
From: Parnell [REDACTED]
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To: DPTI:Planning Reform Submissions
Subject: Planning and Design Code Submission

Michael Lennon,
Presiding Member,
State Planning Commission
C/- Dept of Planning Transport and Infrastructure

28th February 2020

Dear Michael,

I wish to make a few brief points in relation to the Phase 3 Planning and Design Code consultation. I will focus mainly on the process, because I know that local councils have done a good job going through the Code as it applies to their areas and have pointed out in detail many of the individual policy issues that relate to their communities.

Consultation

First, I am pleased that the Minister has accepted the invitation to postpone the implementation date beyond 1st July 2020. He has re-introduced into the House of Assembly the Greens' Bill which passed the Legislative Council last year.

Secondly, I think the Commission should take advantage of this extension to ensure that the final, corrected version of the Code is made available to the public for a final round of consultation before it comes into effect. I note that this has been requested in many submissions. This is important for both the general community and also for local Councils. For example, the City of Unley submission says:

The State Government is commended for recently announcing a delay to the implementation of the Code. The Commission is still encouraged to provide a comprehensive response to submissions, issue a final completed draft of the Code and afford due period for road testing and proofing before final live implementation.

The principle behind this request is that it is in everybody's interest to get the Code right before it goes live. For some stakeholders, it will be technical issues and for the community and local Government, it will be looking for anomalies, inconsistencies and unintended consequences. The situation we want to avoid is inappropriate development being approved or appropriate development being denied due to errors in the Code. The Code is

a legal document that can be relied on in Court. We do not want to see litigation where the legal argument is “I know that’s what it says, but that’s a mistake”.

My personal favourite “mistake” is in the Bowden Brompton area where the Code allows 8 storey buildings provided they are no more than 4 metres high! Nobody is suggesting that it is deliberate considered policy. It is clearly a mistake, but which is correct? Storeys or metres?

The Commission has already admitted to errors and promised to fix them. However, what the community expects is that they actually are fixed and we can see that they are fixed before the Code becomes law. Last year, I raised the issue of the zoning of National Parks. The Commission has agreed that they should all be zoned for “Conservation”, yet this still has not been fixed. The Phase 1 Outback Code went live 8 months ago and the problem still remains. Whilst this may not have resulted in any inappropriate development approvals to date, an 8-month “window” with incorrect planning policy could be a disaster in the Metropolitan area where most development applications are lodged. To put it bluntly, we want to see that you have fixed things BEFORE they become law and to have the ability to highlight any further issues before they become legal problems.

What the Commission should do is to make all of the corrections and changes “live” on the website before the commencement date and then provide the community with at least one month to provide final feedback. This would also be the period of “road testing and proofing” requested by Councils.

The Minister has suggested he needs a three month delay for Phase 3 with the start date pushed back to at least 1st October. There is no legal or practical reason why a final round of consultation isn’t possible before then. I note that my Bill to postpone the commencement of the Code gives complete control to the Minister to set a commencement date and that more than one postponement is allowed if that is required.

“Like for like”

One of the areas of most concern to the community has been where the translation of planning policy from the old system to the new has resulted in significant changes to planning policy. This flies in the face of the promise that the first iteration of the Code would be “like for like” and that any significant changes to policy would be in subsequent Code variations, where they could be properly debated in the community. As the Local Government Association points out:

“[Like for like] has not occurred, with many councils set to lose significant policy detail, as well as highly effective policy tools such as concept and structure plans. Much of this lost content has been developed and refined over many years and represents a significant investment of both public money and the time and expertise of councils and state government, as well as the goodwill of communities and stakeholders involved in the policy development process.”

In my submission, this goes to the heart of the credibility of the process. When “like for like” is promised, but what is delivered are significant variations to key matters such as minimum allotment sizes, building heights and other changes, this leads to suspicion. I’m often asked: “what other changes have they snuck through in these thousands of pages?” The truth is, we don’t know, because the Commission has not seen fit to highlight policy changes in any comprehensible manner.

State Planning Policies

It is hard see any clear connection between the State Planning Policies and the Code. The whole purpose of the SPPs was to inform the Code, so this is a major failure. In my submission, one of the jobs for the Commission over the next few months should be to identify how the Code supports each of the State Planning Policies. Where there is an inconsistency, the Code should be revised.

Heritage

There is now clearly documented evidence from a number of Councils that the level of protection offered to “Contributory items” under the current Development Plan will be weakened under the Code.

My submission is that Contributory items should continue to be individually listed in the Code and supported by appropriate policy that gives them the same level of protection they currently enjoy.

Technical issues

Finally, I would hope that when the zoning and overlay mapping is finished, that it will include the ability for users to directly access the policy for the various zones, sub-zones and overlays directly from the map. In other words, the map should include clickable links to policy from the drop down menu. At present, users need to go back and forth from the map to the Code with no direct link between the two. Also, the “ID” numbers for the various zones and overlays does not appear to be indexed or searchable in the Code. This should not be too hard to fix.

Yours faithfully,

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