

10 December 2019

The Honourable Stephan Knoll
Minister for Planning
GPO Box 1533
ADELAIDE SA 5001

SENT VIA EMAIL

Dear Minister

Draft Phase 3 Planning and Design Code

Thank you for the recent opportunity to work in collaboration with your agency to enable a more appropriate transition of the new Planning and Design Code into the City of Burnside. The Council and Administration are presently working on reviewing the proposed conversion of the City of Burnside Development Plan policy into the new Code structure.

While the Council will respond fully and in specific detail to the proposed Code policy affecting its area prior to the official consultation Phase 3 period closing on 28 February 2020, the Elected Member body have requested that I write to you to foreshadow and highlight particular areas of concern so that these might be considered in the interim prior to the Council's comprehensive response. In the meantime, Council staff will continue to maintain an ongoing dialogue on these topics with departmental staff.

The following areas are of particular concern to the Council and are made on the basis of the recent advice from the Department of Planning, Transport and Infrastructure (DPTI) that the new Code aims for a 'like for like' transition of zones and policy as much as is practically possible.

Implications of a Generic Code

The intent of the State Planning Reforms is to provide one set of state-wide planning rules for the entire state. In doing so, there is little recognition of the different and unique way older, established inner areas of Adelaide have been developed in comparison to the newer, outer areas of Adelaide. Many of the new Code Zones and policies which envisage more intensive and larger scale mixed use development and are intended to be overlaid over many of our retail and commercial areas which are currently low scale, low intensity uses in close proximity to low density, low scale residential areas. A one size fits all approach is not appropriate in many instances.

The new Code needs to include additional zones and relevant policy which recognises unique variations in established areas and those localities which are already functioning successfully and do not need 'upscaling'.

Residential Zones

The Council's Development Plan currently contains a single Residential Zone which includes 29 associated Policy Areas. Each of these Policy Areas are unique in terms of their character and the nature and form of desired development. The draft Code, however, proposes that this singly residentially zoned land be variously rezoned to a Suburban Neighbourhood Zone, General Neighbourhood Zone and Housing Diversity Neighbourhood Zone. It is the Council's wish that all of our residential areas be located within the Suburban Neighbourhood Zone with appropriate relevant Technical and Numeric Variations introduced to ensure that the current policy which differentiates its 29 Policy Areas is reflected in the Code. This would be closer to a 'like for like' transition of our current Development Plan into the new Code.

Historic (Conservation) Zone & proposed Historic Area Overlay

Issues of heritage and character are of particular importance to the Council and its residents. The Council's Development Plan presently identifies land compromised in a Historic (Conservation) Zone with 9 associated Historic Conservation Policy Areas. Each of these have identified contributory items that demonstrate and display the historic characteristics unique to each Policy Area.

The Council is concerned about the Commission's current intention to no longer individually identify contributory items in the new planning system. The absence of individual identification (by either a map or list of addresses) will create uncertainty and confusion for all interested parties, and will dramatically increase the time it takes to ascertain what parts of the building are to be retained. The Council is equally concerned as to the proposed applicable demolition criteria in the Historic Area Overlay. In particular, it is of the view that the inclusion of any economic test to ascertain whether or not a building is worthy of retention is unacceptable and open to subjectivity. The demolition performance outcome for the Historic Area Overlay should be identical to the performance outcome for the Local Heritage Place Overlay (PO 6.1).

Historic Area Statements will replace desired character statements and identify key elements and historic characteristics in a particular area. It is the expectation of the Council that the Historical Area Statements which will be used to interpret the policies in the Historic Area Overlay will relate to and accurately transition the Council's existing policy for its 9 Historic Conservation Policy Areas.

Commercial and Business Areas

The draft Code does not give due recognition to the development and character of the established inner suburban areas of Adelaide. There is a gap in the zones available within the current draft Code to cater for smaller commercial and business precincts within established suburbs.

The draft Code proposes to remove the current centres zone hierarchy and transition all our city's District, Neighbourhood and Local Centres into the Suburban Activity Centre Zone, The performance outcomes in this zone are inappropriate for our Local Centres, which are small, intimate centres, predominantly located within low scale residential areas. The introduction of a new zone to reflect the nature of our existing Local Centres is necessary.

Furthermore, the transition of many of our smaller scale business zones into more intensive zones such as the proposed Suburban Business and Innovation Zone or Suburban Employment Zones is not appropriate nor a "like for like" transition of current policy. Additional zones are needed to cater for these variations.

General Policy

The draft Code proposes substantial changes to several planning policies relating to residential development and design. This will result in a weakening of many of the design outcomes across our Council. In particular, the significant reduction in upper level setbacks from boundaries and the reduced opportunity for neighbours to be notified of adjacent development is of key concern.

