

Mr Michael Lennon,  
Chair, State Planning Commission,  
Department of Planning, Transport & Infrastructure,  
GPO Box 1815,  
Adelaide, 5001.

The Secretary,  
Kensington Residents' Association Inc.,  
Mr A Dyson,  
[REDACTED],  
Kensington, 5068.  
28<sup>th</sup> February 2020.

**Re: Planning & Design Code Phase 3**

Dear Sir,

Our Association offers the following comments and suggestions in relation to the draft Phase 3 Planning & Design Code.

Unfortunately, we believe as do many other community organisations, residents and Councils that the consultation has been a farce. The draft Planning and Design Code was released prematurely, being incomplete and full of errors and omissions. The consultation period has been a sham. You and your Commission Members and the Department's Planning Reform team by your statements and criticism of all who have questioned the proposed reforms have conveyed the very real impression that very little notice will be taken of any concerns or suggestions for changing the draft Code. Community organisations, residents and Councils have expended very considerable effort in trying to understand the implications of the draft Code and in preparing submissions but hold very little hope that they will result in any meaningful changes.

The recent announcement by the Planning Minister of a delay in the implementation process, to allow greater community 'understanding' of the Code gave some hope that the consultation period would be extended. Unfortunately it was not extended so there seems little point in the delay. The Code is far from 'ready', as the Minister asserts and, as the Planning Department has now admitted, the essential e-planning system is still under construction and has an uncertain future.

As stated in the Protect Our Heritage Alliance's media release of 26<sup>th</sup> February: *"The whole 'consultation' process has been an abrogation of community trust and the democratic process. It has ignored the dictates of the statutory Community Engagement Charter, and has been a disgraceful and deceitful failed exercise in the promulgation of public policy."*

The following table indicates how the various zones, under the existing City of Norwood, Payneham & St Peters (NP&SP) Development Plan, in Kensington will be translated into the new zones under the Planning & Design Code:

Kensington	
Development Plan Zone	Draft P&D Code Zone
Residential Historic (Conservation) - Kensington 1 Policy Area - Kensington 2 Policy Area	Suburban Neighbourhood + Historic Area Overlay
Mixed Use Historic (Conservation) - Kensington Policy Area	Business Neighbourhood + Historic Area Overlay

Kensington	
Development Plan Zone	Draft P&D Code Zone
Business - Kensington Policy Area	Suburban Business & Innovation (existing Major Development approval – Peregrine)
Neighbourhood Centre - Marryatville Policy Area	Suburban Activity Centre
Community - Education Policy Area	Community Facilities

It was our understanding that there would be a ‘like for like’ transition from the current NP&SP Development Plan. In fact, in Edition 27 of DPTI’s Planning Ahead e-newsletter you are quoted as follows:

*“Earlier this month I gave an important briefing to South Australia’s Cabinet members on the draft Planning and Design Code. The main point I wanted our parliamentary representatives to take away was that this first generation of the Planning and Design Code is largely about transitioning and consolidating existing contemporary policy from individual council development plans into the Code.”*

Quite clearly, the draft does not transition and consolidate the existing Council development plans into the code. Some of the key differences are discussed below:

### Key Differences in the draft Planning & Design Code

#### Zoning - General

- Many draft Code Zones allow for a broader range of new land uses compared to current zones.

*We are opposed to the proposed new land uses.*

- Some numerical policies, such as block size and width, are transitioned to the draft Code, but this has not happened in all areas (and some are incorrect).

*Numerical policies should be transitioned in accordance with the NP&SP Development Plan.*

- Other existing local policies which have been tailored to the local area are not included in the draft Code.

*These existing local policies should be reinstated.*

#### Zoning - Specific

- Changes in land use opportunities are envisaged in **Neighbourhood Zones** with a decrease in non-complying activities. Applications for industry, crash repair station, motor showroom, entertainment venue, electricity substation, hotel, warehouse, or petrol filling station would be considered on merit as Performance Assessed in the **Suburban Neighbourhood Zone** (all currently non-complying in the **Residential Historic Conservation Zone**)!

*These land uses are incompatible with the existing heritage and residential character and we demand that all currently non-complying uses remain as such.*

- Preschools, childcare, health and welfare services, recreation facilities are envisaged for the **Suburban Neighbourhood Zone** without any specified size restriction.

