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Re: Comments on the draft Planning and Design Code (primarily focused on Phase 2 councils (Rural Areas))

To whom it may concern,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to comment on the draft Planning and Design Code Phase 2 councils (Rural Areas, hereafter the Code).

As South Australia's primary nature conservation advocacy organisation, since 1962, NCSSA has been a strong advocate for the protection of native vegetation and biodiversity in South Australia with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities and the management of protected areas.

Please note that NCSSA is a State-based organisation and while, in the limited time available, we have given priority to a review of the content of Phase 2 of the Planning and Design Code, our comments are not restricted to Phase 2. Where we are specifically commenting on Phase 1 or 3, we have indicated this in the submission.

We concur with the State Planning Policy for Biodiversity that:

"the planning system has a fundamental role to play in conserving biodiversity at the landscapes scale to maintain the critical function it provides".

In light of this, NCSSA supports the following changes that are proposed in the Code:

- The proposed new Native Vegetation Overlay, which will provide a formal link between the land-use planning and native vegetation protection regimes. We believe this will lead to a more co-ordinated implementation of current legislative settings and awareness-raising regarding existing obligations, and
- Policies for encouraging more 'green infrastructure' in new developments, particularly by including requirements for trees in the Deemed-to-Satisfy assessment pathway. Encouraging the establishment of new tree canopy is critical for cooling our city in a warming climate, as well as providing a range of other benefits.

However, NCSSA is concerned that the Code as currently drafted will not deliver on the intent of the State Planning Policy for Biodiversity and therefore requires substantial amendment before finalisation. Specifically, we call for:

- The identification and protection of areas of high biodiversity values, as per the State Planning Policy for Biodiversity, including by the correct and complete identification of areas to be included in the

Conservation Zone (as well as the expansion of this zone to include additional areas recognised to be of conservation significance, as per our specific suggestions in this submission),

- Policies for the Conservation Zone which deliver appropriate levels of protection for biodiversity, including:

- Conservation Zone policy that delivers on the intent of *National Parks and Wildlife Act 1972* for areas declared as National Parks, Conservation Parks, Game Reserves, Recreation Parks and Regional Reserves, and Wilderness Protection Areas under the *Wilderness Protection Act 1992*.

This includes assessing any proposed tourist accommodation through the ‘restricted’ rather than ‘performance assessed’ pathway in these areas, and only where it is specifically authorised (rather than ‘contemplated’) by the relevant management plan, as well as the inclusion of a ‘public good’ test whenever tourist accommodation in a park or reserve is being assessed.

- Creating a specific “Conservation Zone - Wilderness Protection Subzone” that includes all of South Australia’s fourteen declared Wilderness Protection Areas, which mirrors the high level of protection from development afforded these areas under the *Wilderness Protection Act 1992*.
- A more fulsome implementation of the State Planning Policy for Biodiversity, specifically through:
 - The inclusion of references to biodiversity, or the full meaning and attributes of biodiversity, in key zones and overlays and the new general provisions (see specific suggestions in this submission),
 - The creation of an overlay that identifies the critical habitat of threatened species and ecological communities (i.e. a ‘Critical Habitat Overlay’ as described on page 17 of this submission)
 - Stronger policy in relation to renewable energy to ensure further clearance of native vegetation for solar farms is avoided, and
 - Stronger protection for regulated and significant trees, recognising that retaining existing tree canopy is not only important for biodiversity but is of highest priority given our changing climate.

NCSSA would also like to provide the feedback that as a small, community based organisation, providing comment on the Code has been extremely challenging. Not only is the Code difficult to review, in part because of its novel and complex structure, but it is apparent that the process of translating policies from the old system to the new has been limited by time and/or resource constraints, resulting in errors, omissions and anomalies. NCSSA therefore shares the view of a number of other community groups, including our peak body the Conservation Council of SA, that there is a case for delaying the implementation of the Code in order to correct errors, then peer review and test the new system prior to widespread implementation.

If you would like to clarify or discuss this submission please contact me on (08) 7127 4633 or via email at julia.peacock@ncssa.asn.au.

