



Environmental Defenders Office

18 December 2020

Level 1, 182 Victoria Square

ADELAIDE SA 5000

Via email: DIT.planningreformsubmissions@sa.gov.au

Re: Revised Planning and Design Code

The Environmental Defenders Office (EDO) is the largest environmental legal centre in the Australia Pacific, dedicated to protecting our climate, communities and shared environment by providing access to justice, running ground breaking litigation and leading law reform advocacy. The EDO appreciates the opportunity to comment on the revised Planning and Design Code (the revised Code). The EDO has followed and contributed to the process from the start with a focus not only on how the changes impact environmental issues but also the impacts on community rights.

Executive Summary

Despite having undergone substantial change there are still many errors, inconsistencies and omissions in the revised Code. If it remains unchanged the revised Code will facilitate larger developments, the easier removal of trees on both private and public land, increased infill development opportunities, increased number of street crossovers, less community consultation and appeal rights and reductions in minimum site areas, site coverage and setbacks. In our view the revised Code needs further improvement and until this occurs full implementation should not occur. There is no need to rush implementation and every effort should be made to improve the Code and all such efforts should be transparent.

Consultation

The current consultation process has been wholly inadequate. The revised Code has been on public consultation for just six weeks. The original Phase Three Code was a document of

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some 3000 pages and was on consultation for five months. The revised Code is a document of 7849 pages, written in a technical language that deals with very complex matters. It is difficult to follow and interpret. The task of reviewing such a document is near impossible in the time frame given. It has been difficult, if not impossible, for us and other stakeholders to provide thoughtful and constructive comments. In our view the Community Engagement Charter has not been properly followed during the process as the scope of consultation has not been matched by the scope and scale of consultation required.

There is a high risk of unintended consequences if the revised Code is not substantially improved. Given this and the fact that there has been little modelling of potential impacts the Code should be subject to further analysis and review. The EDO strongly recommends a six month phase of road testing and review prior to full implementation. There is no sound reason to fully implement the Code by a particular date. If it is implemented without being improved poor decision making is likely putting South Australia's planning system at risk.

Climate Change

The revised Code fails to reflect the State Planning Policy on Climate Change and international Sustainable Development Goals. The Code is effectively silent on climate change challenges and threats and should be revised to include references to the urgent climate issues facing the planet.

Trees

The SA Government recently commissioned a study on trees and infill which notes that the SA Government's *30-Year Plan* also sets a target to increase urban green cover by 20 per cent by 2045 and that *this target is at significant risk with tree cover reducing from 21.5 per cent to 19.5 per cent across metropolitan Adelaide between 2013 and 2016*. However, the content of the Urban Tree Overlay effectively means that the tree canopy only needs to be approximately 1% of the site in order to be automatically approved. The soil area only needs to be approximately 2% of the site. For larger sites, the percentages of tree canopy cover and soil area are only slightly increased. These policies will not achieve the targets in the 30 year plan. Therefore the EDO strongly recommends policy more in line with recently released

guidelines in NSW. In addition, requirements for minimum tree planting size and ongoing maintenance should be written into both Code policy and conditions of approval

However, the requirement to plant a reasonably sized tree as part of a proposed development should not be circumvented through the use of an offset scheme. There are no policies proposed as to the circumstances when this might be allowed. We are concerned that payment into an offset scheme may be seen by applicants as a more favourable option to planting trees and could be used when there are no genuine impediments for the required tree planting on the owner's property. This would particularly be the case if the required fee for the offset scheme was relatively low. We understand that fee may be \$300 which is substantially less than the real value of a tree as referenced in the government's own report. Finally, the EDO supports proposed incentives to retain trees but these could be improved. They could include a bonus for developing land for housing where trees are part of the overall design of the land and buildings.

Community rights

Applications currently allowing wide consultation and representors to have appeal rights have been reclassified so that less consultation is required and appeal rights no longer exist. However, for these applications the applicant will still have appeal rights and the ability to obtain deemed consents if shortened assessment timeframes are exceeded. Only a very few applications categorised as restricted will allow representors to have appeal rights. Denying the majority of citizens the right to have a say and in appropriate cases the right to challenge decisions will inevitably generate conflict. The revised Code should reflect current Development Plan policy with respect to the notification of neighbours and the public.