*To be compatible with the residential character of Kensington reasonable size restrictions should be imposed on such land use.*

- Building on boundaries increased in length from 8 metres to 10 metres.

*We oppose the proposed increase.*

- Some zones, such as **Business Neighbourhood Zones** and **Community Facilities Zones**, will have a new building height policy that allows for much taller buildings of up to six storeys. In addition, “*significant development sites*” get a 30% height bonus! The **Business Neighbourhood Zone** extends along most of The Parade, Kensington and about half way down Thornton Street towards Regent Street in what is currently the **Mixed Use Historic Conservation Zone**.

*Such buildings, possibly up to eight storeys with the height bonus, would significantly overshadow adjacent heritage housing and severely restrict solar access. We are strongly opposed to such multi-storey development along The Parade. We also strongly oppose the rezoning of Kensington’s school sites as **Community Facilities Zones** allowing multi-storey development surrounded as they are by heritage housing. We request that height restrictions remain as they are in the NP&SP Development Plan.*

#### Historic Areas

- The draft Code policies for historic areas have significantly less detail than current Development Plan policies. This provides less guidance about what types of development are appropriate.

If as claimed “***this first generation of the Planning and Design Code is largely about transitioning and consolidating existing contemporary policy from individual council development plans into the Code***” the current NP&SP Development Plan policies should be maintained.

- Valued historic buildings known as Contributory Items are currently identified by property address and on a map. These are historic buildings that, as a collection, make up the character and streetscape of our Historic Conservation Zones. Currently, these buildings, approximately 200 in Kensington, have strong and effective demolition controls. With the new code, demolition controls will be severely weakened as the draft Code does not identify which buildings are historic buildings. Instead this will need to be determined on a case-by-case basis, providing less certainty for everyone.

*Despite claims to the contrary Contributory Items have enjoyed effective protection from demolition and also do so in both Victoria and New South Wales. We commend the legal opinion obtained by NP&SP from Norman Waterhouse and included in Council’s submission as Attachment E that Contributory Items may be retained and the Performance Outcomes should be amended as suggested.*

- The Historic Areas Statements contain only broad statements of the character and characteristics of the area with little detail. The current Development Plan has Desired Character Statements for the various Policy Areas and these have gone from about 1000 words to only 250 or so.

*The Historic Area Statements should be updated to include important matters like minimum allotment sizes, minimum street frontages, the historical era that applies, materials to be used in new buildings or additions, the scale of built form, fencing styles, and roof pitches properly reflecting the content of the NP&SP Development Plan.*

- New demolition tests appear in the draft Historic Area Overlay that are much weaker than exist in our current NP&SP Development Plan. For example, in the new Code a building can be demolished if the “*facade does not contribute to the historic character of the streetscape*” or the original verandah has been removed.

*An astute developer could easily argue that if a building is hidden by a large fence or hedge or the façade has been changed, it doesn't contribute to the streetscape and therefore could be demolished. These buildings will quickly be cherry picked by developers with wall-to-wall boxes erected in their place whereas they could easily be restored to their former glory with appropriate renovation and replacement of inappropriate verandahs and fences. There are many excellent examples of such renovations within Kensington and they have added considerable value to these properties.*

### **Other Changes**

- The new digital e-Planning system with its interactive mapping tool where development applications and enquiries can be made online is obviously still in a development phase and is almost impossible to navigate.

*Implementation of the Code and e-Planning system should be delayed until it is a workable system that has been made available for proper community consultation and appropriate changes made in response to the consultation.*

- Changes to who can make decisions about development proposals, including private planners

*Our Association is opposed to the use of private certifiers and the proposed assessment process. Assessment and approval should remain with local councils.*

- Changes to: the types of development needing planning approval; notification rights for neighbours; and appeal rights.

*The proposed changes will undermine the ability of citizens to have a say in what will be developed next door, down the street or within the neighbourhood and are unacceptable.*

- Reduced privacy screening requirements for upper level windows from 1.7 metre high screening to 1.5 metre high screening.

*To minimise loss of privacy from neighbouring two or more storey developments 1.7 metre high screening should be retained.*

- Under the Code, private open space will be allowed in front of dwellings.