Regulated & Significant trees

Despite the 30 Year Plan calling for an increase in canopy cover, the new Code works against this in many areas by facilitating the easier removal of trees on both private and public land. This will result in the significant reduction of canopy cover, habitat loss and climate resilience, due to reductions in minimum site areas, less restrictions on site coverage and setbacks, potential to build closer to boundaries and increased number of street crossovers. Appropriate policy which is 'non-negotiable' is needed to ensure that new development is required to provide suitable trees which will deliver canopy cover and noticeable microclimatic benefits.

The draft Code presently contains a single Regulated Tree Overlay. This is to be contrasted with current Development Plan policy which distinguishes between and provides separate policy for both regulated and significant trees.

In a recent Advertiser article, you were reported as saying that existing policy for regulated and significant trees would be transitioned to the new Code. It went on to suggest that these trees would have the same level of protection under the Code as they do now and that any suggestion to the contrary was false.

The Council is concerned that regulated tree policy appears to have been consolidated within a single Regulated Tree Overlay with no higher order of policy relating to the proposed removal of a regulated tree that is a significant tree. It is unclear as to whether the omission of a separate Significant Tree Overlay is a deliberate policy decision or an inadvertent omission.

In any event, the proposed criteria for a tree damaging activity that is not to be undertaken with other development does not reference the current test that "all other reasonable remedial treatments and measures must first have been determined to be ineffective". The omission of this requirement, at least in respect of significant trees, would result in a severe weakening of the current level of protection. This must be rectified if your stated intention is to ensure that the Code affords the same level of protection to such trees as presently exists under the Development Plan.

Floodplain Mapping

The current iteration of the Code mapping for the City of Burnside, omits the Hazards (Flooding) Overlay and consequently fails to capture our existing Watercourse Zone which recognises the existing floodplain in our City. There is also concern that the current policy does not reflect the latest research for this part of Adelaide and will not ensure adequate levels of flood protection.

Definition of Minor Variations in the Development Assessment Process

The PDI Act aims to bring greater certainty to the development assessment process. The determination of whether or not a variation or change to an application is minor relies, however, on the subjective assessment by the assessing officer. Without a clear practice direction or other form of guidance to provide a strong definition of what is a 'minor variation', there will be inconsistencies of approach between the private sector and councils.

Council vegetation, trees, infrastructure and the business use of public roads

Amendments to Sections 221 and 222 of the *Local Government Act 1999 (LG Act)* which are yet operational will be effected by Part 7 of Schedule 6 to the *Planning, Development and Infrastructure Act 2016 (PDI Act)*.

Once operative, these amendments will have significant implications for Council vegetation and infrastructure in the public realm, together with the use of public roads for business purposes. If the alteration of a road or the use of a road is approved by a development authorisation under the PDI Act, a person will no longer require an authorisation from the Council under Sections 221 or 222 of the LG Act. The Code will need to contain appropriate policy that relates to these issues so that they may be appropriately considered by the various relevant authorities determining applications for planning consent.

The Council is particularly concerned that relevant authorities will effectively assume control for approving work in the public realm, including the removal of street trees.

Consultation timeframe

The introduction of the Code represents a once in a generation reform. Given the scope of work involved, it is our view that the consultation draft for Phase 3 has within it various inconsistencies, anomalies, gaps and mapping errors.

It is critical that DPTI has adequate time for the review of this policy position, particularly given the emphasis within the PDI Act on consultation at the policy formulation stage rather than at a development application level. The proposed timeframe for the introduction of the Code on 1 July 2020 should not come at the expense of sound process. Appropriate time, commensurate with the enormity of the task, should be taken to ensure that the Code is the best it can be, following full and comprehensive consultation, feedback and review.

Important Overlays are still being prepared and both the Council and the public will require a greater opportunity to assess the implications of what is proposed. The Council is of the view that the local government sector and broader community would benefit from the opportunity of having additional time to assess the implications of this proposed significant policy reform. In this regard, the Council supports the Planning, Development and Infrastructure (Commencement of Code) Amendment Bill 2019 to amend the transitional provisions by deleting the 1 July 2020 commencement date and substituting a "designated date".

The concerns raised above pertain to the current iteration of Phase Three of the draft Code and are not an exhaustive list. It is acknowledged that there are likely to be some changes to the Code from now until its implementation. Council may raise further points as more details and responses are received.

I trust that you will consider these areas of concern and look forward to continuing to work productively with the State Government in the policy transition of our Development Plan into the Code.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry Cant', written in a cursive style.

Barry Cant
A/Chief Executive Officer