



Environmental Defenders Office

28 February 2020

Adelaide office: Level 1, 182 Victoria Square

Adelaide SA 5000

Via email DPTI.Planningreformsubmissions@sa.gov.au

Re: Draft Phase 3 Amendment to the Planning and Design Code (the Code)

The Environmental Defenders Office (EDO) is an independent community legal centre specialising in public interest environmental planning law.

Introduction and Executive Summary

The EDO has had a long standing interest in the planning reforms and has commented on various matters including draft regulation and policy papers. We have a particular interest in how the Code impacts environmental matters, the amenity of neighbourhoods and the rights of the community to participate in decision making.

The Code is critical to the planning reforms. Drafting this policy document has been a very large task for all concerned, however it is our view that the Code is a long way from being finalised. We need a comprehensive and best practice policy document which will be of benefit to all South Australians and their environment. Unless the Code is significantly changed our state will be beset by very poor planning decisions for years to come.

Process to date

The reform process has been long and complex. Whilst we appreciate the enormity of the task including finalising the Code the process has been deeply flawed. The consultation process on the Code was meant to be guided by the Community Engagement Charter. The emphasis is on engaging communities early rather than at the later stages of the planning process when it may be too late to influence outcomes. However years of experience in SA



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and many other jurisdictions has shown that the community's interest is mainly at the assessment stage. The community is generally not interested in developing policy and this is borne out by the feedback we have had about this process from EDO members and supporters.

The Charter provides that engagement must amongst other matters be genuine, inclusive and respectful, fit for purpose and finally informed and transparent. However in our view consultation not fulfilled these principles. There has not been a genuine, community focused discussion exploring what we want in our communities.

Despite one of the objectives of the planning reforms being to simplify the system, the Code is very complex, difficult to understand and error ridden. It comprises not only new multiple tools for assessing development but also new policy and terminology. It is accompanied by a difficult to use online mapping tool. This tool only provides the names of policies and then the user has to go back to the 3000 page Code document to identify applicable policy.

The EDO is concerned that the consultation has not been notified broadly and in particular DPTI's Information sessions. EDO staff and many of our clients have attended these. We have found that they have tended to focus on extensive briefings rather than consultation. DPTI staff have struggled to use the online mapping tool to correctly identify policy relating to particular street addresses and have often been unable to answer detailed questions about particular policy matters.

When it was finally released for consultation the Code and accompanying documentation was not fit for purpose. There are many errors and inconsistencies making it very difficult for the community to know what is a policy position and therefore comment effectively. Some were identified at the start and many have been identified since. The public has not been provided with direct comparisons between old and new policies are not available as current development plan policy is quite differently drafted. Critical detailed local policy which should be in subzones has been left out. Multiple significant changes to policy have been made that have not been adequately discussed at all or go beyond those canvassed in prior discussion papers.

Elements of the Code were also formulated during the consultation period. Some policy was released on the 23 December 2019, some three months after consultation began. This included an Update Report, draft Historic and Character Area Statements and an updated Classification Tables document. Whilst the Update Report clarified some issues it did not address others. Those living in historic conservation zones did not have the ability to comment fully until the release of the draft Historic Area Statements. Therefore for these people they realistically only had a few weeks to comment given their release just prior to Christmas/New Year. Essentially the Code was released for consultation when it was not ready.

As a result the EDO and many of our clients have had great difficulty understanding and responding to the Code. Furthermore, the e planning system is not yet in place to help the community readily identify the policies that apply to their area or areas of interest.

A further concern is that the People and Neighbourhoods and Renewable Energy Discussion Papers were not released for public consultation until just before the start of consultation on the Code. This meant that public consultation and policy direction process did not occur in the same way as for example with the Environment and Transport Discussion Papers.