*This proposal will encourage high front fencing which is discouraged in **Historic Conservation Zones**. Accordingly, this provision should not apply where there is an **Historic Area Overlay**.*

## General Concerns

We have many other concerns about the draft Code, particularly as it relates to the NP&SP Historic Conservation Zones and other historic areas. Our concerns include:

- The draft Code is incomplete and riddled with errors and its release for public consultation was very premature.
- The draft Code is incomprehensible to most in the community and for many professionals.
- The draft Code will not make planning easier, quicker, simpler, and more equitable, as claimed. In fact it will be a 'goldmine' for lawyers, planning professionals, and consultants.
- There is a lack of sub-zones to provide for local area variation.
- Minimum site areas are incorrect and different from the existing minimums.
- There is no protection from developments using the NP&SP laneways as primary access without access to a proper road or street as contained in the current NP&SP Development Plan.
- The loss of minimum site coverage provisions.
- The loss of fencing detail provisions.
- The loss of details of materials.

## Conclusion

According to the SA Planning Portal: *"The Code will provide South Australians with planning policy that is consistent and clear, making the planning process quicker, simpler and more equitable. This will help the community to navigate the planning system when building a house, developing a business or progressing large commercial developments."*

Quite clearly the Draft Code fails to meet these high expectations and without significant changes to the draft followed by a period of genuine consultation it should not be implemented.

It has been asserted throughout the current consultation period that the draft Code would simply transition and consolidate the existing Council development plans into the Code on a "like for like" basis! The Local Government Association; many Councils including our own NP&SP Council; heritage and planning experts; the National Trust; and residents' groups dispute this assertion and back this up with hard evidence and facts. Accordingly, we request that on this basis alone the draft Code should not be implemented without significant changes as recommended by the above organisations and groups.

It could be said that a "one-size-fits-all" and "lowest-common-denominator" approach has been taken rather than adopting the highest standards from development plans from councils such as NP&SP. This high quality development plan has been tried and tested and worked for many years having been developed at considerable cost to its ratepayers to serve the needs of the NP&SP community.

Kensington was one of the first villages settled to the East of Adelaide in 1839. Fortunately many early colonial and Victorian houses, hotels and commercial buildings remain. By the 1960s to 1980s the area was generally very run down and many buildings of heritage value were either abandoned or badly neglected. However Kensington has been transformed from a very run down area through the heritage protections introduced in the mid 1990s when Kensington was declared as an Historic Conservation Zone.

This declaration included the designation of about 70 Local Heritage Items and about 200 Contributory Items; the introduction of strong demolition controls and appropriate rules; and guidelines for the renovation and development of these buildings. This has resulted in sensitive and historically appropriate renovation of many properties within Kensington. Not only have the value of these properties increased significantly but the value of all properties in Kensington have increased significantly. Without the protections afforded by Contributory Item status Kensington will gradually lose these buildings that contribute to the historic character and eventually property values will fall.

Our Association supports the submissions from the City of Norwood Payneham & St Peters and from the Community Alliance South Australia, of which our Association is a member.

In conclusion neither the draft Planning & Design Code nor the e-Planning system are fit for purpose without very substantial amendment. They should not be implemented before:

- A thorough revision taking into account the concerns of Local Government and the Community.
- The transition and consolidation of the existing Council development plans into the Code on a “like for like” basis, in particular for Historic Conservation Zones.
- The inclusion and identification of all previously identified places of heritage significance including Contributory Items.
- The removal of six storey developments from **Business Neighbourhood Zones, Suburban Business & Innovation Zones** and **Community Facilities Zones**.
- A final round of community consultation, in compliance with the Community Engagement Charter, before the Code becomes operational.

Yours faithfully,



**Peter Duffy**  
**President** ( [REDACTED] )



**Andrew Dyson**  
**Secretary** ( [REDACTED] )

cc The Premier, Hon Steven Marshall  
Deputy Premier, Hon Vickie Chapman  
Minister for Planning, Hon Stephan Knoll  
Minister for Environment & Water, Hon David Speirs  
Hon Mark Parnell, MLC  
City of Norwood, Payneham & St Peters  
Community Alliance South Australia  
National Trust of South Australia  
History Trust of South Australia  
South Australian Heritage Council  
Australian Civic Trust