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Michael Lennon
State Planning Commission
GPO Box 1815
Adelaide SA 5001

Dear Mr Lennon

RE: DRAFT PLANNING AND DESIGN CODE

The Adelaide Park Lands Preservation Association (APPA) appreciates the opportunity to provide feedback on the draft Planning and Design Code (the Code). We look forward to working with the State Planning Commission and the City of Adelaide (CoA) to refine the Code to ensure it protects and promotes the special status, attributes and landscape character of the Adelaide Park Lands, and that the final version of the Code is a document that **genuinely aligns 'like for like' or improves upon** the CoA's current Development Plan, while also aiming to reinforce and align with the many other Park Lands statutory planning and management documents established under state and federal legislation, namely the *Adelaide Park Lands (APL) Act 2005 (SA)* the *Local Government Act 1999 (SA)* (Chapter 11, Part 1 governing Community Land) and the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999 (C'wealth)* governing National Heritage-listed places.

We note that the current CoA Development Plan and Adelaide Park Lands Management Strategy (APLMS) have evolved over many decades of activism, consultation and expert input since (i) the 1980s, when APPA was established as a non-profit community-based 'watchdog' to monitor government planning and actions, and to speak out on behalf of all South Australians when the Adelaide Park Lands' public open space and landscape values are at risk, and (ii) from 2005, when the Adelaide Park Lands Authority (APLA) was established under the APL Act to undertake a key policy role with respect to the management and protection of the Park Lands.

As a poorly-resourced community group, APPA appreciates Minister Knoll's recent decision to delay implementation of the Code, although, as expressed below, we believe that further delay in the system 'going live' will be required, along with the establishment of a clear mechanism for review and amendment of the Code ahead of its implementation. We echo the many community groups across the state who simply have not had the capacity to review the draft Code thoroughly in the given time frame, especially given the enormous size of the draft PDF document (over 3000 pages), its numerous anomalies, its clear departure from a genuine 'like for like' transition of policy, and the current awkward table and map format versions of the proposed e-planning system.

We have therefore relied heavily on the City of Adelaide's own analysis and submissions – with which we are in broad agreement – and on the advice of an independent planning consultant, to highlight what we believe are the key issues needing to be addressed. These are summarised as follows:

1. Will future Code-based, Performance-based and Restricted Development assessment be required to take into account Adelaide Park Lands policy outside of the Code?

APPA notes that much of the policy for the current assessment of development proposals for the Adelaide Park Lands comes from policy documents external to the Code and to the SA planning system, namely the APLMS under the *APL Act 2005 (SA)* (the Act), the relevant Community Land Management Plans (CLMPs) under section 196 of the *Local Government Act 1999 (SA)* and the stated National Heritage values under the *EPBC Act 1999*. APPA is concerned that proposed Code-based, Performance-Based and Restricted Development assessment processes will only take into account the very limited

policy currently contained within the Code, and urgently seeks clarity on this, as this will have enormous and very direct repercussions for the future of the Adelaide Park Lands.

We recommend that the Code for the Adelaide Park Lands Zone includes cross references to the Statutory Principles of the APL Act, to the APLMS and to the relevant CLMPs, or directly imports policy from those documents which are mandated by the respective legislation and which were adopted by Council and State Government after very detailed and painstaking reviews, including by a joint City of Adelaide/SA Government Project Advisory Group to the Adelaide Park Lands Authority.

2. EBPC Act referral and assessment

APPA recommends that a self-assessment and referral process is undertaken in consultation with the federal Department for Environment in accordance with the *EPBC Act 1999* regarding any possible effects the Code may have on the values which underpin the National Heritage Listing of the Adelaide Park Lands and City Layout.

3. Significant (Cultural) Landscape Protection overlay for National Heritage Place

APPA recommends more refined policy with regard to protecting the cultural landscape values of the National Heritage-listed Park Lands, and suggest this could be further reinforced with a mechanism such as a Significant (Cultural) Landscape Protection overlay. Under existing legislation and mapping, and under the Code and new mapping, there is no identification of the National Heritage Place, and as such there is no identification of whether a development proposal may impact the National Heritage values. The Department of Environment (C'wealth) 'Matters of National Environmental Significance: Significant Impact Guidelines' requires actions, such as introduction of a new policy or a new development application, to undertake a self-assessment process to determine if a referral to the Commonwealth Government is required to ensure that actions to, or in the vicinity of a National Heritage place do not impact on National Heritage values. However, there is currently nothing in the SA Planning system to define the National Heritage curtilage of the Adelaide Park Lands and City Layout, nor to alert development application processes to this obligation.

