

9th February 2016



Conservation
Council SA

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Dear Member of the Legislative Council,

Planning, Development and Infrastructure Bill

In October 2015 the attached submission was made by the Conservation Council of SA Inc. regarding the Planning Development and Infrastructure Bill 2015. It expressed a number of concerns on behalf of our members, including the Community Alliance, WACRA, National Trust of SA Inc and SOS with input from the Environmental Defenders Office (EDO) over aspects of the legislation.

I now write to convey the concerns of the Conservation Council's planning sub-committee who met last night to discuss crucial aspects of the Bill currently progressing through the Legislative Council.

Specifically, a number of amendments we understand are proposed. We understand that the debate in the Legislative Council is up to Clause 54 of 203 clauses in the Bill. The following list indicates a brief comment, concerning those under immediate consideration, which we hope you will consider when voting support or otherwise. We note that the Hon. Mark Parnell MP has indicated additional amendments, which we list with the letters MP, together with further matters for your attention.

Clause 44	Remove exclusion of development assessment from Community Engagement Charter and add triggers for community consultation on a development application.
Clauses 53 and 54	The proposed exemption of planning system information and charging for use of planning portal would seem to be seriously regressive steps if the government is interested in 'New Democracy' and effective public participation. Clearly this is a State Government initiative and managing and operating this system and associated costs is the responsibility of the State Government.
Clauses 61 – 62 -, Planning and Design	Consider requirement for Minister to consult regarding the content of the Code

Codes	before adoption
Clause 63	<p>The Expert Panel's recommendations for reform of heritage provisions have been excluded from the Bill which perpetuates the current Development Plan Amendment (DPA) process for listing local heritage. This is costly, lengthy and unresponsive to community heritage values. There is currently no provision for public nomination of a place for local listing and this would be rectified by inclusion of the LHP listing process in the Heritage Places Act. Clause 63 should be deleted and transitional provisions for local heritage should apply until the Expert Panel's recommendations can be implemented in a future Bill.</p>
Clause 56	<p>The proposed amendments to allow appropriate consideration of local variations, the environment and ecologically sustainable development" are essential if the planning system is to support triple-bottom-line outcomes and appropriate development outcomes in the future. These are not major departures from the Development Act 1993 system but rather strongly reflect the intent if not always the practices within the present system.</p>
Clause 59A State Planning Policies Inclusion of reference to Climate Change policy (MP))	<p>Strong support for policies tackling the impacts of climate change if urban and rural policies do not take into account the effects of rising temperatures and extreme weather events.</p> <p>Support the inclusion of a specific state planning policy detailing climate change impacts likely to occur and policies to guide decisions sea level rises, increased temperatures, increased bushfires etc.</p>
Clause 74 (MP)	<p>Support amendments to ensure that development approved under draft policy amendments with interim operation (now referred to as 'early commencement') does not pre-empt meaningful public input. Amendments to similar effect were supported in the Legislative Council in the recent past but have not been finalised pending this Bill. Members are urged to support the community in having an</p>

	effective voice and not support measures, such as 'early commencement' to facilitate projects', which breach public trust."
Clause 78 Council Development Panels(MP)	Support continued inclusion of elected members as a minority with majority of professional members. Suggest that membership should not require 'experience in planning and development' as local government membership of a DAP or similar body provides exposure and better understanding of planning processes and responsibilities.
Clause 79 Minister appointed Development Assessment Panels(MP)	Support amendment that imposes same obligations of the Minister as for local councils in appointing an 'accredited professional'. It is considered membership of the Planning Institute of Australia as an urban and regional planner should define the term 'accredited'. Likewise support the Minister being able to appoint elected councilors to Panels.
Clause 81 Assessment Managers (MP)	Support amendment that these people need to also be 'accredited' rather than 'persons of a prescribed class'
Clause 88	Clause 88 especially sub-section (2)(g) provides very little discretion regarding the applications that can be called in by the Minister for assessment by the State Planning Commission. Parnell amendment 63 (Dec 2015) is therefore supported.
Clause 104 Restricted development(MP)	Support for amendment that enables representors before the Planning Commission to have access to all relevant documents and given at least 5 days notice of the hearing – continuing the current DAC practice of publishing the full development application and accompanying documents including the planning officer's report
Clause 104 Restricted development	Support amendment that Planning Commission publish online details of any appeal lodged within 7 days of being notified by the appellant or the Court.
Clause 107 – EIS procedure(MP)	Supported
Clause 107 – EIS procedure (MP)	Supported
Clause 116 – Referrals- Portal publishing of comments by referral bodies (eg EPA, Coast Protection	Supported

