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Expert Panel
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Submitted via email: DTI.PlanningReview@sa.gov.au

Friday 16 December 2022

Re: Submission to Planning System Implementation Review

Dear Expert Panel,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to provide a submission to the Planning System Implementation Review (the Review).

Since 1962, the 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 management of protected areas.

Previous submissions still relevant

The NCSSA provided four submissions to the Marshall Liberal Government's development and implementation of the Planning and Design Code (the Code), as follows:

- Comments on the Code (primarily focused on Phase 2 councils (Rural Areas)), submitted in November 2019,
- Comments on the Code (primarily focused on Phase 3 councils (Urban Areas)), submitted in February 2020,
- Comments on the Discussion Paper on the Proposed Changes to Renewable Energy Policy in the Code, also in February 2020, and
- Feedback on the revised draft Code for South Australia, in December 2020.

These submissions presumably form part of the '*volume of submissions and representations that have been made by groups and individuals during previous engagement and review processes*' referred to by the Panel in its three Discussion Papers.

The NCSSA also attended a sitting of the Environment, Resources and Development Committee on 3 May 2021, together with the Conservation Council of SA (CCSA), to outline key concerns with the development and implementation of the Planning and Design Code as it relates to nature conservation.

Frustratingly, virtually none of the feedback provided by the NCSSA seeking to improve the way the Code protects South Australia's nature has been directly responded to nor corresponding changes to the Code or e-Planning system made.

A fundamental issue appears to be the perception that the land-use planning regime is superior to other legislative arrangements. South Australia's nature is protected by a series of pieces of legislation, including the *Native Vegetation Act 1991*, the *National Parks and Wildlife Act 1972* and the *Wilderness Protection Act 1992*, that are all equally as valid as the *Planning, Development and Infrastructure Act 2016* and its associated instruments. The planning system should complement and reinforce the provisions of these nature protection Acts rather than ignore or override them.

The NCSSA acknowledges that the scope of this Review does not encompass all the issues raised in its previous submissions, however, as these issues remain unresolved the NCSSA wishes to take this opportunity to restate the following points:

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

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 NCSSA's November 2019 submission. The community's feedback 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 correctly** as being solely within the Conservation Zone.

Two of the errors previously pointed out by the NCSSA appear to have been fixed (Hincks Wilderness Protection Area, using the allotment address Lot 2 Tooligie Hill Road, Hincks SA 5603, which was zoned as both Rural and Conservation but is now solely Conservation and Nullarbor Wilderness Protection Area, using the allotment address 1430 Koonalda Road, Nullarbor SA 5690, which was zoned Conservation, Remote and Coastal Waters and Offshore Islands but is now solely Conservation).

However, the NCSSA also pointed out that Vulkathunha-Gammon Ranges National Park, using the allotment address 864 Idninha Track, Gammon Ranges SA 5732, was zoned both Remote and Conservation, and this error remains.

The following errors were found by searching in SAPPA while preparing this submission:

- Ravine de Casoars Wilderness Protection Area on Kangaroo Island, using the allotment address Lot 1 Playford Highway, Flinders Chase, which is zoned Conservation, Rural and Coastal Waters and Offshore Islands,
- The Strzelecki Regional Reserve, using the allotment address Lot 511 Oodnadatta Track, Stuarts Creek, which is zoned both Conservation and Remote Areas, and
- Canunda National Park, using the allotment address Lot 157 Coola Road, Canunda, which is zoned both Conservation and Rural.

An audit of all protected areas is therefore still an outstanding task which should be completed to ensure they are properly zoned **before** any development applications are lodged.

Similarly, there seem to be errors in the application of the Native Vegetation and State Significant Native Vegetation Overlays, with both overlays applying in one place when it should only be one or the other, so these also need to be checked.

- **Create a Wilderness Protection Subzone**

South Australia currently has 14 Wilderness Protection Areas, which cover over 1.8 million hectares and have been declared to protect large, unmodified areas that retain their natural character.¹ The

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

Wilderness Protection Act 1992, and associated Code of Management, allow for limited to no development in wilderness areas, and the Planning and Design Code should reflect this.

The policy for the Conservation Zone is not appropriate for these areas as it envisages a range of development types that would or could be permitted. A specific subzone that **mirrors the provisions** of the *Wilderness Protection Act* is therefore required to prevent inappropriate development in these areas **before** any development applications are received.

- **Planning decisions should be consistent with park management plans**

Parks declared under the *National Parks and Wildlife Act 1972* or the *Wilderness Protection Act 1992* require the development of a management plan, which is drafted in consultation with the community and then finalised and adopted by the Environment Minister.