The Australia International Council on Monuments and Sites (AICOMOS) has recommended that National Heritage Places such as the Adelaide Park Lands and City Layout should be identified in South Australia's planning system in some way, so that if necessary, potential impacts can be appropriately considered and assessed. APPA supports this recommendation. National and Commonwealth Heritage Places could be an overlay, such as 'for information' or, in the case of the Adelaide Park Lands and City Layout, could be identified as a Significant Cultural Landscape Overlay, in new mapping linked to the Code. This is already undertaken in NSW, with an example being the National Heritage listing of 'Bondi Beach' which is shown on the Heritage Map under the Waverley Local Environment Plan. In addition, the National Heritage listing for Bondi Beach is mentioned on the NSW Heritage Register search (the equivalent of our Heritage Places Database). Such identification is also recommended for South Australian National Heritage Places such as the Adelaide Park Lands and City Layout.

APPA notes that the federal government has requested the establishment of a Heritage Management Plan for the Adelaide Park Lands and City Layout National Heritage site, and recommends that this process should be reinforced through a Significant (Cultural) Landscape Protection overlay to underpin management of the recognised national heritage values.

4. Dedicated Zone for Adelaide Park Lands and Squares

APPA supports the recognition of the special attributes of the Adelaide Park Lands through a renamed Adelaide Park Lands (APL) Zone. APPA agrees that the boundary of the APL Zone should include the six squares which are a part of the Adelaide Park Lands and recognised as such under the *Adelaide Park Lands Act 2005* (SA) and the EBPC Act.

5. Strengthened policies around appropriate land use and built form

APPA notes that the Adelaide Park Lands are primarily for outdoor recreational purposes and any other land uses should be ancillary and supportive to these uses. The draft Code provides little guidance to assess uses other than those specifically envisaged. The implication may be inadequate policy basis to refuse inappropriate land uses, this being at odds with legislative framework in place for the Park Lands.

While APPA supports the CoA's recommendation to delete the proposed 2 Subzones (Adelaide Oval and East Park Lands) in favour of more comprehensive Zone-wide policies that are further strengthened to prevent inappropriate development (land uses and built form) across the proposed Adelaide Park Lands Zone, we note this would require the reinstatement of the current land use strategy of the CoA Development Plan where envisaged land uses are clearly outlined and all other land uses are considered inappropriate.

Alternatively, APPA proposes ALL the existing policy areas and precincts of the current CoA Development Plan are transitioned to Subzones recognising unique land use or landscape character differences across the Adelaide Park Lands Zone, while also incorporating relevant policy from the APLMS and the CLMPs. APPA proposes that more sophisticated drafting of the Code with comprehensive Zone-wide policies underpinned by Subzone policy areas could provide a one-off opportunity to better align all of these policies, and to remove current anomalies and discrepancies between the different statutory and policy frameworks and recommends that the City of Adelaide and the Commission explore this alternative approach in more depth and in consultation with community members.

Specifically, PO.1.8 identifies a future for the Adelaide Aquatic Centre. However, this is a departure from the CoA Development Plan which seeks no change in land use. APPA requests reinstatement of the original policy, and/or a re-drafted policy that would permit future return of the Aquatic Centre site to public Park Land.

6. Strengthened policy around built form and reinstatement of key CoA Development Plan policies

New and larger buildings are more clearly contemplated by the Code, presenting a departure from the present CoA Development Plan key policies that seek:

- a reduction of building floor area, fenced and paved areas over time
- progressive return of alienated land to the Park Lands; and
- a reduction in the number and extent of buildings.

APPA strongly supports reinstatement of the above policies with regard to built form.

Additionally, PO.1.8 identifies a very loosely-defined future for the Park 2 precinct that is a departure from the CoA Development Plan (which seeks no increase in total floor area of the existing Aquatic Centre). APPA requests reinstatement of the original policy, and/or a re-drafted policy that would permit future return of the Aquatic Centre site to public Park Land.

7. Achieve 'like for like' through listing of appropriate land uses and deeming all other land uses inappropriate

APPA notes that the proposed Code policy approach is much more permissive than the existing CoA Development Plan, which lists all developments as non-complying unless specifically envisaged in the Park Lands Zone, or within a specific policy area. What is being proposed is not 'like for like' and will enable unwanted and inappropriate development across the Park Lands. APPA agrees with the City of Adelaide's suggestion for the Code to describe or list what is appropriate or envisaged development by reinstating current Development Plan policy. All development other than listed appropriate should thus be deemed inappropriate.

