

26<sup>th</sup> February 2020

Department of Planning, Transport and Infrastructure  
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Adelaide SA 5001

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Dear Sir / Madam

## **DRAFT PLANNING AND DESIGN CODE: PHASE 3 (URBAN AREAS)**

We provide this submission to the Department of Planning, Transport and Infrastructure in response to the Phase Three of the Draft Planning and Design Code for Urban Areas.

As citizens we have many concerns with the proposed Code including - the size of the draft code and accompanying documentation, the inaccessible online tool meant to assist people to identify policy, the numerous known errors at time of release, and the late December release of Heritage Area Statements, Update Report and Updated Tables over the Christmas/New Year period, at a time when bushfires and virus concerns occupied peoples minds. We consider the whole process has had many flaws, alienating a large section of the community.

As experienced heritage practitioners, we are specifically concerned with the proposed Historic Area Statements and the removal the schedules of Contributory Items in Historic Conservation Zones (to be called Historic Areas).

## **1 HISTORIC AREA STATEMENTS (HAS) FOR PHASE 3**

### **Limited time allowed for responses**

We believe that insufficient time has been allowed for feedback on the proposed Historic Area Statements. Despite promises that they would be issued on Thursday 19<sup>th</sup> December, these statements were finally released at 10 to Midnight on 22<sup>nd</sup> December, at a time when the majority of the professional working population concerned with this issue had gone on leave. This has left insufficient time to process and respond to the proposed form and content of the HASs. This is clearly rushed policy making on the run in a time frame which is not workable for effective consultation and feedback. The now proposed extension of the Code introduction by 3 months **does not include** more time to make submissions, meaning consultation and response on these important policy issues is rushed and pressured.

### **Historic Area Statements**

In the *Draft Planning and Design Code - Historic Area Statement, Proposals to Amend Phase 3 (Urban Areas) Planning and Design Code Amendment – Historic Area Statements*, the Historic Area Statements (HAS) have an introduction which outlines

*“In the new planning system all historic conservation zones (over 140 are currently in development plans) and the like, plus the 11,810 contributory items, will transition into the new Planning and Design Code under a new Historic Area Overlay.” .....*

*“Historic area statements are proposed to be introduced into the Code to help clearly identify and articulate the key elements of historic importance in a particular area.”*

Generic guidelines for Historic Areas Overlays have been prepared and in the draft Code for Phase 3, example Historic Area Statements have been prepared. These provide a prototype and template for these statements across South Australia within the new Code.

As for the Phase 2 statements, previously commented upon by us at the end of November 2019, these draft statements for each Historic Area **are extremely deficient in detail** and of very little use as a planning tool.

We are concerned for the following reasons:

- **The generic introduction to each Historic Area makes no reference to the specific area being described**, so that no context is set for the historic background, development pattern or heritage values of the particular Historic Area. This information is readily available in the heritage surveys undertaken (and in some of the existing Development Plan provisions) for Local Government Areas, and available on the internet. It is clear that no reference has been made to these documents, which were prepared using considerable financial resources (state and local government funding) and which served the basis for local councils to prepare their heritage provisions in existing Development Plans.

The proposed Historic Area Statements for each overlay are not sufficient in their current proposed form. They are generic, minimal statements, which are generally inaccurate, incomplete and of no assistance to local government planners in the development assessment process. The fact that DPTI/ government has stated the following is of no comfort:

*“The new system ... allows for a range of new tools which we don’t currently have, for example, the requirement for a heritage assessment to be provided, and consideration of streetscape/contextual analysis and optional design review for replacement dwellings where demolition is assessed to be appropriate”.*

This requirement adds additional costs and uncertainty for any applicant – who will do this, what will it cost, and what consistency of advice can be given by different consultants? And clearly applicants will pay for the advice they want and need to assist with their DA process, not submit objective clear heritage advice. The lack of inclusion of this essential (and available) information in the Historic Statements will create an uncertain and confusing planning framework, fraught with interpretational inconsistencies and additional conflict and costs.

- **The maps provided are too basic and without essential detail** including street layouts/subdivision patterns, already listed local and state heritage places and other available and important information. There is inconsistency in mapping style of the proposed Historic Areas and no keys provided to interpret the maps (eg 5 colours with no key to indicate what the colours mean). The current Development Plan mapping systems are more consistent and clearer and should and could be adapted and used to replace the minimal, inadequate new mapping provided.