Yours sincerely,



Julia Peacock
Nature Advocate

Summary of NCSSA's specific suggested amendments

Summary of changes sought to Conservation Zone:

- Change the assessment of proposed Tourist Accommodation from the 'performance assessed' pathway to the 'restricted' pathway for the Conservation Zone,
- For assessing potential development in Conservation Zone areas declared under the *National Parks and Wildlife Act 1972* and *Wilderness Protection Act 1992* through the 'restricted' pathway, amend the wording from development 'contemplated' to 'specifically authorised' in the relevant plan, and apply a 'public good' test in the assessment process,
- Create a Wilderness Protection Subzone for the fourteen areas currently proclaimed under the *Wilderness Protection Act 1992* with policy that mirrors the provisions of that Act, i.e. that prohibits roads, tracks, buildings or structures except those that are specifically authorised by the plan of management,
- Expand the categories of tenures in the Conservation Zone to include Native Forest Reserves managed for conservation, Crown Land reserved for conservation and private reserves included in Australia's National Reserve System,
- Correctly include all relevant areas in the Conservation Zone for Phases 2 and 3 prior to finalisation,
- Correctly include all relevant areas in the Conservation Zone in the Phase 1 (Outback) area as a priority since this Phase is already operational.

Summary of changes sought to Rural Zone:

- Policy for Zone and/or relevant overlays ensures solar farms are sited and designed to avoid adverse impact on native vegetation specifically and biodiversity more generally.

Summary of changes sought to Native Vegetation Overlay (NVO):

- Amend Desired Outcome 1: to 'Protect, retain and restore areas of native vegetation, *habitat and the significant biodiversity associated with and present in areas of native vegetation*',
- Redraft PO 1.3 and DTS 1.3 to clarify and harmonise, ensuring that the purpose is to separate inappropriately intensive land uses from the boundaries of all native vegetation areas, not just those included in the State Significant Native Vegetation Overlay (SSNVO),
- Include a definition of 'minor' clearance that ensures an objective test is applicable for determining what is 'minor' clearance in PO2.1 for land division. Also, clarify why the term used in PO2.1 is 'minor' and not 'low level clearance' as used in SSNVO DTS / DPF 1.1.

Summary of changes sought to State Significant Native Vegetation Overlay (SSNVO):

- Reconsider name of SSNVO, suggest change to 'Reserves and Heritage Agreement Native Vegetation Overlay', since the overlay is spatially derived from tenure and administrative categories, not a biodiversity inventory of state significance,
- Include all reserves containing native vegetation, including Game Reserves, Recreation Parks and Regional Reserves, where applicable, as well as areas we suggest adding to the Conservation Zone ie. Native Forest Reserves, Crown Land dedicated as Conservation Reserve and private conservation areas in our national Reserve System.

Summary of change sought to better implement SSP4 - Biodiversity:

- Develop and implement a Critical Habitat Overlay that includes likely critical habitat for threatened species and ecological communities listed nationally and at the state level.

Summary of change sought to Regulated Tree Overlay:

- Redraft PO 1.2 to 'Regulated and significant trees should be preserved, particularly if they are indigenous to the locality, important habitat for native fauna, part of a wildlife corridor of a remnant area of native vegetation and/or are important to biodiversity of the local area' (noting that other changes may be suggested in our subsequent 'Phase 3' comments).

Summary of change sought to Infrastructure and Renewable Energy Facilities general provisions:

- Redraft DO 1 to add '*... is environmentally and culturally sensitive (particularly by avoiding native vegetation clearance and impacts on biodiversity more generally)...*'.

Summary of change sought to Land Division in Rural Areas:

- Redraft DO 1 to add 'biodiversity habitat' in (c).
- Redraft PO 1.1 to clarify expression 'prevailing context of the locality'.
- Redraft 9.2.3 to avoid inappropriate concentration of allotments alongside reserves established to conserve natural coastal environments, native vegetation, and other sensitive environments.

NCSSA comments on the draft Planning and Design Code (primarily focused on Phase 2 councils (Rural Areas) unless otherwise stated)

Comment on the implementation of the State Planning Policy for Biodiversity

NCSSA supports the State Planning Policy 4 – Biodiversity (SPP4), and the concept that this high-level policy should be enacted through the various mechanisms of the planning system. However, we believe that as currently drafted, the Code does not fully address the policy and therefore its intent will not be achieved.

The purpose of SPP 4 includes the following statement:

“The planning system has a fundamental role to play in conserving biodiversity at the landscapes scale to maintain the critical function it provides. The planning system must enable the recognition and protection of ecosystems that help safeguard the prosperity, vitality, sustainability and livability of our state. This includes mitigating the undesirable impacts of biodiversity loss; helping businesses and industry capture new and emerging market opportunities; and increasing our resilience to challenges such as climate change.