8. Refinement of Desired Outcomes

APPA recommends including within the ‘Desired Outcomes’ of the Zone more descriptive policies to protect and enhance the unique features and landscape character of the Adelaide Park Lands. This could be achieved through reinstatement and revision of the current Desired Character policy, as Desired Outcomes. It may be noted that current CoA Development Plan policy for the park lands is the outcome of extensive and detailed investigation and evaluation of landscape values undertaken independently for the CoA, utilizing extensive time and resources that are not available to the Commission. Code policy should respect that history and level of sophistication.

9. Design guidelines for new buildings

APPA suggests revising the ‘Built-form and Character’ provisions to provide greater clarity regarding new buildings in the Adelaide Park Lands. This could be achieved through incorporation of the City of Adelaide’s Park Lands Building Design Guidelines (under development) into the Code; or these being adopted as a Design Standard to further support high quality Park Lands building design. However APPA notes that these guidelines are essentially architecturally-driven, and contain no rigour with regard to policy for reducing built form impact on landscape values, such as the containment of footprint and height limits. The Guidelines would need to work in tandem with strengthened policy around built form impacts, and the reinstatement of key policies discussed under Headings 6 -9 above, and Headings 10-13 below.

10. Specific policy content to suit the unique qualities of the Adelaide Park Lands

APPA agrees with the CoA that the unique planning considerations for the Zone (and possible Sub-zones) warrant zone-specific policy content on matters including movement and parking, advertising and fencing (rather than the general policy that applies across other zones, that does not adequately recognise the unique qualities of the Adelaide Park Lands). For example the APLMS, which has been adopted by both the CoA and State Government in accord with (Adelaide Park Lands) Act extensively addresses movement and parking, advertising and fencing, well beyond the level of general policy. This policy needs to be included or referenced in the Code provisions.

Specifically car parking on park lands is currently supported by the Code provided it is ancillary, a policy change (without justification) from the CoA Development Plan and APLMS, which seek in various locations to limit, remove and reinstate to Park Lands. The application of Code General Modules car parking rates will clearly result in excessive car parking in the Park Lands based on standard car parking rates, and APPA strongly supports the CoA request to amend these Code provisions to reflect the APLMS and the CoA Development Plan.

11. Public notification for all code-assessed development

Given the status of the Adelaide Park Lands as public land APPA supports public notification for all code-assessed development assessments. Nevertheless, we suggest that minor types of development that are currently not subject to notification should be exempt from public notification.

12. Mapping and concept plans

APPA agrees that the reinstatement and addition of mapping and / or concept plans would support a clearer statutory planning framework, including the additional mapping of a National Heritage-listed Significant Landscape Overlay.

13. Former ‘non-complying’ and ‘seriously at variance’ development

APPA supports the establishment of clear lists of appropriate or envisaged development along with lists of inappropriate development, with all other (non-listed) development deemed inappropriate in the Adelaide Park Lands Zone, but subject to a performance-based assessment.

It is of considerable concern to APPA that the Code has no equivalent to the current ‘non-complying use’ designation and that it is not clear how applications which would have been caught in this net

would be dealt with beyond the seemingly opaque ‘Restricted Development’ and ‘Performance Based’ assessment processes.

In light of the unclear nature of ‘Restricted Development’ assessment we support the City of Adelaide’s recommendation that current non-complying development be deemed ‘inappropriate development’ and performance-assessed, with the proviso that Code policy is revised to provide a list of what is appropriate development, and that all development other than that listed appropriate is deemed inappropriate in the Adelaide Park Lands Zone.

For example, given that Education Establishments and Public Infrastructure are anticipated *under certain circumstances and within some parts of the Zone*, it is recommended that these are Performance Assessed Development with reference to all statutory documents and plans, along with the establishment of defined SubZones that designate where such uses are deemed appropriate.

Given Hotels, Commercial and Residential land uses are NOT anticipated in the Zone (unless a commercial use is defined as ancillary to the primary purpose of the Park Lands as public recreational open space), these should be listed as inappropriate development, but remain a Performance-Assessed Development.

As to the notion of a proposal being ‘seriously at variance’ with the zone provisions, it is entirely unclear how such outliers will be captured and dealt with. The discontinuation of the requirement for concurrence between local and state authorities on such outliers is also a concern, especially with regard to applications previously deemed non-complying, in this highly sensitive landscape.

