

7 July 2020

Hon Stephan Knoll MP  
Minister for Planning  
Email: [ministerknoll@sa.gov.au](mailto:ministerknoll@sa.gov.au)

Dear Minister Knoll

**Re: Planning and Design Code- Proposed Demolition Controls and Historic Area Overlay**

I refer to the Community Engagement Report for Phase 2 of the Planning and Design Code released on 18 June, where it acknowledges that submissions pointed out weakened demolition controls for buildings within Historic Area Overlay (pg 44). It is of great concern to our members that the SA Planning Commission did not recommend changes to strengthen the proposed demolition controls within the Historic Area Overlay, or make meaningful improvements to overall policies such as Historic Area Statements.

In addition, the What We Have Heard Report for Phase 3 notes that many of the 1700 submissions express concern that demolition controls are indeed being weakened for historic buildings (especially Contributory Items) within the Historic Area Overlay despite promises made by members of Government and the State Planning Commission (Attachment One). Our members fear that since the policy was not changed for Phase 2, that the same outcome will be carried over to Phase 3, despite the strong public support for stronger demolition controls.

I enclose a paper which documents why the proposed demolition controls are weaker than what is contained in many current development plans (Attachment Two). You may be aware that Mr Gavin J Leydon, of Norman Waterhouse Lawyers, provided sound legal opinion to this effect to the City of Norwood, Payneham and St Peters which was included in the Council's submission to Phase 3.

Community Alliance SA would like to know if the Government will commit to strengthening demolition controls *and* Historic Area Statements, for both Phase 2 and Phase 3, in order to improve the protection of historic buildings in line with the various public promises. In addition, I would be most grateful to meet with you to discuss these questions in person. My fellow committee member, Ms Elizabeth Vines OAM will accompany me. Ms Vines is a Fellow of the Royal Australian Institute of Architects and was recently awarded the prestigious Sir James Irwin President's Medal by the Institute.

Please feel free to contact me for further information and I look forward to your reply.

Sincerely,

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cc Premier Steven Marshall MP, Members of Parliament, Members Legislative Council

Promise	Outcome
<p><b>Heritage Protection</b></p> <p><b>February 2020, Allan Holmes on ABC Radio</b>  <i>“protection under the new system will be <u>as good as it was under the old system</u> and there is enough evidence to show that; ... <u>heritage protection does not change, it’s give exactly the same protection that it was under the old system, we’re not changing anything.</u>”</i></p> <p><b>24 January 2020</b>  Minister Knoll on ABC Radio: <i>“<u>In the new system there is an overlay that provides the exact protection the people are looking for, it provides for demolition control, but more than that ...</u>”</i></p> <p><b>30 January 2020</b>  Michael Lennon, at Port Adelaide forum: <i>“<u>Heritage provisions are intended to strengthen heritage protection in this state. I believe in the importance of Heritage. I couldn’t look people in the eye if I didn’t believe that these provisions didn’t strengthen heritage protection</u>”</i></p> <p><b>February 2020, Commission Letter to property owners</b>  <i>“It is important to note that properties within a <u>Historic Area Overlay will continue to be protected, as they currently are in Historic Conservation zones, with rules and policies that control demolition</u>” (no mention of the new economic viability test)</i></p> <p><i>“<u>... there is no fundamental change to the planning policy intent for historic areas ...</u>”</i></p> <p><b>Mid 2019</b>  Michael Lennon, DPTI promotional video  <i>“<u>Assurances to everyone that existing heritage items will receive the same protection and more” .. ‘heritage and character are one of the most important aspects of the planning system ... need to tread carefully</u>”</i></p> <p><b>October 2019</b>  Michael Lennon on ABC Radio, <i>“... real protections that are offered are through policy and demolition controls and in the draft we have released today, <u>you will see very strong policy in these historic areas and very strong demolition controls</u>”.</i></p>	<p>Protection for heritage and historic areas is weakened under the new system. This has been confirmed by Norman Waterhouse Lawyers.</p> <p>There is new emphasis on economic viability, instead of structural condition, and the visibility of the property.</p> <p>Contributory Items will no longer be listed or recognised. Instead, they will be included in Historic Area Overlays. This removes certainty of protection for both owners and purchasers.</p> <p>Demolition controls in the draft Planning and Design Code have been significantly weakened for a great majority of Council areas.</p> <p>There is a clear move away from thematic analysis and replacement dwelling as demolition tests.</p> <p>Historic Area Statements are to guide replacement dwellings within Historic Area Overlays. These statements have been significantly watered down from previous development plans and contain little local content or guidelines for new dwellings. Councils consulted widely on previous development plans and much of this work has disappeared in the draft Code.</p> <p>The Historic Area Statements comprise a table of physical characteristics, no statement of historic values or context and no clear guidance for change in the form of a desired future character statement or similar. Description does not constitute policy for the future management and retention of heritage values.</p> <p>Reference to the Burra Charter guidelines for conservation has been omitted.</p> <p>Disregard of ERDC recommendations to keep Contributory Items</p>