A final but critical issue is the process for amending the Code from the time consultation first began with Phase 1 in February last year. The community provided feedback at that time on a range of issues and a Community Engagement Report and Technical Report were prepared. The Environment, Resources and Development Committee of State Parliament provided feedback as well to the Planning Minister. However very little of the feedback was incorporated into the draft phase 2 and phase 3 released for consultation at the same time on 1 October 2019.

A great deal of work is needed to improve the Code which includes removing its many errors and inconsistencies and including important local policy. Policy needs to be clarified and /or strengthened in many areas. More applications need to be publically notified and subject to appeal rights (ie more matters listed as restricted development). This must be done before the Code is fully implemented. Including certain new policies and strengthening proposed ones will go a long way to improving protection for our natural and built heritage and preserving the character and amenity of neighbourhoods.

Once all feedback on the Code has been considered and necessary changes made, the Code should be re released for a further period of consultation to ensure all error and inconsistencies have been removed and there is broad community support for the Code's policies. There is already a great deal of community frustration and mistrust around the process and Code content. If this rewrite and further consultation is not done frustration will rise and there will be a further breakdown in trust.

Recommendation

The Code should be fully revised to remove errors and fill gaps then re consulted on. Full implementation should be delayed as long as is needed to achieve an appropriate first generation version of the Code.

KEY ISSUES -SUMMARY

Whilst we support some aspects of the Code including the recognition of the importance of integrating Water Sensitive Urban Design (WSUD) principles and rainwater harvesting together with tree planting and retention policies there are many proposals we do not support and significant policy gaps. The Code contains generic, different, and diminished prescription policies which will not lead to the planning decisions needed to minimize vulnerability to climate change with predicted extreme weather events, species extinction, and overall impacts on food production. Significantly the State Planning Policies on Climate Change and Biodiversity have not been reflected fully in the Code. Specific references to biodiversity protection on public land need to be included in relevant overlays and zones to acknowledge the importance of long lived, large trees and their contribution to ameliorating predicted temperature rises. Tree protection, heritage preservation and infill policies need to be enhanced and WSUD policies need to be more widely included in overlays and zones.

Climate change

It is very disappointing that climate change is not specifically referenced and we strongly recommend that particular attention be given to this matter. The Code must reflect the urgency of the need for climate mitigation, adaptation and resilience. Land use choices will be fundamentally affected by increasing hazards, health impacts and threats to critical infrastructure.

Infill

A key concern is the impact of infill housing in established neighbourhoods, including the loss of vegetation and tree canopy when existing housing is replaced with denser building forms. As new developments will become predominant in urban streetscapes this will impact seriously on the health and welfare of adjacent neighbours, creating community conflict and disruption.

As noted the EDO supports the proposed policy of tree planting, incentives to retain trees, WSUD and landscaping for infill development. However the tree planting policy needs further improvement regarding the type of trees and how the trees are to be maintained. There needs to be stronger consideration of WSUD deemed to satisfy criteria for non- residential development, and development of varied forms and scales should be applied. Also, we encourage a broader consideration of all aspects of integrated water management, including waterway ecology, into a single policy applying to all development.

Whilst there are some positive infill policies there are many that are weak and will lead to inappropriate infill/increased housing densities and a reduction in tree canopy. These policies include smaller building sites (we note that Adelaide has the smallest sites on average in the nation and in some proposed zones, current 2 for 1 infill developments could extend to 4 to 1 or greater), 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.

Urban trees

Urban trees play a very important role in cooling our suburbs and contribute to the well being of community members. In common with many cities Adelaide's tree canopy is declining and hard surfaces are increasing which is contributing to a greater urban heat island effect. We understand that Adelaide has one of the smallest tree canopies of any Australian city. Unless significant attention is given to this issue there will be detrimental health and economic impacts. It is clear that if the 30 Year Plan target for a minimum 20% tree canopy by 2045 is to be met there must be significant efforts made with respect to

retention and planting of trees on private land. There is simply inadequate public open space available. The EDO supports the transition of trees listed as significant in development plans into the Code. However the overall 'tree policy' in the Code means that there will be diminished protections for trees. More trees will be lost as crowded urban infill is implemented.