The planning system has a role to play in ensuring biodiversity and associated life-supporting functions are maintained and enhanced by:

- *identifying and protecting areas of high biodiversity value*
- *ensuring development occurs in appropriate locations, is sympathetically designed and is compatible with conservation values*
- *assessing the cumulative impact of development on biodiversity, including spatial, temporal and incremental impact*
- *recognising and maintaining modified landscapes where land use and conservation values co-exist in a mutually beneficial way*
- *ensuring people have access to natural places that contribute to their quality of life, health and wellbeing as well as providing areas for recreation.*

When environmental values are considered early in the planning process, development in environmentally sensitive areas can be avoided and cumulative impacts are able to be better managed.”

NCSSA is concerned that, as presently drafted, the Code does not adequately identify and protect areas of high biodiversity value (see later comments on the Conservation Zone), nor present any mechanisms to assess cumulative impact as yet. We do, however, acknowledge and support the proposed introduction of a Native Vegetation Overlay to the Code, which will be one mechanism for ensuring that environmental values are considered early in the planning process.

Within SPP4, Policy 4.1 states that the planning system should ‘minimise impacts of development on areas with recognised natural character and values, such as native vegetation and critical habitat so that critical life-supporting functions to our state can be maintained’, however, there is no mechanism currently proposed for identifying critical habitat (see later comments regarding a Critical Habitat Overlay).

Of key concern to NCSSA is that the Code does not contain an overarching biodiversity policy (eg. Desired Outcome) and omits important content from general policies that were included in Development Plans and the Planning Policy Library. These have been reduced and disaggregated to comply with a new (un-tested) format that relies heavily on overlays, which is particularly risky if the overlays are not accurately mapped. We therefore believe the Code would be strengthened with the re-instatement of an overarching policy relating to biodiversity that would be taken into account in any assessment process, such as those that appeared in the Natural Resources General Module (unlike SPP4, which doesn’t instruct the assessment of applications).

Particularly in the absence of an overarching biodiversity policy that instructs the assessment of applications, we are concerned that references to biodiversity, or the full meaning and attributes of biodiversity, are lacking in key zones and overlays and the new general provisions. For example, the Native Vegetation Overlay incompletely and inadequately addresses biodiversity conservation (see later comments regarding specific suggestions for improvement).

Not only is the draft Code difficult to review, in part because of its novel and complex structure, but it is apparent that the process of translating policies from the old system to the new has been limited by time and/or resource constraints, resulting in errors, omissions and anomalies. It is of concern that poorer outcomes could be 'cemented' in the new planning system if not eradicated by a more thorough process of review and translation at the outset.

NCSSA therefore shares the view of our peak body, the Conservation Council of SA, that there is a case for delaying the implementation of the Code in order to correct errors, then peer review and test the new system prior to widespread implementation. We understand a number of other groups are advocating this too given similar concerns about quality being sacrificed for speed in the translation.

Comments on Zones and Sub-zones

Conservation Zone

Code Framework: The concept of a Conservation Zone, with appropriate sub-zones, is supported. However, the Conservation Zone includes areas that are governed by other Acts (such as the *National Parks and Wildlife Act 1972* and the *Wilderness Protection Act 1992*) and therefore policy for the Conservation Zone (and sub-zones) should be consistent with those Acts.

Code Content:

Assignment to Assessment Pathways:

Table 2 assigns Tourist Accommodation¹ as Performance-assessed Development, instead of Restricted, where any of the following apply:

- Visitor Experience Subzone
- In an area proclaimed under the *National Parks and Wildlife Act 1972* and is contemplated by the relevant 'management plan' prepared in accordance with that Act.
- In an area proclaimed under the *Wilderness Protection Act 1992* and is contemplated by the relevant 'management plan' prepared in accordance with that Act.

The wording of dot points two and three is too open-ended, including the use of the term 'contemplated' which is open to varied and subjective interpretation. It also undermines the certainty the public are entitled to expect as regards the purpose, use and protection of reserves.

In *National Parks and Wildlife Act 1972* (NPW Act) parks or reserves where management plans envisage the development of tourist accommodation in limited locations, it is by no means clear that only a tourist development in a location earmarked for such development would be assigned as Performance-assessed Development, not Restricted. This could have the perverse effect of encouraging development located contrary to the intent of the plan, while avoiding effective public scrutiny and participation on tourist developments with potentially major implications for the protection of the natural and cultural environment and other objectives of park management.