<p><b>Sept 2019</b>  Planning Minister Stephan Knoll on ABC Radio, <u>“We need a policy that is bulletproof to deliver certainty”</u></p> <p><b>June 2019</b>  Michael Lennon in Adelaide Review advertorial: <u>“Let me reassure you that there is no truth to claims that all contributory items will lose their protection under the new planning system”</u></p> <p><b>May 2019</b>  Michael Lennon on ABC Radio, 6 May, “Those items (contributory items) <u>will have the same controls over demolition as they do now</u>”, and, “... there is <u>no change to the demolition control applying to those dwellings now compared to the future.</u> Everything in that sense will stay the same”.</p> <p><b>2019 Heritage and Character Fact Sheet</b> (not dated or numbered)  <i>“A Historic Area Overlay to protect all historic conservation zones and the like, <u>plus the 11,810 contributory items within them</u>”. And, <u>“These overlays proved strong protection for heritage”</u>”</i></p>	
<p><b>“Like for Like”?</b></p> <p><b><u>May 2019, Policy Statement from SA Planning Commission</u></b>  <u>“The first generation of the Code will largely be a consolidation of the intent of the current policy environment”.</u></p> <p><b><u>November 2019</u></b>  The main point I wanted our parliamentary representatives to take away was that this first generation of the Planning and Design Code <u>is largely about transitioning and consolidating existing contemporary policy from individual council development plans into the Code.</u>  (Planning Ahead Newsletter, Edition 27)</p> <p><b><u>South Australia’s Planning and Design Code – How Will it Work Technical Discussion Paper)</u></b>  <u>Substantial policy reform elements are not proposed to be included in the first generation of the Code (unless explicitly identified and progressed by the Commission through its Policy Discussion Papers), or where a council is leading a change to its area.</u></p>	<p>Substantial policy reform has occurred in the first draft of the Code.</p> <p>Reduced protection of Significant Trees in notification requirements.</p> <p>More overshadowing allowed by new buildings (45 degrees vs 30 degrees) No undertaking to revert to 30 degrees as requested by many councils.</p> <p>Loss of shopping district tiers.</p> <p>There are major changes in density, setbacks, land uses found in zones such as the General Residential Zone and city based policies mistakenly applied to all areas throughout South Australia. Development standards are deficient and performance based assessment processes have proved inadequate with respect to housing design in particular. The Code is part of a system that favours big developers, reduces public notification and significantly and ignores better planning outcomes. Power is concentrated at a state level in a planning system that sets different sets of rules for state planning bodies and favours developers.</p>