The NCSSA believes these management plans should be thought of as a 'contract' or 'agreement' with the community regarding how these publicly-managed protected areas will be cared for.

At present, the Planning and Design Code does not provide sufficient regard to these management plans.

The decision-making process for any proposed development in a declared park or reserve should **require the Minister for Planning to make decisions that are consistent with any adopted management plan.**

As the NCSSA is not best placed to recommend the specific amendments that are required to ensure management plans are given due regard through the planning system, the Expert Panel should seek advice as to what amendments are required to ensure this takes place.

Specifically, the NCSSA believes the current arrangements under the Planning and Design Code that tourism accommodation is 'restricted' in the Conservation Zone except where it is 'tourist accommodation in a reserve constituted under the *National Parks and Wildlife Act 1972* and the relevant reserve plan of management prepared in accordance with that Act identifies tourist accommodation as an envisaged land use' is inadequate.

The wording of this clause is vulnerable to misinterpretation, since a plan may 'envisage' tourist accommodation, but it may not be of the scale or type, or in the location, of a specific development proposal. At a minimum, more precise language such as the development being 'specifically authorised' by the plan should be used, however, the NCSSA believes all development proposals for protected areas should be 'restricted' and, as above, decisions should be consistent with any adopted park management plan.

A specific, recent example of the issue of inadequate regard for a park management plan was the development (now approved but not yet constructed) of private, luxury tourist accommodation within Flinders Chase National Park. The proposal put forward by the developer was totally inconsistent with the park management plan, with accommodation proposed for areas outside the specific zones where such development was contemplated in the plan. Unsurprisingly, the proposal was met with community consternation and anger, and led to a protracted battle including court action and the overriding of regulations in order for approval to be granted.² Many in the community still feel that the proposal is inappropriate, and had the Minister for Planning been bound to make decisions consistent with the adopted management plan for Flinders Chase National Park that was in force at the time the proposal was put forward, the development would have been refused.

- **A more fulsome implementation of the State Planning Policy for Biodiversity is required**

The NCSSA was encouraged by the development of a State Planning Policy (SPP) for Biodiversity as part of a suite of policies designed to 'outline matters of importance to the state in land use planning and development and provide a policy environment aimed at enhancing our livability, sustainability and prosperity'.³

² <https://www.theislanderonline.com.au/story/7762880/state-government-repeals-native-vegetation-regulations-in-flinders-chase/>

³ https://plan.sa.gov.au/_data/assets/pdf_file/0005/552884/State_Planning_Policies_for_South_Australia_-_23_May_2019.pdf

The SPP for Biodiversity identified crucial issues for biodiversity protection, including the need for the planning system to identify and protect areas of high biodiversity value, to ensure development occurs in appropriate locations and to assess the cumulative impact of development on biodiversity, including spatial, temporal and incremental impact.

The commitment by those developing the new system was that ‘the rules set out in the Code must reflect and align with the SPPs as they provide the strategic framework on which Code policy is based’.

The NCSSA does not believe this commitment has been delivered on.

Much more work is needed to fully recognize and protect places of high biodiversity value in South Australia, and to address the gradual erosion of biodiversity through many small actions of destruction.

As a starting point, in addition to the three changes already outlined in this submission, there are a range of other ways the Planning and Design Code could much more effectively protect biodiversity. These include through:

- The inclusion of references to biodiversity, or the full meaning and attributes of biodiversity, in key zones and overlays and the general provisions (see the NCSSA’s previous submissions for specific suggestions),
- The creation of an overlay that identifies the critical habitat of threatened species and ecological communities (i.e. a ‘Critical Habitat Overlay’) using readily available mapping and publicly available records such as those held in BDBSA⁴, and
- Stronger protection for regulated and significant trees, recognising that retaining existing tree canopy is not only important for biodiversity but is of highest priority given our changing climate.

Renewable energy infrastructure

As the Expert Panel may be aware, the State Government has just commenced consultation on the development of a Hydrogen and Renewables Act.⁵ Renewable energy infrastructure, whilst welcomed from the perspective of reducing carbon pollution, can be damaging to nature. For example, the leading cause of native vegetation clearance between 2014-2018 in South Australia was for large scale solar farms.

A rapid transition to renewable energy cannot come at the cost of nature, which is in crisis given the current rate of loss of species and their habitats.⁶

The new proposed Act intends to defer to the existing planning system for environmental approvals for large scale renewable energy infrastructure. Stronger policy is therefore needed to avoid damage to nature, and specifically to ensure further clearance of native vegetation for solar farms is avoided. As a starting point, specific suggestions of where Code policy requires strengthening are in the NCSSA’s submission dated February 2020.