Some management plans show campgrounds. As 'contemplated' and 'intent' are not the same thing, this could be taken to be grounds for arguing that tourist accommodation 'contemplated' as a campground is intended to accommodate visitors, and that may be taken as a cue by some that there may be scope to include permanent facilities (like tents, shelters and cabins etc.).

The majority of visitor experiences catered for by NPW Act parks and reserves, together with the maintenance of natural values, rely on judicious planning of visitor facilities based on a management plan developed and amended consultatively with the community and not undermined by 'by-pass' mechanisms without due regard to local context and the broader public interest in conservation.

NCSSA is therefore of the view that 'Restricted' is the appropriate default assessment path for Tourist Accommodation in the area proclaimed under the *National Parks and Wildlife Act 1972* and *Wilderness Act 1992*. Code amendments could make exemptions to the 'Restricted' status for sites for Tourist Accommodation specifically authorised in a management plan, but not outside the designated sites. Also, in the absence of an adopted management plan, a case could be made for exemption of adaptive re-use of buildings previously occupied as dwellings (like old homesteads, and lighthouse keeper's cottages).

Restricted is not the same as Prohibited. It simply offers a more exacting assessment path and opportunity for meaningful public participation, as befits an issue involving the potential degradation of a public asset.

¹ defined in the following way in the Land Use Definitions:

"Means premises in which temporary or short-term accommodation is provided to travellers on a commercial basis."

The NPW Act states its purpose as “An Act to provide for the establishment and management of reserves for public benefit and enjoyment”, and this purpose should be taken into account in assessing proposed Tourist Accommodation. The restriction of public access to any part of a park for commercial interests acts against the primary purpose of the Act, and therefore any development should also pass a ‘public good’ test. This would require the value of public use to be prioritized over other purposes and particularly restricted access for private interests or for generating income from the park.

The draft Code lacks context-sensitive policies to help guide tourist developments in parks and reserves. Management plans for parks and reserves are varied in how they approach integration of land use and management issues, but where they do so effectively are a better tool than the draft Code.

Code Spatial Application: The stated intent is supported, ie:

“all reserves proclaimed under the *National Parks and Wildlife Act 1972* and *Wilderness Protection Act 1992* (this includes National Parks, Conservation Parks, Recreation Parks, Game Reserves, Regional Reserves and Wilderness Protection Areas) applying a consistent policy framework to preserve and enhance the biodiversity value of these natural areas.” (p154, Guide to the Draft Planning and Design Code, Attachment 2: ‘Alignment of the Planning and Design Code with State Planning Policies’)

NCSSA is disappointed that the mapping on exhibition is yet to include many of these reserves in the Conservation Zone, however, we understand that this will occur before finalization of Phases 2 and 3. We urge the Conservation zoning of reserves in the Phase 1 area at the earliest possible opportunity since this Code is already in use.

NCSSA also believes the Conservation Zone should be expanded to include the following areas of high biodiversity value:

- Proclaimed Native Forest Reserves, some 16,000 hectares in total, located in the Mount Lofty Ranges and Limestone Coast regions. Similar in purpose to Conservation Parks under the National Parks and Wildlife Act, they contain a variety of vegetation types including native forest, woodland, grassy woodland, shrub land, grassland and wetland, and are managed by Forestry SA for conservation,
- Crown Land dedicated as Conservation Reserve under the *Crown Land Management Act 2009*, some 19,500 hectares², and
- private conservation areas included in Australia’s National Reserves System³.

Wilderness Protection Areas receive the highest level of protection offered in South Australia under the *Wilderness Protection Act 1992*⁴, which states:

‘The following activities are prohibited in wilderness protection areas and wilderness protection zones:

- (a) the grazing of stock and all other forms of primary production;
- (b) the construction or erection of roads, tracks, buildings or structures (except those that are specifically authorised by the plan of management of the wilderness protection area or zone).’

The Code should reflect this by including all fourteen of South Australia’s current Wilderness Protection Areas in a newly created ‘Conservation Zone - Wilderness Protection Subzone’, the policy for which should reflect the intent of prohibiting any form of development, except where it is specifically authorised by the plan of management. A

² As per the Department for Environment and Water’s “Area Statement: Summary of Protected Areas for South Australia” dated 13 March 2019

³ <https://www.environment.gov.au/system/files/pages/e311b83f-6fa1-4272-b1fd-cf268373bbbc/files/capad-2018-governance.pdf>

⁴ Department for Environment and Water ‘Wilderness Protection in South Australia’, available from <https://www.environment.sa.gov.au/our-places/wilderness-protection-areas>

new subzone is needed since policy governing the Conservation Zone, which covers a wide range of areas including areas currently used for farming, cannot provide the high level of protection that these areas should be afforded.

