listing” in the State and Local Heritage Place Overlays and the phrase “visible from the public realm” in the Historic Area Overlay.

Conservation Zone Provisions

RECOMMENDATIONS

1. Correct overlays to include Conservation Zoning to apply to all areas of parks.
2. Review vague terms to provide specific meanings: e.g. 'contemplate' undermines the purpose, use and protection of reserves expected by the public.
3. Campgrounds are shown in some management plans. It needs to be clarified whether tourist accommodation is to be considered in these areas beyond temporary tents rather than permanent facilities (e.g. cabins) Camping is an option for members of the community as an accessible and inexpensive way of connecting with park environments. It would be a pity if such areas were to be commercialised.
4. 'Restricted' is the appropriate default assessment path for Tourist Accommodation in areas proclaimed under the National Parks and Wildlife Act 1972 and the Wilderness Act 1992. Code amendments could make provide exemptions to the 'restricted' category for sites for Tourist Accommodation designated in Park Management Plans and extended where no management plan exists to apply to historic buildings such as lighthouses, farm buildings and homesteads.
5. Consider notification to apply beyond the 50m area around a proposed development site and include Park volunteer groups who have invested significant time and effort in caring for natural areas, as well as the general public who have a clear interest in public open spaces and parks.
6. Amend the Significant Landscape Protection Overlay to include Wilpena Pound
7. The information regarding public notification (p26 of the Guide) states that the types of development exempt from notification are listed under procedural matters at the end of the relevant area zone. Reference to procedural matters includes Class of Development /Activity-Referral body/Purpose of referral. This notification does not refer to public notification and it is suggested a clearer and direct reference to public input be provided.
8. Public land – why should the public not be included, advised and contribute to the assessment o new developments on public land? Many NGO volunteers have donated considerable and continuous-time caring for parks, to support the aims of conservation. It is strongly recommended that under Procedural matters the Friends of Parks and Nature Conservation Society be enabled to be a comment on tourism accommodation and other land uses that may compromise the integrity of park management.