Space industry infrastructure

The planning system needs to be updated to provide guidance for the growing space industry in South Australia. There are currently no zones which foresee the kinds of developments which will be required to support this new industry, an oversight in the development of the Planning and Design Code.

It is critical that this be addressed as soon as possible before the industry grows further. As the Expert Panel may be aware, a private company has applied to build an experimental, industrial rocket launching facility inside a wildlife sanctuary, at a place called Whalers Way on the Eyre Peninsula, which is zoned for Conservation.⁷

The lack of any zones that foresee space industry-related developments was raised by the private company in their application for approval. Whalers Way is a completely inappropriate place for this proposed development – not

⁴ <https://www.environment.sa.gov.au/topics/science/information-and-data/biological-databases-of-south-australia>

⁵ <https://yoursay.sa.gov.au/hre-act>

⁶ <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>

⁷ https://plan.sa.gov.au/development_applications/state_development/impact-assessed-development/majors/major_projects/majors/sleaford_southern_launch

only is it zoned for Conservation, but it is also 'protected' as a Heritage Agreement under the *Native Vegetation Act 1991* and it is habitat for a range of threatened species, as well as being a high bushfire risk area.

Guidance for the space industry is therefore needed urgently to ensure no further proposals like the one at Whalers Way are received.

Scope of this Review and response to specific Discussion Paper questions

In relation to the *Discussion Paper – Planning, Development and Infrastructure Act 2016 Reform Options*, and specifically the section on *Impact Assessed Development*, the NCSSA wishes to respond to the question 'What are the implications of the determination of an Impact Assessed (Declared) Development being subject to a whole-of-Government process?'

The NCSSA believes it is essential for Impact Assessed (Declared) Development to **be subject to a whole-of-Government process**. This is based on its experience with the assessment of a proposal for the rocket launching facility at Whalers Way, which is an Impact Assessed (Declared) development (transitioned from a 'major impact' assessment process under the previous legislation).

As mentioned earlier, Whalers Way is 'protected' for nature conservation as a Heritage Agreement under the *Native Vegetation Act 1991*, and the permission of the Minister for the Environment will be required to cut out the areas where the company would like to site their rocket launch pads from this 'protection'. The Environment Minister's decision-making process should not be separated from, and should be considered as important as, a decision by the Planning Minister as to whether or not to grant planning permission for the application.

A whole-of-government approach promotes greater equality amongst relevant decision-makers, which better reflects the community's expectations that all pieces of State legislation are equally important.

In relation to *Discussion Paper – Planning and Design Code Reform Options*, the NCSSA provides the following responses to questions related to *Native Vegetation*.

1. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?

There is a clear need to rationalise and harmonise the rules governing tree removal under the planning system and under the native vegetation regime. The Panel's Discussion Paper outlines the example regarding managing vegetation along fence lines, where the erroneous belief exists that removing a tree within 5 metres of the fence is permitted under native vegetation regulations, and therefore can go ahead, when planning permission is also required.

The NCSSA wishes to refer the Expert Panel to relevant work by a group of eNGOs, lead by the CCSA, to identify the top ten legislative reforms required to better protect urban trees.⁸ As per this list, the NCSSA believes repealing the exemptions for native vegetation removal within 5m of fence lines and within 10 metres of building in the peri-urban and urban areas would assist in achieving the retainment of remnant native trees of conservation value. Similarly, the requirement for the Department of Infrastructure and Transport and the Department of Education to publicly consult and gain planning approval to remove regulated trees, including remnant native vegetation, should be restored.

Clearance for bushfire safety should be undertaken in a manner that reflects the bushfire attack level of the property, rather than being based on relatively arbitrary distance measures.⁹

2. Are there any other issues connecting native vegetation and planning policy?

The NCSSA concurs with the Panel that, whilst the two overlays highlighting the presence of native vegetation are likely to have been an improvement on past arrangements, the two systems of native vegetation and planning

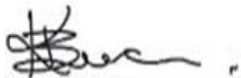
⁸ https://www.conservation.sa.gov.au/top_10_urban_tree_law_reform_priorities

⁹ <https://drive.google.com/file/d/1ETbwN-piK2xyj7diQWxFWeH6Gt8mIH30/view>

policy are still quite separate. Options for facilitating easier access to expertise on native vegetation extent and condition should be considered, together with a widespread education campaign highlighting the value of protecting native vegetation.

If you would like to clarify or discuss this submission please contact Julia Peacock, Nature Advocate, on [REDACTED] or via email at [REDACTED].

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kirsty Bevan', with a small flourish at the end.

Kirsty Bevan
Chief Executive Officer
NCSSA