The dis-continuity of the Conservation Zone areas in the Flinders Ranges is questioned – discussed further in ‘Rural Zone’ below.

Summary of changes sought to Conservation Zone:

- Change the assessment of proposed Tourist Accommodation from the ‘performance assessed’ pathway to the ‘restricted’ pathway for the Conservation Zone,
- For assessing potential development in Conservation Zone areas declared under the *National Parks and Wildlife Act 1972* and *Wilderness Protection Act 1992* through the ‘restricted’ pathway, amend the wording from development ‘contemplated’ to ‘specifically authorised’ in the relevant plan, and apply a ‘public good’ test in the assessment process,
- Create a Wilderness Protection Subzone for the fourteen areas currently proclaimed under the *Wilderness Protection Act 1992* with policy that mirrors the provisions of that Act, i.e. that prohibits roads, tracks, buildings or structures except those that are specifically authorised by the plan of management,
- Expand the categories of tenures in the Conservation Zone to include Native Forest Reserves managed for conservation, Crown Land reserved for conservation and private reserves included in Australia’s National Reserve System,
- Correctly include all relevant areas in the Conservation Zone for Phases 2 and 3 prior to finalisation,
- Correctly include all relevant areas in the Conservation Zone in the Phase 1 (Outback) area as a priority since this Phase is already operational.

Rural Zone

This zone covers the majority of the area covered in Phase 2 and land in the agricultural regions of the State. As well as productive higher-rainfall land, it also includes land traditionally regarded as marginal for agriculture, areas of native vegetation, and some pastoral lands (eg. in the Flinders Ranges Council).

The main emphasis of the Rural Zone is primary production as reflected in the two Desired Outcomes.

Code Content: The new Zone’s content does not take into account the balance between development and conservation objectives aspired to in earlier rural zoning. This was supported by overarching general policies that may not apply now.

Also, given the wide range of agricultural land capability in the very widespread Rural Zone, and the potential for climate change and other factors to alter viability, the sustainability of the economic options available to landowners should be considered. For example, low-rainfall land that can no longer support viable agriculture as the main income source may be more appropriate for large solar farms, whereas the zone contemplates only small scale ones.

Specifically, solar farms should be sited and designed to avoid adverse impact on native vegetation. This is of particularly important since solar farms are currently the leading cause of native vegetation clearance approval in South Australia. It is therefore critical that the Code guide such development onto more appropriate sites, such as unviable agricultural land, rather than losing the biodiversity associated with native vegetation.

The Rural Zone extends north of Goyders Line into areas of the Southern Flinders Ranges, for example, and is not just confined to the largely cleared agricultural districts to the south.

Code Spatial Application: The zoning of areas of the Flinders Ranges Council contiguous with the Conservation Zone to the north and west of the Council area as Rural is questioned. Clearly the attributes that warrant inclusion of areas in a Conservation Zone do not stop at a Council boundary.

These Conservation Zone areas partly reflect a Class A Environmental Zone originally based on a 1970s landscape assessment and adopted in all relevant Development Plans.

Summary of changes sought to Rural Zone:

- Policy for Zone and/or relevant overlays ensures solar farms are sited and designed to avoid adverse impact on native vegetation specifically and biodiversity more generally.

Rural Living Zone

A detached dwelling is a Deemed-to-Satisfy Development in the Rural Living Zone except in listed overlays, including the Native Vegetation Overlay, which covers the whole of the Rural Living Zone.

This is appropriate, but means defining detached dwellings as Deemed-to-Satisfy Development in the Zone is somewhat misleading.

Rural Living Zones have been established over areas containing native vegetation of conservation value, so it is important that development in such zones is subject to the relevant provisions of the Native Vegetation Overlay.

Summary of supportive comment on Rural Living Zone:

- Important that rural living dwellings are subject to relevant provisions of Native Vegetation Overlay.

Comments on overlays

Native Vegetation Overlay (NVO)

Code Framework: The NVO has the potential to more effectively align land-use planning and native vegetation protection, and therefore NCSSA strongly supports its inclusion in the Code.

