

**PRESENTATION TO ENVIRONMENT, RESOURCES AND
DEVELOPMENT COMMITTEE – 17 February 2020**

Thank you Mr Chairman and members of the committee for the opportunity to once again speak on behalf of the City of Norwood Payneham & St Peters on the Council's ongoing concerns about the transition of Contributory Items into the Planning and Design Code.

With me today is Mr Mario Barone PSM, the Council's Chief Executive Officer and Mr Carlos Buzzetti, Council's General Manager, Urban Planning and Environment.

Mr Chairman

When I last spoke before this Committee on 9 September 2019, I raised with you, my Council's concerns regarding the future status of Contributory Items, proposed for removal under the Code, a concern I know is shared by this Committee and reflected in its Heritage Inquiry recommendation (made in April 2019) calling for all Contributory Items to be transitioned into the first iteration of the Planning & Design Code.

This morning, I do not intend to repeat my previous statement, but rather recap on the key issues before providing you with an update of the current state of play on the issues at hand. Since I last presented to the Committee, the Planning and Design Code has been released for consultation and the Council has had the opportunity to review the broader implications of the Code and consider its significant impact on the changed planning rules for our community, a number of which I'd also like to outline to the Committee.

My Council has received widespread support from other Councils, which have Contributory Items in their respective Development Plans, Members of Parliament, owners of CIs, heritage groups and the community for the position put to this Committee last year, that existing Contributory Items be transitioned across into the Planning and Design Code.

I would like the Committee to note that the matters raised last year are still of grave concern for the City of Norwood Payneham & St Peters and in fact now, with the release of the draft Code, these concerns have been compounded by the dearth of detailed planning policies in the Historic Area Overlay and the inadequacy of Historic Area Statements to guide the assessment of development applications for properties located in these valued historic areas.

There has been much reliance in the Commission's argument that there is a loss of people's rights in applying a policy construct, such as listing dwellings as Contributory Items, that restricts their ability to demolish their building, subject to meeting the criteria contained in the existing policies, when such a policy construct and listing process for Contributory Items has no legal status under the Development Act nor the PDI Act. And yet, the State Planning Commission's proposed policy for the Historic Area Overlay, which states that buildings described in the Area Statement should not to be demolished, is of itself a policy construct impacting on peoples' rights.

It is clear that the key difference between the existing and new development assessment frameworks, is that the current system provides

clear guidance and transparency to house purchasers, applicants, property owners and the community with an upfront list of the buildings that clearly articulates which buildings are considered of value and currently listed as Contributory Items as opposed to the proposed system which does include policy to retain buildings of value, but creates significant ambiguity (and the potential for future litigation) by opening the assessment process to a case-by-case assessment of the heritage value of each building and whether or not it should be demolished, by a multitude of professional practitioners with the cost, uncertainty and delay ultimately borne by applicants and the community. This outcome is continually not being made public by the Commission as it does not suit their argument.

As this slide demonstrates, with the clarity of valued buildings marked on a published map, unless mitigating circumstances apply, provides a more certain framework for all parties. Why would anyone willingly want to create a system with greater ambiguity?

(Slide 1 – Contributory Items)

Once you have established if a building is of value, the key consideration is then the strength of the policy that determines whether the building can be demolished. My Council and indeed many other Councils, argues that the draft demolition policy test under the P&D Code is weaker than what current exists, which ultimately may make it easier for dwellings which ought to be retained, to be demolished under the new system.

(Slide 2 – Code demolition policy)

The aspects of the demolition policy in the draft Code that the Council remains concerned with are criteria (a) and (b) set out on the screen.

With respect to criteria (a), which refers to alteration to a front elevation, the Council holds significant concerns and uncertainty regarding how this may be interpreted and to what extent the Council can protect these buildings; as further grounds for lengthy dispute (and potential legal appeal) as part of an assessment.

With respect to criteria (b), which refers to a building façade and its contribution to the streetscape, it is unclear how this is intended to apply and Council is very concerned this becomes a test of a building's visibility, for example when a contributing building is obscured by high fencing or vegetation. High fencing and vegetation is not currently a justification for demolition of the dwelling, primarily because these are property features which are easily and regularly improved.

The Council is concerned that these two (2) parts of the demolition policy will undermine the Code's ability to protect and retain buildings of significance.

On 24 October 2019, the Chief Executive Officer and I met with Ms Anita Allen (DPTI) and Mr Michael Lennon, Chair of the State Planning Commission at the Norwood Town Hall. The purpose of the meeting was for Mr Lennon and Ms Allen to provide the Council with an introduction to the Commission's draft P & D Code and to discuss the Council's specific concerns.

