



Conservation
Council SA

Mr David Ridgway MLC
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Re Developing a Better South Australia – Discussion Paper

Dear Mr Ridgway

Please find attached a copy of Conservation Council SA's submission on the Developing a Better South Australia – Discussion Paper and our views on the future of the South Australian Planning System.

Thank you for the opportunity to comment on this matter.

Yours Sincerely

Tim Kelly

Chief Executive



Conservation Council SA

DEVELOPING A BETTER SOUTH AUSTRALIA

20 January 2012

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The Conservation Council of South Australia is South Australia's peak non-government community environment organisation. Formed in 1971, it is an umbrella group for around 50 of the state's diverse environment groups.

Conservation Council SA welcomes the opportunity to comment on the State Liberal Party consultation draft: **Developing a Better South Australia**. The Conservation Council SA has developed a comprehensive view of environment policy in "South Australia in a Changing Climate: A Blueprint for a Sustainable Future."¹ This document sets out, at a strategic level, policy positions in six key environmental areas, including planning and sustainability issues.

INTRODUCTION

CCSA believes that the South Australian planning system, implemented under the *Development Act 1993*, is failing to meet the needs and expectations of the South Australian community and requires substantial reform. It is now over 20 years since the last comprehensive review of planning in this State,² during which time its economic, social and environmental fabric has undergone significant change. We believe therefore that a fresh review of the planning system is both warranted and timely.

In addition to the invitation to provide this submission, at a recent meeting with the Premier, the Honourable Jay Weatherill MP, and the Minister for Sustainability, Environment and Conservation, the Honourable Paul Caica MP, the Conservation Council of SA was also invited to provide its views on the shortcomings of the current state planning system and possible future directions.

This submission builds on the viewpoints and recommendations contained in our major policy document, *South Australia in a Changing Climate: A Blueprint for a Sustainable Future*, published in September 2009. The submission reflects growing concerns that are currently being communicated to us and some of the ideas for improvement that have been raised. We therefore set out these matters in relatively brief form, as dot points, in order to provide a relatively concise overview rather than a detailed analysis or evaluation. We are committed to undertaking further investigations and campaign activity in this context over the next 12 months.

¹ (<http://www.conservation.sa.gov.au/blueprint.html>)

² The Planning and Development Review conducted in 2007-8, which prompted numerous amendments to the *Development Act* in 2009, was not, in our view, a comprehensive, strategic review of the planning system of the kind last undertaken through the Planning Review in 1989- 90; rather, it was essentially limited in its focus to "process" issues related to the operation of the development control aspects of the planning system with very limited public input.

THE DEVELOPMENT ACT AND REGULATIONS

- The title of the current planning legislation reflects a preoccupation with physical development and a lack of recognition of the underlying planning functions, and should be changed to the *Planning and Development Act* (ironically, as it originally was in the first comprehensive planning legislation adopted in South Australia by the Dunstan government in 1967);
- The objectives of the Act, as framed in section 3, need revision to afford greater weight to the goal of achieving ecological sustainability alongside economic and social development, and also to promote concepts such as the creation of a liveable city, a healthy living environment and the reduction of South Australia's ecological footprint;
- The practice of tabling amending Regulations which then take immediate effect, often just prior to lengthy Parliamentary breaks, denies the opportunity for disallowance before significant damage may have been caused; amending regulations should not be allowed to take effect until the period for disallowance has expired.

PLANNING DIRECTIONS AND SOUTH AUSTRALIA'S STRATEGIC PLAN

- The population growth target in South Australia's Strategic Plan (SASP), and reflected in the Planning Strategy/30 Year Plan, is inappropriate given the State's current ecological footprint and should be scrapped. Indeed the previous target of 2 million people by 2050 has recently been brought forward to 2027 in the revised 2011 SASP, based on growth projections from current pro growth policies. There is no longer any 2050 population target or vision of population that would underpin how South Australia would plan for a sustainable future;
- The recent review and update of South Australia's Strategic Plan included significant consultation on the vision and goals for the State. However, there was extremely limited consultation on the actual targets of the Plan. As a result, there is continued poor integration between various themes of the plan as well as no solution to deal with conflicting targets. In other cases targets do not adequately support the vision and goals of the SASP.
- The Planning system should properly tackle the contributing factors of the following formula which cause an increasing ecological footprint, and how they interact:

THE PLANNING STRATEGY/30 YEAR PLAN

- There is a lack of clear vision within the Planning Strategy with respect to the character of desired, future development, including in relation to;

- the urban growth boundary;
 - the means of increasing existing urban density;
 - the promotion of Transport Oriented Development (TOD), for example in existing or proposed rail corridors for increased and reliable public transport; and
 - ensuring adequate restraints on development in “hazard” areas such as the Mt Lofty ranges and near waterways prone to flooding;
- The Planning Strategy is unduly focussed on physical development at the expense of environmental and social objectives, and needs to address more fully and effectively matters such as:
 - The impacts of climate change and need for adaptation measures (e.g., re coastal development)
 - Future implications of peak oil;
 - Protection of biological diversity;
 - Protection of character and amenity of city, urban and rural landscapes, heritage worthy and heritage listed buildings.
 - Building codes require further revision to promote greater consideration of energy efficiency and water security in building design.

DEVELOPMENT PLANS

- Development Plans have evolved to become overly flexible and vague, thereby allowing for conflicting land-uses, and are in need of a substantial overhaul to afford them greater clarity;
- In the course of preparing Development Plan Amendments (DPA's), there is little or no modelling of potential adverse impacts of proposed development activities, which should be addressed by requiring strategic environmental assessment (SEA) of DPA's that are likely to have significant adverse environmental impacts;
- There appears to be an emerging trend of using DPA's for “spot rezoning”. This is symptomatic of inadequate consideration of future desired character and is not good planning. It is a practice that should be discouraged.