Heritage

The EDO supports the inclusion in the Code of buildings currently designated as Contributory Items in Development plans. However, the name should be retained as representative infers that they are only of "representative" value, rather than each being of individual historic value as a significant member of the historic collective group, irrespective of their form or design. "Representative" could imply that if there is already representation of a particular building style or type it may not be necessary to list all buildings which contribute to the heritage values of an area. The EDO notes that the Code lacks linkages between policy

policies and these buildings and recommends that this be rectified before the Code is implemented.

Another concern is that in the process to standardise separate Council Development Plans into one State-wide policy a lot of detailed specific instructive policy has been replaced by generic simplified policy. While some generalised policy coverage can be found in the General Development Provisions many important policy details have been omitted. Such detail is found in current plans via Desired Character Statements. Failure to adequately include such policy affects multiple issues such as specific land use distribution, streetscape outcomes and local traffic and access details.

In particular, Heritage Overlays lack specific/substantial detail on how new development should be undertaken and therefore will have little strength at the time development assessment decisions are made. In addition, the proposed Historic and Character Area Statements whilst improved are still not complete as the policy content is still limited. The Historic and Character Area Statements are not considered to be an adequate substitute for existing Development Plan policies as they are limited to describing existing features and do not include any “forward facing” policies. The failure to include this policy detail will expose historic areas to increased risk of inappropriate development.

In addition, many of the Overlay policies do not specifically refer to the Statements and instead refer to the ‘historic area’. For example, the building height policy in the Historic Area Overlay states: “Development is consistent with the prevailing building and wall heights in the historic area”. While it is relevant and important to consider the area surrounding a development site, with the above policy there is no direct reference to the building height expressed in the Historic Area Statement e.g, “Predominately single-storey, up to two storeys in some locations”. Policy throughout the Code and Historic Area and Character Area Statements must be improved to better protect our historic assets.

It is also proposed that there will be non-statutory Design Advisory Guidelines for development in historic and character areas which will be released at the same time as full implementation of the Code. They are being drafted pursuant to section 66(5) of the PDI Act. Such design guidelines are presently found in many existing Development Plans (often in tables and concept plans). Sometimes heritage principles within development plans will refer

to external guidelines and include a notation to the effect that development undertaken in the relevant zone or policy area should be undertaken having regard to and consistently with those external guidelines. Thus, although the guidelines are not within the Development plan, they must still be considered as part of any development assessment because of the reference to them within the Plan. Under the Development Act 1993, a planning authority is required to undertake its development assessment against the provisions of the appropriate development plan.

However, as the proposed Design Advisory Guidelines will be non-statutory guidelines there is no requirement that they be considered in the development assessment process. They will contain important information and details which should be able to be considered as part of the process of assessing development in the Historic and Character areas. However, there is no reference to them within the Code and they do not appear to come within the definition of Planning Rules. Planning authorities only have to assess a development against the relevant provisions of the Planning Rules (102(1)(a)PDI Act).

The Design Advisory Guidelines should be prescribed by regulation so that they must be considered in the development assessment process. They should also be consulted on prior to implementation of the Code as it is very difficult to consider and comment on the efficacy of the Historic and Character Area Overlays and Statements without access to them.

Finally, the demolition controls in various heritage Overlays need improvement. Those in the Historic Area Overlay should reflect those found in the Norwood Payneham and St Peters Development Plan as they are stronger and more appropriate. There should also be stronger protection from demolition in the State Heritage Places Overlay. Performance Outcome 6.1. Demolition of State Heritage places was non-complying under the Development Act and development plans under that Act. Demolition should be restricted development.

Infill

Infill policies must be improved. Current policies include smaller building sites, inconsistent or missing frontage provisions, front and side setback provisions, reduced maximum height provisions compared to current and increased residential flats, group dwellings, row dwellings densities. Overall minimum standards have been reduced. Proposed policy continues to allow for development on boundaries in excess of current requirements.

Furthermore, many non-residential uses such as shops will be allowed in existing residential areas, which will adversely impact traffic, parking, noise, neighbour amenity, and character. All uses which are currently non-complying in our residential areas should be “restricted development”. Alternatively, a new zone should be created purely for residential land use. As currently drafted the revised Code will result in poorer design outcomes. For example, the Neighbourhood zones emphasize quantitative criteria over design compatibility. In addition, the current requirements for setbacks for development from side and rear boundaries will be substantially reduced in many areas.

Please email the writer at Melissa.ballantyne@edo.org.au with any queries.

Yours sincerely,

Environmental Defenders Office

A handwritten signature in cursive script that reads "M Ballantyne". The signature is written in black ink on a light-colored background.

Melissa Ballantyne

Managing Lawyer-South Australia