At that meeting, the Chief Executive Office and I raised a number of matters in regards to the draft Code, which included the absence of current floodplain mapping and associated policy and the loss of comprehensive and contemporary planning policies (including that contained in the *Educational Establishments Development Plan Amendment* approved by the Minister only last year). I am sure this Committee is well aware of the full range of policy changes proposed by the Commission which will be significantly altering the framework for planning assessment and in turn creating a one-size-fits-all in South Australia.

In our conversation, the Commissioner admitted that the Code for the City of Norwood Payneham & St Peters had a number of gaps, errors and omissions and they were seeking the Council's assistance and advice to ensure that the final plans more accurately reflected the Council's current Development Plan content.

In the time since that meeting, the Council has had the opportunity to gain a better understanding of the full magnitude of the policies which will be lost and change brought about by the Code. These aspects are fully reflected in the Council's detailed submission on the Code, which concludes that the draft Code is not sufficiently resolved to provide an appropriate or comprehensive replacement for our Development Plan, evolved over decades with our community to recognise important local characteristics and reflect these in carefully-considered, nuanced local planning rules.

Mr Chairman, this morning I want to bring to this Committee's attention part of the conversation with the Commissioner and Ms Allen in respect to the Council's proposed solution for Contributory Items.

During our discussion, the Chief Executive Officer and I stated that we found it odd that the Commission appeared reluctant to address the very genuine concerns expressed by this Council, owners of Contributory Items, other Councils and the community generally, regarding the future of Contributory Items, which if listened to, would remove much of the angst that had built up over recent months.

I then stated that I found it difficult to understand why the Commission, in particular Mr Lennon, continues to publicly continue with the rhetoric that recognising Contributory Items in the new Planning and Design Code could not happen because they (Contributory Items) were a policy construct and had no legislative status, unlike State and Local Heritage Places.

I stated that given there was already a definition for Contributory Items, I could see no valid reason why a policy definition could not be easily translated into a workable legislative definition for the purpose of including it in a draft bill. The Chief Executive Officer and I also added that if there was still no appetite or indeed request or proposal, to allow the future addition of further Contributory Items, as has been the case since 2012, this would be of no concern as my Council and other Councils already have identified those buildings.

Mr Lennon responded by offering my Council the opportunity to prepare and present a workable legal definition on Contributory Items to the

Commission, giving his word that it would be given due consideration by the Commission.

Having accepted this invitation in good faith, the Council subsequently engaged Mr Gavin Leydon, of Norman Waterhouse Lawyers (a respected town planning lawyer with significant experience) to develop a legal definition of Contributory Items, an exercise that came at considerable financial cost to ratepayers, but one that my Council believes was worth the investment.

(Slide 3 – Norman Waterhouse definition)

This definition was then provided to Mr Lennon in a letter dated 12 December 2019 with a copy of Mr Leydon’s advice. I have provided a copy of that advice as a handout.

To the heart of the matter Mr Chairman and Committee Members, Mr Leydon advises of a simple, but effective definition, as:

“Buildings or structures that demonstrate the historic, economic or social themes and a characteristics as expressed in the Historic Area Statement.”

As advised to Mr Lennon, this definition can be readily included in the Planning and Design Code and in the Practice Guideline, enabling the transition of clear assessments tools, by reference to maps and lists of Contributory Items (for those Councils which current have identified Contributory Items). In this way, the significant investment that Local Government has made through heritage surveys and upfront identification

of these buildings can be maintained in planning policy, rather than transferring that cost and policy ambiguity to applicants.

In addition, this advice from our legal expert, Mr Leydon, confirms that the adoption of this definition would enable the transition of existing Contributory Items into the Planning and Design Code within the Historic Area Overlay.

Such an approach, together with effective demolition policy, would appropriately maintain the status quo and would not undermine the application of different demolition threshold assessment tests to Local Heritage Places and Contributory Items, which in turn should address the Commission's ongoing concerns that Contributory Items have, in some instances, been treated as 'de facto' Local Heritage Places.

Despite this invitation by Mr Lennon, on 20 November 2019, the Council received correspondence from Ms Allen rejecting the agreement that had been reached in respect to the offer for my Council to present the Commission with a legal definition of Contributory Items. This correspondence is a disturbing misrepresentation of the facts. The invitation from Mr Lennon was accepted in good faith and the legal advice commissioned by the Council was pursued and presented in the spirit of cooperation.

The retraction of the offer to contribute to a practical solution which recognises Contributory Items in the new Planning and Design Code, is extremely disappointing and one must question the motivation of this position. If the real obstacle is the Commission understanding that Contributory Items cannot be transitioned into the Planning and Design

Code then why seek to diffuse advice which clearly shows that it can be done. Perhaps Mr Chairman, they do not wish to see that advice.

