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Friday December 18 2020

Re: Feedback on the revised draft Planning and Design Code for South Australia

To whom it may concern,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to comment on the revised Planning and Design Code for South Australia (hereafter 'the revised Code').

As South Australia's primary nature conservation advocacy organisation, since 1962, NCSSA has been a strong advocate for the protection of native vegetation and biodiversity in South Australia with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities and the management of protected areas.

The NCSSA understands that feedback is being sought on Phase 3 (Urban) of the revised Code, however, there are a number of outstanding matters raised in this submission that also impact Phase 2 (Regional) and Phase 1 (Outback) areas. These issues are particularly pressing since Phases 1 and 2 are now operational.

This submission is in addition to the submissions the NCSSA made on Phase 1 (Urban Area) of the Code as well as the Discussion Paper on the Proposed Changes to Renewable Energy Policy, both dated 27 February 2020, and Phase 2 Councils (Rural Areas), dated 29 November 2019.

The NCSSA believes the following issues need to be addressed as a matter of urgency and prior to the finalisation of the revised Code:

- **Correct and complete mapping of the Conservation Zone and the Native Vegetation Overlays**

As it currently stands, the Conservation Zone is not correctly mapped. This is despite a large volume of community feedback highlighting this problem during Phase 2 consultation including in our November 2019 submission, which was summarised in DPTI's 'What We Have Heard' Report from Phase 2 (March 2020) as:

'Many of the respondents provided feedback that the spatial application of the Conservation Zone to protected areas under the *National Parks and Wildlife Act 1972* or the *Wilderness Protection Act 1992* is currently inconsistent in the draft Code online mapping viewer.'

Despite this feedback, areas declared under the *National Parks and Wildlife Act 1972* or the *Wilderness Protection Act 1992* are still not mapped consistently and accurately as being solely within the Conservation Zone. Examples of errors found by the NCSSA include:

- Vulkathunha-Gammon Ranges National Park, using the allotment address 864 Idninha Track, Gammon Ranges SA 5732, which is zoned both Remote and Conservation,

- Hincks Wilderness Protection Area, using the allotment address Lot 2 Tooligie Hill Road, Hincks SA 5603, which is zoned as both Rural and Conservation, and
- Nullarbor Wilderness Protection Area, using the allotment address 1430 Koonalda Road, Nullarbor SA 5690, which is zoned as Conservation, Remote and Coastal Waters and Offshore Islands.

As a small, community-based organisation, the NCSSA does not have capacity to review the zoning of all of South Australia's park areas, but is concerned that these errors may be widespread.

The NCSSA has been advised that these errors are due to differences between cadastral and zone boundaries, and that in practice, a zone would be verified before any development application was considered. However, for a 'state of the art' new planning system, it seems reasonable to expect that all mapping should be accurate and that avoiding any uncertainty regarding which 'rules' apply in a given area should be paramount, particularly for South Australia's areas of outstanding natural value.

Similarly, there are errors in the mapping of the Native Vegetation Overlay (NVO) and the State Significant Native Vegetation Overlay (SSNVO). As outlined in our submission of 29 November 2020, the NCSSA strongly supports the introduction of these overlays as they are likely to result in the consideration of requirements of the *Native Vegetation Act 1991* earlier in the development planning process. However, the NCSSA understands that only one overlay should apply in any given area, and therefore errors in their mapping have also been identified, as follows:

- Kati Thandha – Lake Eyre National Park, using the allotment address Lot 511 Oodnadatta Track, Stuarts Creek SA 5720, is mapped as within both the NVO and the SSNVO, and
- Nullarbor Wilderness Protection Area, using the allotment address 1430 Koonalda Road, Nullarbor SA 5690, is mapped as within both the NVO and the SSNVO.

Required action:

- 1) DIT and DEW commit the required resources to ensure all mapping of parks and conservation areas is correct, being solely within the Conservation Zone, across all three Phases of the Code, particularly Phases 1 and 2 which are already operational and before Phase 3 goes 'live'.
- 2) DIT and DEW commit the required resources to review the mapping of the Native Vegetation Overlay and the State Significant Native Vegetation Overlay to ensure they are accurately applied.

- **Appropriate assessment of proposed developments in natural areas**

Natural areas in South Australia are protected primarily through two pieces of legislation: the *National Parks and Wildlife Act 1972* and the *Wilderness Protection Act 1992*. The revised Code should reflect the intent of each of these Acts, which includes protecting natural areas from inappropriate development.

An improvement that was made between the previous version of the Code and this revised version is all proposed tourist accommodation in Wilderness Protection Areas will now be assessed through the 'restricted' pathway, rather than through 'performance assessed'.

The NCSSA acknowledges that the revised Code contains amended wording in relation to tourism accommodation in areas protected under the *National Parks and Wildlife Act 1972*, i.e. that it will be 'performance assessed' where the relevant reserve plan of management identifies it as an 'envisaged land use' rather than if it is 'contemplated' in the relevant reserve plan.