- **The function of the table** in the Historic Area Statements is not immediately obvious and possibly more confusing than helpful. This needs to be clarified for it to make sense. The Information provided in the tables is inconsistent across the Historic Areas, inadequate and

would provide no basis against which to measure development applications. Some of the information comes from existing Development Plan provisions, but is selective and *ad hoc*. These tables, as proposed, **do not** “*identify and articulate the key elements of historic importance in a particular area*” as claimed by the Planning Commission.

In summary, the Historic Statements in their current forms would **provide no assistance for the development assessment process**. The information provided is totally inadequate and does not provide sufficient detail to assist with assessing the relative merits of any proposed development. No development objectives or local policies are included resulting in very minimal and vague guidance for new development. This will leave local government planners with little “teeth” to prevent demolition and/or require good quality design within an Historic Area. In their current form, development may be approved which would destroy the historic values of a Historic Area Overlay, and the significant qualities of the sense of place of each will be irrevocably lost.

## Specific Examples for the Urban Areas

### Strathalbyn

On careful consideration it is clear that the attributes table for Strathalbyn is entirely inadequate. For example, under eras and themes Strathalbyn is described as an 1860s settlement. In fact, a great deal of Strathalbyn is not that period and comprises later areas of development which also have historic values. There is a detailed heritage survey of the town which clearly outlines this historic environment, and it appears that this information has not been referred to in the preparation of the Historic Statement for Strathalbyn. [see *Heritage Survey of the Township of Strathalbyn, Volumes One & Two, 2003*]

### Middleton

In the proposed planning scheme a very small Historic Area overlay is proposed (it should be noted that a larger area was recommended in the 2012 Heritage Review not allowed by Planning SA.) The area described is the Mill precinct which has a three storey structure and two residences. However the table says that the important attribute of Middleton is “single storey dwellings”. This would imply that the State Heritage Registered Mill building, a major historic building and the visual focus of the Historic Area has no relevance in the physical environment of the Historic Area. It can only be assumed that no reference was made to the very detailed *Heritage Review of the South Coast Towns for Alexandrina Council, 2012*.

### The Avenues, NPSP

In the case of the Historic Area Statement for the Avenues, only very limited sections of the existing Development Plan provisions have been carried across. What is lacking is all of the carefully considered detailed policies which guide new development in the existing Development Plan. In their place is a very general (and deficient) statement of what exists. The extremely general and almost generic information will not provide planners with any helpful guidance about how to manage development and undertake assessments appropriate to the Avenues Historic Area.

A disturbing anomaly is that the Historic Area Statement notes that building height is predominantly single storey in the Historic Area, yet building height limits set elsewhere in the new Code say 2 storeys is permissible. In the current HCZ provisions, a second storey is allowed in The Avenues if it is well set back and concealed in the roof space. This fine grained approach to heritage planning has now been removed across the whole of NorwoodPaynehamStPeters. We consider an extremely retrograde step and which will result in the degradation of the careful managed historic environment of the Council area.

In addition, we would also like to point out one of a number of specific errors of transition of existing controls in the NPSP case. Land division controls for the residential character zone in Norwood Payneham and St Peters have been removed. This is of particular concern for Ninth Avenue, Seventh Ave, (between Stephen Terrace and Harrow Road), and Seventh Avenue, Joslin. We request confirmation that these controls will be reinserted in the code.

**[Please respond to this specific request as previously requested in our earlier feedback.]**

## 2 REMOVAL OF SCHEDULES OF CONTRIBUTORY ITEMS

We continue to be very concerned on the matter of the removal of schedules of Contributory Items from the information included on Historic Areas (which were formerly Historic Conservation Zones). We therefore reiterate the information we provided in our previous submission related to Phase 2 (Rural Areas).

Since 2001, many councils have undertaken Heritage DPAs, seeking and ultimately obtaining approval for the inclusion of Local Heritage Places, Historic Conservation Zones with Contributory Items, based on the State Government's recommended model policy for the retention of these buildings within conservation areas. Sign-off on various Councils' listing and mapping of Contributory Items has been authorised by successive Planning Ministers in accordance with the Governments *Heritage Planning Bulletin (2001)* and the Planning Department's *South Australian Planning Policy Library*. Many historic suburbs within our city are among the most desirable places to live in Adelaide, evidenced by high property values and significant investment in renovations and extensions to these buildings. The property owners that live in these suburbs value the historic conservation rules that have preserved these heritage conservation outcomes.