The Council was also disappointed to learn of the outcomes of the rushed process for the reconvened Expert Panel in its review into *Heritage and Character in the Planning and Design Code*.

(Slide 4 –Expert Panel cover)

This process was compromised by the limitations of the Expert Panel's timeframe which did not allow them to undertake a review of the heritage and character policies in the draft Code, despite the fact that such a review was one of the core elements set out in the scope of the Expert Panel's review.

(Slide 5 –Expert Panel – Review Scope)

In this regard, not only was the Council's alternate legal opinion on Contributory Items not put before the Expert Panel, but the Panel noted it was not in a position to review the Code policies proposed by the Commission and instead, restricted itself to a review of the framework.

The Expert Panel noted that there is *“no substantive policy change wrought by proposed Overlays, but rather a transition of existing policies into the new structure”*

The Council has conducted a thorough review of the Code's policies for historic areas and compared this against the current Development Plan policy. Significant amounts of important policy guidance and local area

characteristics have not be carried across in the transition to the Code. In fact Mr Chairman there does not appear to be any plan to do so. For many Councils with comprehensive, detailed requirements for heritage and character areas, this stripping out of policy content, removes the nuanced, local policy requirements that are critical part of the current development assessment framework for these sensitive locations. Mr Chairman, this is not town planning – this is the simple pursuit of a strategy without first getting agreement on what is best for South Australia from an urban planning perspective.

(Slide 6 –Expert Panel – No Substantive Policy Change)

It is curious therefore that without a similar analysis of the policy detail, the Panel was able to conclude that there is “*no substantive policy change*”. How can it arrive at this conclusion?

This slide demonstrates a summary of the current policy requirements that have been removed from the Council’s Historic Conservation Zones.

(Slide 7 & 8 – Removed Zone Policy lists)

These important and detailed local policy characteristics have been stripped out and replaced with very few, generic policies under the Code, such as:

Design and architectural detailing of street facing buildings complement the prevailing characteristics in the historic area.

In response to community feedback that the Historic Area Overlay does not contain detailed policy that reflect all the nuanced, localised policy detail of these highly valued historic areas, the Commission outlined a process for preparing Historic Area Statements at the time the Phase 3 Code was released. The Historic Area Statements were subsequently published on the Planning Portal on 23 December, mid-way through the consultation process.

These Historic Area Statements remain a poor substitute for the loss of current Desired Character Statements and Councils have been advised these are not to contain policy, they must simply be list of the historic characteristics, not policy guidance as to how new development should be assessed. Our Council has been provided with 31 of these Area Statements, several contain only a few words such as *“residential”*, *“double and single-fronted cottages”* and *“bluestone and sandstone”*.

(Slide 9 – Historic Area Statement Kent Town 2)

Some of our Statements do not even reflect the correct land use. These simplistic statements do not provide the planner with the detailed design and siting considerations for these historic areas, detail which is readily available in current Development Plans.

(slide – Historic Area Statements – Removed Policy)

This slide illustrates the loss of detailed policy that has occurred in the Commission’s preparation of the Historic Area Statements. The highlighted yellow content shows the words which were sought or drafted by Councils (using only current policy) have been removed from the

Statements. This demonstrates a complete loss of local autonomy over the policy settings that have been set by Councils and desired by local communities.

The Code's omission of Contributory Items is not a standalone issue, it is compounded by many other deficiencies in the draft Code, including:

- the underlying zones anticipating a much broader range of land uses than current Development Plans;
- the Historic Area Overlay policies providing significantly less detailed policies;
- the brevity of Historic Area Statements which reflect only existing conditions and don't provide guidance for new development; and
- shorter timeframes for assessing development proposals with a risk of deemed consents.

In conclusion, Mr Chairman, collectively, these issues will result in poorer development outcomes on the ground, eroding the very historic character we have set out to protect. Does the community really understand what is happening?

The Council's position remains firm that Contributory Items should be retained and transitioned over to the Planning and Design Code in a clearly identified database (e.g. spatially identified on a map or by address) and that demolition protections afforded under the current system also be transitioned across to the new planning system. It has been proven that this can be achieved. However, sadly it is clear that there is no will to do so.

The intent of consistent policy across the State is supported, however this must not be at the cost of replacing almost all nuanced local planning policies with very few, generic policies under the Code, if we are serious about heritage protection and what makes the urban form of our suburbs different from that of other capital cities.

Once again, I thank you for the opportunity to again address you on this important aspect of the Planning and Design Code.

Mr Chairman, we'd welcome any questions the Committee may have for us.