<p><b>2019 Heritage and Character Fact Sheet</b> (not dated or numbered)  <i>“Historic Area Statements will be introduced in the Code to help <u>clearly identify and articulate the key elements of historic importance in a particular area</u>”</i></p> <p><b>January 2020, Premier Steven Marshall, in a letter to constituent:</b>  <u>Policy within Council’s existing development plans is being used to develop Historic Area Statements</u> in order to assess development with the Historic Area Overlay, which captures existing contributory items”.</p> <p><b>14 May, 2020: Michael Lennon to the CASA General Meeting</b>  “I genuinely think an awful lot of this is about planning policy, it’s about planning systems, and roles and responsibilities and procedures and practices.”</p>	
<p><b>Subzones</b></p> <p><b>South Australia’s Planning and Design Code – How Will it Work - Technical Discussion Paper)</b></p> <p><i>Significant and important local characteristics can be recognised.</i></p> <p><i>Subzones can be created for areas where there is an exceptional unique difference from the zone to warrant the need for additional policy.</i></p> <p><i>Feedback from councils and stakeholders through the transition to the Code will be imperative to identify any important unique local characteristics that warrant application of a subzone.</i></p>	<p><b>Local policy content has not been retained in the Code.</b></p> <p>Sub zones are sparsely used in the Code. Most Councils had no prior collaboration as to any important local policy that was desired to be transitioned to the Planning and Design Code.</p> <p>Without Council input, sub-zones have been provided:</p> <ul style="list-style-type: none"> <li>• 37 Councils have 0 sub zones in draft P&amp;D Code</li> <li>• 20 Councils have 1 sub zone in draft P&amp; D Code</li> <li>• 10 Councils have 2 sub zones in draft P&amp; D Code</li> <li>• 2 Councils have 3 sub zones in draft P&amp; D Code</li> <li>• City of Adelaide has 13 sub zones</li> </ul>
<p><b>Regional Plans</b></p> <p><b>South Australia’s Planning and Design Code – How Will it Work Technical Discussion Paper</b></p> <p><i>Regional Plans will provide a long-term vision (15 to 30 years) for a region and include provisions for the integration of land-use, transport infrastructure and the public realm. The 30 Year Plan for Greater Adelaide- 2017 Update...will serve as the state’s Regional Plans are developed.</i></p>	<p>Regional plans have not been developed.</p> <p>Existing Concept Plans have been omitted.</p>

## **WHY DEMOLITION CONTROLS MAY BE WEAKENED IN THE PLANNING AND DESIGN CODE**

Contributory items are the “building blocks” for current Historic Conservation Zones. All of these zones have been transferred across to the proposed Planning and Design Code to become Historic Areas in an Overlay format. The Historic Area Overlay applies to a historic area in its entirety. However it is not proposed to include lists of Contributory Items as is done currently in Council development Plans. Whilst development plan policies vary from Council to Council many have adopted the South Australian Planning Policy Library (SAPPL) policy on demolition within Historic Conservation Zones (or a slight variation thereof). Demolition of Contributory items is generally only considered if the structure is proven to be unsound (by a suitably qualified expert) and in a state of disrepair. However proposed demolition policies in the Historic Area Overlay are weaker than currently. The differences between current controls and what is proposed is set out below:

### **Old system (SAPPL -most councils)**

**Buildings and structures should not be demolished in whole or in part, unless they are:**

- (a) structurally unsafe and/or unsound and cannot reasonably be rehabilitated**
- (b) Inconsistent with the desired character for the policy area**
- (c) Associated with a proposed development that supports the desired character for the policy area.**

### **Proposed Planning and Design Code**

**Buildings and structures that demonstrate the historic characteristics as expressed in the Historic Area Statement are not demolished, unless:**

- (a) The front elevation of the building has been substantially altered and cannot be reasonably, economically restored in a manner consistent with the building’s original style; or**
- (b) The building façade does not contribute to the historic character of the streetscape; or**
- (c) The structural integrity or condition of the building is beyond economic repair**

The proposed policies do not strike the right balance and are poorly worded. They are clearly at odds with the many statements by the State Planning Commission claiming that

there is no change to policy protection. It is true that the same policies will apply across the state but certainly there has been no complete transfer over of 'like for like' policy as repeatedly promised by the Commission.