DPTI documents state that no contributory items have been scheduled since 2012. This is not because there was not the desire by Local Councils, but because **this process was refused by Planning SA. Local Government Councils and their communities value the clarity and certainty that such a schedule provides.** We believe that the opinions expressed in the many submissions, petitions and public meetings which have been held during the lead up to the Phases 2 and 3 reinforce this.

We note that the draft Code proposes to remove the schedules and maps of the current contributory items and weaken associated policy controls. This will profoundly affect the Phase 3 Historic Areas and will negate the significant investment made in Historic (Conservation) Zones by those Councils who currently use these policy provisions. The State Planning Commission's judgement that the listing process for Contributory Items has lacked rigour is misinformed. Councils concerned have all prepared Heritage Plan Amendment Reports generally with a high standard of rigour. It is agreed that some vary in standard and detail, but this does not justify the proposed action to remove the Contributory Item category and remove an important part of the planning system that has provided protection and conservation of valued places within historic areas. Rather, a proactive role of Planning SA could have been to ensure consistency of how these schedules were prepared but is against the wishes of the Property Sector who have specifically requested the removal of these schedules - to assist with lessening protection and making demolition and therefore new development easier.

The Commission has argued that the removal of Contributory Items will provide property owners and developers with greater certainty. This is considered a false assumption. The current schedule of places provides certainty as to which places are recommended for retention. This schedule is proposed to be replaced with poorly worded, unclear policies with an *ad hoc*, costly and delayed assessment process which will lead to poor development outcomes.

In order to retain the identified and documented consistent historic environment in Historic Areas, we believe that existing Contributory Items schedules should be retained as part of Historic area statements and appropriate legislative criteria for the listing of new Contributory Items should be developed as part of the new planning system. This would underpin their previously recognised importance in the current planning system.

We believe Contributory Items could be retained and transitioned over to the *Planning and Design Code* in a clearly identified database (e.g. spatially identified on a map showing the newly termed Historic Areas boundaries or by address) and the existing demolition protections under the current system be transitioned across to the new planning system.

It should be noted that the term “contributory items” is used both in NSW and Victorian Planning systems, with councils having the ability to refer to these schedules in the development assessment process (eg the Woollahra (NSW) Development Control Plan, lists and maps CIs as does the City of Yarra (Vic) planning scheme). Neither requires legislative definitions for them to be effective in their intent – ie the protection of places with heritage character. In NSW the validity of a Contributory Item as an essential component of the historic character of a Conservation Area was proven in the Court Decision *Helou v Strathfield Municipal Council* [2006] <sup>1</sup>and confirmed as follows:

*Planning Principle 43. Most Local Environmental Plans include a heritage provision that requires a proposal's impact on the heritage significance of an item or conservation area to be assessed. This planning principle applies only to contributory items in a conservation area, not to listed heritage items.*

*Planning Principle 44 A contributory item in a conservation area is a building that is not individually listed as a heritage item, but by virtue of age, scale, materials, details, design style or intactness is consistent with the conservation area, and therefore reinforces its heritage significance.*

The Planning Commission has refused to respond to any alternative position – and keeps to its position that “In the new planning system, Contributory Items will no longer exist. This is because there is no legislative criteria for them”

Source - *Community Guide To Heritage & Character In The New Planning System* May 2019  
[https://www.saplanningportal.sa.gov.au/\\_data/assets/pdf\\_file/0006/545748/Community\\_guide\\_to\\_heritage\\_and\\_character\\_in\\_the\\_new\\_planning\\_system.pdf](https://www.saplanningportal.sa.gov.au/_data/assets/pdf_file/0006/545748/Community_guide_to_heritage_and_character_in_the_new_planning_system.pdf)

Alternative community and local government submissions have been ignored. Public meetings, and previous submissions have been ignored, with a planning expert being brought to South Australia at community expense to explain the NSW process (at the Norwood September public meeting attended by 550 people). No notice has been taken of any alternative and constructive proposals which provide clarity and certainty.