Board, etc) (MP)	
Clause 118 Time within which decision must be made.	Not supported in its current wording. To place the onus on Councils to fund a legal challenge against the “deemed planning consent” will result in significant cost to ratepayers.
Clause 122 Variation of conditions – (MP)	Supported
Clause 193 – Joinder applications- amendment to require the Court to consider reasons why a person may want to join an appeal –and provides that a special interest or alternatively a person acting in the ‘public interest’ ought to be allowed to participate. (MP)	Supported
Amendment moved by John Darley, MP to exclude local government employees from membership to planning decision bodies, during employment and for 2 years after ceasing employment	Not supported for participation on DAPs and other planning bodies outside their area of employment.
Infrastructure issues	Support with further amendments provided by Minister particularly Amendments 65 and 69 (II). It is considered community involvement where existing should be provided for, given that they will be expected to contribute to the cost. This would establish a process that involves all stakeholders,
Clause 164—Contributions by constituent councils	Support deletion of clause 164 (1).If a council is forced to make a contribution, then the council will be forced to re-coup these costs from its ratepayers. This is yet another tax and one that is fundamentally unfair as those it is raised from have no ability to influence the quantum.

In conclusion, we urge consideration of

- the need to retain productive land close to transport links and markets in the longer term and suggest that land capability planning determine areas appropriate for exclusion from urban development.
- We support the Minister in advocating an urban expansion boundary for future food production and environmental biodiversity reasons.
- We are supportive of the matters raised over inclusion of local government in decision making and policy matter
- We are concerned that many aspects of the Bill not addressed by the current list of clauses should not be promulgated by subsequent regulation, unless clearly indicated in head legislation and subject to parliamentary scrutiny.
- Include new sub-sections in sections 101, 123 and 124 exempting development within the Adelaide Park Lands from being declared by the Minister to be impact-assessed development under s 101(1)(c), assessed as essential infrastructure under s 123, or assessed as Crown development under s 124. (This carries over exemptions from the present legislation.)

Thank you for meeting with representatives of member and affiliated groups if you have done so to date, and for your time in reading the above points. I acknowledge the time provided by Mark Parnell in bringing us up to date with the amendments. Should you have any questions, please contact Melissa Ballantyne of the EDO on 8359 2222.

Yours sincerely,



Craig Wilkins
Chief Executive

9th February 2016

Attachment

CCSA 2ND October 2015

Initial Analysis of the Planning, Development and Infrastructure Bill

Thank you for the opportunity to comment on this Bill. This response is based on an initial analysis only. We will be undertaking further work over the coming weeks.

So far, we have identified a large number of concerns. We believe the Bill will:

- Reduce community participation in the planning system significantly;
- Severely limit the ability of the community to know, or comment, on development;
- Increase the discretionary powers of the Planning Minister;
- Establish a Planning Commission that will not be independent and will not be able to acquire a sufficient level of expertise;
- Establish a framework that contains none of the detail on how the system will work and how it will be implemented.

The overall effect of the Bill is to shift control and ownership from community and local government towards the Planning Minister. If passed without amendment, there will be a significant exclusion of democratic involvement and transparency in the planning system.

A significant number of changes proposed are inconsistent with the recommendations of the Expert Panel on Planning Reform.

We are deeply concerned that such a fundamental change to our planning system has not been widely explained or debated, and urge the Parliament to amend the Bill to restore balance.