However, the NCSSA remains concerned that differing interpretations of 'envisaged' could lead to land-use planning decisions that are not consistent with the intent of the *National Parks and Wildlife Act 1972*. Therefore, the NCSSA still believes tourism accommodation should also be 'restricted' in areas protected

under the *National Parks and Wildlife Act 1972*, since a 'restricted' pathway provides for a more fulsome assessment and the possibility of third party input.

Further, for any planning decision that relates to areas protected under the *National Parks and Wildlife Act 1972* or the *Wilderness Protection Act 1992*, the State Planning Commission should have regard to any agreed management plan for that area. These management plans, which are developed in consultation with the community and endorsed by the Environment Minister, are supposed to guide the management of these fragile and precious natural areas.

Currently, the State Planning Commission is not required to do take such management plans into account. Recently, planning approval was granted for tourist accommodation to be built in in Flinders Chase National Park in areas well outside the designated "development zones" that were identified in the agreed park management plan. This was an example of the planning system not reflecting the intent of the *National Parks and Wildlife Act 1972*, which is the key piece of legislation for managing this natural area, and is an issue that the revised Code should correct.

Required action:

- 3) Change the assessment of proposed Tourist Accommodation from the 'performance assessed' pathway to the 'restricted' pathway for areas protected under the *National Parks and Wildlife Act 1972*.
- 4) Amend the revised Code (in whatever manner necessary) to ensure that agreed management plans for areas managed under the *National Parks and Wildlife Act 1972* and the *Wilderness Protection Act 1992* are taken into account in decisions relating to land-use planning.

- **Specific subzone for Wilderness Protection Areas**

The *Wilderness Protection Act 1992* provides the highest level of protection for natural areas within South Australia¹. The proposed policy for the Conservation Zone within the revised Code, even with the 'restricted' pathway tourist accommodation, is not appropriate for the management of these areas as it allows for many forms of development which are prohibited under the *Wilderness Protection Act 1992*. Since the revised Code should reflect the intent of each the *Wilderness Protection Act 1992*, this needs to be corrected.

Required action:

- 1) Create a Wilderness Protection Subzone of the Conservation Zone that would apply to the fourteen areas currently proclaimed under the *Wilderness Protection Act 1992* (and to any areas declared in future) with policy that mirrors the provisions of that Act, i.e. that prohibits roads, tracks, buildings or structures except those that are specifically authorised by the relevant plan of management.

- **Tree canopy in the urban environment**

The NCSSA supports a biodiverse, shaded urban environment, and is therefore concerned about the protection of large trees from development, particularly where these are native trees which are also protected under the *Native Vegetation Act 1991*. The NCSSA was specifically concerned about the loss of several large Eucalypt trees to make way for a sporting complex development in Mount Barker in 2019, and is more generally concerned that under current settings, green canopy cover is being lost at an alarmingly high rate, with tree cover reducing from 21.5 per cent to 19.5 per cent across metropolitan Adelaide between 2013 and 2016².

¹ <https://www.environment.sa.gov.au/our-places/wilderness-protection-areas>

² OPTIONS ANALYSIS: Costs and benefits of Urban Tree Canopy Options for Minor Infill Development in the Planning and Design Code prepared by BDO Econsearch

Whilst the new Native Vegetation Overlay may lead to improvements in design that avoids clearance of large trees due to earlier dialogue with the Native Vegetation Council than is currently the case, the NCSSA is concerned that the proposed Regulated Tree Overlay apparently does not provide even the same level of protection as current settings, and does not increase protection such that green canopy loss will be arrested.

For example, the NCSSA understands that the proposed criteria for a tree damaging activity in the Regulated Tree Overlay 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 weakening of the current level of protection. Significant trees also have a lesser assessment test for retention, i.e. “retained where they make an important visual contribution to local character and amenity” compared to current “Significant Trees should be preserved”.

The NCSSA believes that policy to incentivise tree retention also needs to be significantly improved to reduce the number of trees being lost to development. This issue is very pressing - the NCSSA recently appeared before the Native Vegetation Council arguing for the retention of a large number of magnificent old Mallee Trees that are proposed to be cleared for a new housing development in Gawler – such loss of existing canopy and biodiversity should be avoided. Policy could include a bonus for developing land for housing where trees are part of the overall design of the land and buildings. Consideration should be given to including greater incentives within land division policies to encourage the retention of significant and regulated trees / or existing canopy. The revised Code could also incorporate disincentives for their removal, for example by paying the real economic and environmental value of the tree.

If you would like to clarify or discuss this submission please contact me on (08) [REDACTED] or via email at [REDACTED].

Yours sincerely,

A handwritten signature in blue ink that reads "Julia Peacock". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Julia Peacock
Nature Advocate