The Code presently contains a single Regulated Tree Overlay. This is in direct contrast with current Development Plan policy, which distinguishes between and provides separate policy for both regulated and significant trees. As currently proposed regulated and significant trees will not have the same level of protection under the Code as is currently the case in development plans. The 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, will result in a severe weakening of the current level of protection. This must be rectified to ensure that the Code affords the same level of protection to such trees as presently exists.

In addition, reference has been lost to indigenous to the locality, important habitat for native fauna, part of a wildlife corridor of a remnant area of native vegetation and important to biodiversity of local area. Further there appears to be change to policy intent as it appears significant trees have a lesser assessment test for retention "retained where they make an important visual contribution to local character and amenity" compared to current "Significant Trees should be preserved".

Built heritage

Built heritage policies are also weaker in some cases than currently. For example contributory items which show collectively important historic values in historic conservation

zones and provide clarity, certainty and transparency to current and future owners are not being transferred into the Code. If contributory items are not transitioned owners, potential buyers and Council staff will be engaged in a longer, more costly assessment process which could lead to more litigation.

In the Historic Area Overlay demolition policies are weaker. One demolition trigger is solely based on considering the contribution of the building façade to the streetscape not all of a building's heritage values. A high fence, vegetation or a few out of character alterations could lead to inappropriate demolition. In addition many local and unique built heritage policies currently in development plans are missing and should be included in subzones. Historic Area Statements meant to support the Historic Area Overlay are poorly drafted and do not contain any local policy. These statements are completely missing in relation to State Heritage areas.

Recommendations

- a. Include guidelines with tree planting and landscaping
- b. Significant tree policy should be in a separate overlay.
- c. Significant Tree Overlay should include reference to indigenous to the locality, important habitat for native fauna, part of a wildlife corridor of a remnant area of native vegetation and important to biodiversity of local area and replace the test for retention of significant trees to "retained where they make an important visual contribution to local character and amenity" to "Significant Trees should be preserved".
- d. In the case of significant trees include the test of "all other remedial treatments and measures have been determined to be ineffective". All tree affecting development applications should be made subject to public notification and consultation.
- e. Include specific recognition of existing tree canopy is an intergenerational asset, a primary factor in micro-climate cooling, helps to sustain habitat, biodiversity and neighbourhood amenity.
- f. Include additional policy which recognises that all large trees both indigenous and non-indigenous species, whether in rural or urban environments have economic value and should retained until dying of natural causes.

- g. Include specific policy regarding retention of Grey Box trees due to their endangered classification and the fact they often do not grow to a regulated tree size.
- h. General policies relating to infill need to improve amenity for local neighbourhoods, for example site sizes, minimum setback and frontages, height restrictions and housing densities need to reflect current policy
- i. Zoning issues must be fixed eg the zone Metropolitan Open Space System should not be replaced by a zone named Open Space. This proposed change would mean that any native vegetation within land zoned as MOSS within the Hundreds of Adelaide, Munno Para, Noarlunga and Yalata, will lose its protection under the Native Vegetation Act 1991.
- j. The Code should have WSUD principles appearing under all subheadings within the 'Design in Urban Areas' GDP. WSUD should be an aspiration for all development types, from small scale residential to high scale; this is currently not the case in the Draft Code.
- k. Transfer Contributory Items to the Code
- l. Amend demolition controls in the Historic Area Overlay to reflect current SAPPL policy
- m. Include local heritage policy in subzones
- n. Amend Historic Area Statements to provide a full contextual and policy statement for properties covered by the Overlays

Should you have any questions on the above, please do not hesitate to contact Melissa Ballantyne on (08) 8359 2222 (Tuesdays and Thursdays)

Yours sincerely

Environmental Defenders Office



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