14. Aboriginal Heritage in the Adelaide Park Lands

We highlight that there is no mention in the Code of policies regarding Aboriginal heritage or culturally significant sites, despite their inclusion in State Planning Policy 7. This is also a gap in the current planning system, with there being no mechanism for formal referral relating to Aboriginal cultural matters and the protection of Aboriginal heritage, despite the wide-reaching effect of the *Aboriginal Heritage Act 1988* (SA), by which all development applications are bound.

APPA is aware of, for example, several existent Aboriginal burial sites that have been ignored during assessment of development applications which have subsequently required abandonment or major revision due to the provisions of the *Aboriginal Heritage Act 1988* (SA).

15. Regular review process for the Code

Finally it is of concern to APPA there appears to be no clear path for regular review, revision and amendment of the Code as was previously and clearly articulated in the section 30 review process of the *Development Act 1993*.

16. Conclusions

Once again APPA makes the point that in the short space of time allowed for its review, it has been challenging for professionals to understand the Code and its on-ground effects, let alone lay people. APPA is concerned that the 'speeding train' of the Code is rushing the City of Adelaide into accepting deeply flawed code provisions for the Park Lands as replacement for the current sophisticated and fine-tuned Development Plan provisions.

We therefore thank you for extending the implementation deadline of the Code but, consistent with the spirit of the Community Engagement Charter, urge you to allow the draft Code, amended after consideration of all submissions, to be further reviewed by the City of Adelaide, and by community members, before it is implemented. The failure of the Commission to respond to all feedback to date, the clear departure from ‘like for like’ policy transition, the refusal of FOI requests by the Department of Planning and Infrastructure (DPTI), along with the numerous errors and anomalies still in evident in

the draft Code as APPA undertakes this submission, makes allowing time for a second review an imperative if the community and the development industry is to have trust in eventual successful implementation of the Code.

In a more general sense, we contend that the draft Code allows the pendulum to swing too far from the centre in terms of the stripped-down policy settings it proposes for the National Heritage-listed Adelaide Park Lands. If the current Development Plan is perceived as too complex or heavy handed – and APPA would contest this proposition – then we suggest that the draft Code applies too light a touch in its approach to development planning with respect to the Park Lands, and with respect to development across metropolitan Adelaide and the rest of South Australia. Specifically, APPA contests that in its current form the Code clearly does not provide a ‘like for like’ transition of policy from the current CoA Development Plan

The possibility that a single Adelaide Park Lands zone may lack nuance with regard to the diverse range of policy areas and landscape character within the Park Lands is of particular concern to APPA. We consider this issue requires more discussion between Council, APLA, APPA and the Commission as to what is the best way forward for incorporating Park Lands specific policy into the new Code. That is, discussion as to whether a single Adelaide Park Lands Zone versus a transition of current Development Plan policy areas to a number of new Subzones will result in a more effective ‘like for like’ transition of policy.

The failure to clearly define a transparent process for the assessment of ‘Restricted Development’ or development that is ‘Seriously at Variance’ with the Code is also of concern. Efficiency and productivity should indeed be hallmarks of a modern planning system, but these attributes should not come at the complete expense of community wishes and expectations, and globally-recognised heritage values and landscape values evolved over so many years.

For all of these reasons we request:

- clarification on how assessment under the Code will incorporate or reference planning and management policy external to it;
- amendment of the draft Code in a manner which is consistent with the points set out above and with the City of Adelaide’s submission on this matter;
- full and comprehensive testing of the Planning and Design Code before it goes live to identify significant unanticipated and/or inappropriate policy changes, errors, missing content and/or unintended consequences to allow for required policy amendments;
- additional consultation with community groups on changes to the Planning and Design Code arising from Phase 3 submissions, through circulation of and consultation on a second draft of the Code;
- that the Commission ensures every South Australian is notified of the changes proposed to their property to meet the PDI Act and Community Engagement Charter;
- the opportunity to test the effect of the proposed Code in the ePlanning system (as originally proposed in the announced transition process);
- that the Commission provide adequate time to prepare for the full implementation of the changes in order to secure community confidence in the transition process; and
- that the Commission provide a clear articulation of a regular review process for revising and amending the Code, in line with the previous Section 30 Development Plan review process.

We trust that you find this feedback constructive and that, along with the City of Adelaide and Adelaide Park Lands Authority submissions, it will lead to amendments to the Code as it applies to the currently-named City Park Lands Zone, with additional policy where there is agreement that policy gaps exist, or amendment is required.

Yours sincerely,



Shane Sody

President
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