### **3 EXPERT PANEL REPORT AND ALTERNATIVE LEGAL OPINION**

The Planning Minister’s “independent review of heritage and character policies” (released late December) was by the original expert panel (how is this independent??) who reviewed their own advice on Contributory Items but stated they were “not in a position to review policies..(only policy framework), ...because of limited ... time constraints, and ... no opportunity to consult” (page 6 of report). In other words, the Panel had ruled that CIs were not statutory, but now

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<sup>1</sup> <https://www.caselaw.nsw.gov.au/decision/549f84273004262463abec2e> *Helou v Strathfield Municipal*

provides ambiguity rather than certainty on this issue. The Panel also say they have had no ability to rule on policy, because of insufficient time and no consultation.

**An alternative legal opinion** has been provided by the Norwood Payneham St Peters Council which validates the provision of schedules of Contributory Items (without the need to legislate them) and this was forwarded to Government on 16th December. (Norman Waterhouse lawyers opinion, prepared by Gavin Lleydon Planning Lawyer)

The opinion states:

“The identification of these special places as Contributory Items **gives clarity, certainty and transparency to owners and the public alike**. This could be contrasted to the alternative approach proposed in the Code whereby demolition policy will impose an evidentiary burden on an applicant seeking demolition to prepare a Historic Area Impact Statement that demonstrates that their place does not contribute to the historic character of the area. Such an **outcome gives rise to ambiguity, rather than certainty, and a process that is potentially disproportionately time consuming and costly.**” (authors emphasis)

**This alternative legal opinion has been ignored by Government.** How can the community have any trust in Government when other expert advice is not considered and no meaningful discussions have been held with experienced professionals and council staff on this important policy matter?

#### **4 TIME FRAME**

We accept that the intent of some consistent policy across the State is sensible, but we believe that no such effective or consistent policy to provide protection for the built heritage of the proposed Historic Area Overlays is outlined in the draft Code, and that insufficient time has been allocated to the preparation of useful Historic Area Statements.

We are also particularly concerned that the time frame for implementation of each Phase is particularly short and provides insufficient time for meaningful consultation. The practical implications of the proposed policy framework have not been sufficiently considered or tested in practice by the Commission. The collective and considerable opposition to the proposed Code “reforms” by councils, community groups, property developers and owners of Contributory Items should not be dismissed but seriously addressed, given what is at stake if these changes proceed.

In addition, as detailed by many individuals, institutions, and organisations, the Code as proposed still contains major errors and unclear elements, and requires considerable editing and change. The revised release, approximately 3 months later than 1<sup>st</sup> July for the Code as a whole, will not allow sufficient consultation and revision to effect the many changes required to the Code.

We strongly suggest that the Government needs to **listen to the many responses** which outline genuine concerns over the **contents** of the Code.

**The 3 month time extension is not sufficient. It is not only** to “ facilitate more time for testing and potentially more enhancements to be made to the eplanning system” – as claimed by the Minister (Feb 7th.) It **must** be a genuine response by the Planning Commission to correct the many errors, develop effective code policies which are now lacking, and make the new planning system fit for purpose, which it currently is not.

## **5. WHAT SHOULD HAPPEN NEXT - THE WAY FORWARD**

**There must be an opportunity to review further revisions to the Code in a collaborative manner prior to** legally “turning on” the Code. Without further Local Government and community input, the framework of the Community Engagement Charter which requires an “informed and transparent” process is undertaken, is breached. This can be achieved through the implementation of the following steps.

**1 - Provide an honest and thorough assessment and summary of the 28<sup>th</sup> February 2020 submissions** and if these submissions do not support the introduction of the Code as it stands, halt the process, listen, and take further time to get it right. The proposed 3 months extension is insufficient to allow for any further consultation.

**2 - Provide a framework for more local policy input** – for example via sub zones, allowing local government to include existing Development Plan Provisions within the new Code (these are now removed)

**3 - Test the Eplanning platform to ensure that it works** prior to its implementation. Currently a “leap of faith” is required, and there is too much at risk if this does not function adequately. There does not seem to be any genuine commitment to test this environment across a range of areas, including stakeholder testing.

**4 - Transition the existing Contributory Item schedules across into proposed sub zones** through provisions which confirm their legality as a policy tool. Consider the alternative legal opinion provided to government regarding Contributory Items, look at interstate examples (where they exist as a successful management tool) and retain schedules of Contributory items as effective heritage policy tools. Use sub zone provisions if required to achieve this objective.

**5 - Undertake genuine and wide-ranging consultation directly with Local Government staff and a range of experienced heritage experts about the proposed heritage provisions in the new Code.**

Yours sincerely



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