Essentially the proposed policies place inappropriate emphasis on front elevations, visibility of building facades and contribution to streetscape character and economic viability. Policies across the 24 current council development plans with Contributory items are not limited in this way and neither should the proposed Code demolition policies. An undue focus on the façade as the measure of heritage value would risk the loss of historic homes in good condition simply because of superficial, out of character alterations. Similarly, an overemphasis on streetscape character opens up the possibility that a sound historic home could be demolished if it is obscured to the street by a high fence and/or vegetation.

The greater emphasis on economic viability of repair as proposed is out of kilter broadly with current demolition policies for CIs (or similar buildings). These typically refer whether the building can be 'economically rehabilitated' (in 3 development plans) or 'reasonably be rehabilitated' (in 17 Development Plans), the latter normally taking into consideration much more than just the cost of the repairs including consideration of the historic value of the building, the likelihood the issues will reoccur once repaired and the cause of the issue. The test regarding economic viability in relation to heritage places is open to wide interpretation. For example, a developer could argue that the owner of a CI cannot afford to repair the verandah so the home is economically unviable to retain. By inserting "or" after criteria (a) demolition could be approved simply on the narrow test of economic repair rather than as a result of carrying out a comprehensive review of the value of the building and the nature of the repairs needed.

The current proposal is similar to policy found in the Unley Council's Development Plan RESIDENTIAL STREETSCAPE (BUILT FORM) ZONE "character areas" where retention and refurbishment is sought without specific listing or map designation of such buildings. In these character areas over 50 historic homes in the last 5 years have been demolished. This compares to stronger policies and listing and map designation of Contributory Items in the Norwood Payneham St Peters Council development plan which have resulted in only about 10 Contributory items in the last 10 years been demolished.

The combination of failure to list Contributory items and weaker demolition controls has the potential to lead to delayed assessments and poor development outcomes. Any person wanting to demolish a property or make changes will have no clear guidance as to its significance or recommendation for retention or otherwise. This has the potential for substantially more costly litigation. Particularly at risk are historic buildings in poor condition or buildings with owners who allow the properties to fall into disrepair and then apply to demolish. Consultants will need to be employed to assess and argue the case on a case by case basis, adding cost and time to the whole process. Decisions will be made using weak and open ended planning policies with too great an emphasis on economic viability. Whilst there are some inconsistencies in Development Plans regarding identification processes,

listings and controls for Contributory items the inconsistencies should not give rise to overturning a system that has provided significant and valuable protection for many years.

If the Code is implemented in its current form, this would destroy and fragment Historic Conservation Zones. The 'long term focus principles' contained within the Principles of good planning in the new Planning Act include the requirement that policy frameworks 'be ecologically sound'. There is also an emphasis on sustainability. The Act requires that rules and standards must seek to protect the environment and the pursuit of ecologically sustainable development. The precautionary principle is a key component of sustainability. It would dictate that in a time pressured situation such as that confronting the Commission regarding the transfer of existing Contributory items across into the new Code, that transfer should include all existing items to enable a full review and assessment of their eligibility for continuing to hold such status to take place in a measured, expert environment with appropriate community input.

When the reconvened Expert Panel on Planning Reform was asked by the Planning Minister last year to "review the heritage and character policies proposed by the State Planning Commission for the draft Planning and Design Code" the panel concluded at page 6 of its December 2019 report that "the Panel is not in a position to review the policies proposed by the Commission..". Many of the Commission's statements over the last 12 months have promised no lessening of protection, for example in May 2019 State Planning Commission Chair Michael Lennon stated on ABC radio that "Contributory Items have the same controls over demolition as they do now" and "there is no change to the demolition control applying to those dwellings now compared to the future. Everything in that sense will stay the same." However this analysis clearly shows there are significant lessening of demolition controls proposed for the Historic Area Overlay covering Contributory Items.

**Community Alliance SA Inc**  
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