Key concerns include:

A. Objects and Principles

- The Bill's Objects do not recognize the community 'ownership' of the planning system, environmental sustainability, local heritage and integrational equality. Although these aspects are relegated to the 'Good Planning Principles', it is not enough to secure their proper implementation as the Courts tend to interpret an Act's provisions based on its Objects.
- Although the Principles of the Bill cover matters of environmental and social importance, they are likely to be neglected due to the reduction of the Objects to a narrow focus on economics and prosperity only.
- This remarkably narrow focus repudiates the universally recognised multi-objective, balanced, holistic approach to planning.

B. Distribution of Power

- As the Minister is solely responsible for preparing and maintaining the Planning and Design Code, the Bill establishes a top-down centralised policy regime that may not be context sensitive.
- The level of power consolidation in the Minister and Department suggested by the Bill contradicts the Expert Panel on Planning Reform recommendation.
- The Bill suggests considerable scope for skewing the composition of various decision-making bodies whether by the Minister or under the delegation by appointed officials or bodies as opposed to elected representatives.
- The Bill compromises the State Planning Commission's independence by making it the subject to general control and direction of the Minister. As a result:
 - o the Minister possesses power to decide on the type of enquires the Commission can undertake in view of the absence of the requirement to publically release the inquiry report.
 - o the Minister can obtain any information from the Commission and its staff and therefore can influence the flow of information.
 - o there is an absence of clear appointment procedures.
 - o there is no requirement in the Bill about the experience and qualification of the appointed Commission Members with regard to social, environment or science expertise. This might notably diminish the Commission's level of expertise.
- The absence of local heritage designation in combination with the narrow Object is likely to result in ad-hoc and anti-heritage decisions by the Minister, who is not confined by the rigors of the Bill.

C. Community Engagement Charter

- The Community Engagement Charter (CEC) is under the Minister's control in terms of its establishment, maintenance and content, but with no time frame for its development. At the moment, there is no regulation establishing the requirements for the CEC.
- The CEC participation in the preparation and amendment of the statutory instruments is vague and not enforceable, as well as will not cover the community participation in the development assessment process.
- On the one hand, any mandatory requirements in the CEC can be overridden by the Commission. On the other hand, the Minister can reject the CEC proposed by the Commission and unilaterally change the CEC.

D. Information access

- There is no clear understanding of the Planning Portal functioning provisions, namely funding availability, the type of planning information required to be placed on the Portal, and information accessibility. It is unclear, for example, how the confidentiality, privacy and security restrictions might influence the information placement and access on the Planning Portal.

E. Public Participation

- The state Planning Policies and Planning and Design Code are at risk of becoming top-down policy processes due to the shift in power away from the community and towards the Minister.
- The alteration of the definition of 'adjacent' (down from 60m to 40m, including a road, street, footpath, railway or thoroughfare or a watercourse or a reserve or other similar open space) will diminish participation options for residents and landlords.
- The Bill promotes a substantial contraction in public notification options due to Commission's right to dispense public notification, no requirements for public notification details and removal of the requirement for newspaper advertising.
- The Bill relegates the environmental impact assessment option with respect to public participation to an unenforceable Practice Direction, which in turn can be changed at the discretion of the Commission.
- Third parties do not have appeal rights to the impact assessment projects specified in the Regulations or declared by the Minister. Furthermore, if a third party seeks to bring enforcement action with regard to the Bill, they will meet significant barriers, including the requirement to provide security for costs, undertakings as to damages and risk paying significant compensation for loss or damage and costs if the third party is unsuccessful.
- The Bill provides the Minister with the power to use interim control to facilitate development projects, which limits community participation and control and promotes non-transparent and potentially corrupt behaviour within the planning system.

We are deeply concerned that there has been inadequate community consultation about the impacts of this Bill.

At the beginning of the Expert Panel on Planning Reform process, the community was promised there would be no surprises. Yet this Bill contains a number of important elements that were not discussed during the Expert Panel process, or at odds with the Expert Panel's recommendations.

Interstate, when similar wide-reaching planning law change has been proposed, there has been consultation at the White Paper stage. As this process step has been skipped, we would recommend a Parliamentary Committee review of the Bill before debate takes place.

I would be happy to explain our concerns in more detail.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Craig', followed by a horizontal flourish.

Craig Wilkins
Chief Executive