DEVELOPMENT CONTROLS

- There is a need to better control the use of “ambit” Development Applications (DA's), for example developers proposing 200% of density/height limits, with consequential renegotiation and settlement by councils and the DAC still well above the specified limits;
- Greater consideration is needed for existing residents where developments threaten solar access or privacy;
- The steady erosion of rights of notification and appeal for third parties has undermined public confidence in, and respect for, the planning system. It has encouraged unacceptable claims of “privacy” in the consideration

of DA's (for example, through commercial-in-confidence claims) which denies the community an appropriate and desirable level of detail regarding proposed developments. In some instances it has also facilitated undue influence on outcomes by developers and is a practice which should be reversed;

- Conservation Council SA supports reforms designed to streamline the system, provided at the same time there is also appropriate attention directed to critical environmental matters to reduce the State's ecological footprint including in area such as such as climate change, public transport, biodiversity protection, and water security. This can be partially addressed through better modelling of impacts prior to approving Development Plans.
- Decision making bodies should be required to provide;
 - a. Complete details of development applications, including photocopies (if necessary) free of charge upon request from a member of the public.
 - b. reasons for significant decisions e.g. major projects.
- The Development Assessment Commission should be required to make all its advices to the Planning Minister publicly available.

ENVIRONMENTAL IMPACT ASSESSMENT (MAJOR PROJECTS)

- The current EIA system is archaic, dating essentially from 1982 with modifications in the mid-1990's, and does not accord with evolving best practice or meet the basic standards that will likely be required in the near future by the Australian Government in order to achieve continued accreditation by way of a bilateral agreement under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth.)*;
- Deficiencies in the current EIA system include:
 - Lack of opportunity for public input on Guidelines for EIS's;
 - Inappropriate application of the process to minor development (e.g., supermarkets) in order to circumvent normal planning controls;
 - Lack of provision for effective community input and consultation, e.g., via a public hearing mechanism;
 - Lack of independent and objective scientific review of EIA documentation;
 - Absence of any provision for strategic environmental assessment of policies, plans etc.;
 - Existence of a "privative" clause preventing any judicial oversight of the operation of the major project process (almost certainly unconstitutional in light of the decision of the High Court in *Kirk v Industrial Commission of NSW* in 2010);
 - Reliance on vague and generalised statements in EIS documentation as binding legal conditions attached to project

authorisations. Aspirational statements and promises to develop plans and programs (post approval), are not segregated from the actual commitments and tangible performance standards upon which the approval decisions and conditions should be based; and ,

- Absence of any requirements for, or regular practice of, requiring post-project monitoring of impacts to check the accuracy of EIA impact predictions and to enforce remediation.
- The Minister should provide reasons for declaring major project status for a project.
- Any environmental impact assessment should be carried out by independent assessors funded by government and developer contributions
- Where a proposed development is likely to cause significant adverse impacts on listed threatened species and / or their habitat then require a statement of environmental effects to be prepared (based on NSW model) and referred for direction to the National Parks and Wildlife Council .

ADMINISTRATION OF THE PLANNING SYSTEM

- The Development Assessment Commission has under-performed and, as currently constituted, reflects vested interests in property development and does not have adequate representation of broader community interests; Conservation Council SA has not yet formed a final view as to whether it would be preferable to redefine the membership of the DAC, or to replace it with an independent professional body comprised of persons with planning expertise (as was the case many years ago with the former State Planning Authority), but is wary of any structure that does not effectively accommodate community viewpoints on planning matters;
- Conservation Council SA believes that Planning SA has developed a culture that is disproportionately concerned with facilitating physical development and that the organisation lacks the skills and willingness to genuinely embrace the challenge of infusing environmental sustainability into the planning system; we believe that an effective balancing of development and environmental concerns within Planning SA would be likely to be more effectively achieved were it to be located, as in the 1980's, within the environment portfolio and, accordingly, urge consideration of such a relocation.
- Development plan amendments should not operate until they have been through the Parliamentary scrutiny process.

OTHER MATTERS

- Conservation Council SA has under consideration a range of other matters pertaining to the operation of the planning system with respect to which it has yet to form a final view;
- One broad area under consideration relates to the financial/economic aspects of the planning system, and includes the following matters;
 - Failure to capture windfall gains from rezoning;
 - Failure to recognise the financial burdens of development on local government or future generations , e.g., in terms of infrastructure replacement or coastal protection;
 - Lack of compensation for residents and businesses adversely affected by zoning changes or development;
 - The lack of a clearly defined mechanism for making trade-offs between economic benefits, on the one hand, and environmental and social impacts on the other;
- Conservation Council SA is also concerned that there is presently a lack of rigour in relation to assessment and community consultation concerning the proposed disposal or commercialisation of public lands (e.g., the Adelaide Parklands, and road/rail corridors);

CONCLUSION

Conservation Council SA believes that it is time for a comprehensive public review and overhaul of all aspects of the State's planning system and urges consideration, as part of such a review, of the matters raised in this submission. In particular, we regard the following matters as critical outcomes from the proposed review:

- Revised objectives in a re-named *Planning and Development Act* to afford fuller recognition to the goal of environmental sustainability;
- Revision of the Planning Strategy/30 year Plan to better reflect and address key challenges such as climate change, peak oil and loss of biodiversity;
- Overhaul of current Development Plans to achieve greater clarity;
- Overhaul of current development control measures to streamline the system, whilst also better addressing environmental objectives and restoring greater opportunities for public notification and third party appeals;
- Complete redesign of the major projects EIA process;
- Review of the DAC, either to widen its membership to better reflect community interests, or to replace it with a professional, fully independent body; and
- Relocation of Planning SA to the environment portfolio.