Unfortunately, key provisions do not emphasise biodiversity and habitat outcomes, diminishing its effectiveness as a framework for conserving biodiversity and awareness of that purpose. Further, there is a lack of specific 'biodiversity' spatial layers like critical habitat for significant species and ecological communities of higher conservation priority that are features of some interstate planning codes (see Queensland example⁵). There is also a potential need to consider biodiversity in assessment of developments well removed from stands of native vegetation (see specific suggestion for a Critical Habitat Overlay).

Code Content: As currently drafted, the assessment policies contain gaps and allow wide discretion to the planning authority to make value judgements without full and adequate consideration of significant biodiversity values.

For example, 'Desired Outcome 1: Protect, retain and restore areas of native vegetation' lacks reference to the biodiversity values of native vegetation, including as fauna habitat.

It is noted that DO 1 for the Hills Face Zone includes the clause:

"(c) preserve biodiversity and restore locally indigenous vegetation and fauna habitats close to metropolitan Adelaide",

while SSPO1 refers to enhancement of biodiversity and habitat values.

The vast majority of the NVO (in Phase 2 area) is in the Rural Zone, which lacks reference to biodiversity in Desired Outcomes. The Rural Zone DO promotes primary production, and to a lesser extent, renewable energy facilities.

Also, there is no Desired Outcome at State or regional level in the Code promoting biodiversity conservation.

To align with State Planning Policy 4 – Biodiversity (which doesn't instruct assessment of applications) we urge the following amendment as minimum for the NVO:

'Desired Outcome 1: Protect, retain and restore areas of native vegetation, habitat and the significant biodiversity associated with and present in areas of native vegetation'

It is important to emphasise that native vegetation areas in the NVO support significant biodiversity. It is also important to articulate and address biodiversity values in the following provisions:

PO 1.1 Development avoids, or where it cannot be practically avoided, minimises the clearance of native vegetation taking into account the siting of buildings, access points, bushfire protection measures and building maintenance.

DTS / DPF 1.1 An application is accompanied by:

(a) a declaration stating that the proposal will not, or would not, involve clearance of native vegetation under the Native Vegetation Act 1991, including any clearance that may occur: (i) in connection with a relevant access point and / or driveway; (ii) within 10m of a building (other than a residential building or tourist accommodation); (iii) within 20m of a dwelling or addition to an existing dwelling for fire prevention and control; and/or (iv) within 50m of residential or tourist accommodation in connection with a requirement under a relevant overlay to establish an asset protection zone in a bushfire prone area; or

⁵ <http://eplan.brisbane.qld.gov.au/CP/BiodiversityOC>

(b) a report prepared in accordance with Regulation 18(2)(a) of the Native Vegetation Regulations 2017 that establishes that the clearance is categorised as ‘low level clearance’.

As PO 1.1 is the only part of the NVO applying to a dwelling in the Rural Zone, for example, it is important that it, or at very least the Desired Outcome, expressly addresses biodiversity values.

PO 1.2 Native vegetation clearance in association with development avoids the following: (a) significant wildlife habitat and movement corridors; (b) of rare, vulnerable or endangered plants species; (c) that is significant because it is located in an area which has been extensively cleared; or (d) that is growing in, or in association with, a wetland environment.

The wording of PO 1.2 reflects a limited, reductionist approach to biodiversity conservation. It contains references to wildlife and species, but omits important components of biodiversity like vegetation associations.

PO 1.3 Intensive animal husbandry and agricultural activities are sited, setback and designed to minimise impacts on native vegetation, including impacts on native vegetation in State Significant Native Vegetation Areas, from: (a) the spread of pest plants and phytophthora; (b) the spread of non-indigenous plants species; (c) excessive nutrient loading of the soil or arising from surface water runoff; (d) soil compaction; or (e) chemical spray drift.

DTS / DPF 1.3 All classes of development, other than the following located within 500 metres of a boundary of an area identified in the State Significant Native Vegetation Areas Overlay: (a) horticulture; (b) intensive animal husbandry; (c) dairy; (d) commercial forestry; or (e) aquaculture.

PO 1.3 addresses native vegetation generally and also makes specific reference to State Significant Native Vegetation Areas – presumably areas of the SSNVO but this is not specified. DTS / DPF 1.3 does not actually address PO 1.3 at all – instead of intensive animal husbandry and agriculture activities, it applies to types of development not mentioned in PO 1.3. Clearly it needs to be re-drafted to reflect the scope and intent of PO 1.3. The literal intent of DTS / DPF 1.3 is to encourage location of a wide range of development, other than those mentioned in PO 1.3, closer to an area identified in the ‘State Significant Native Vegetation Areas Overlay’ (fix typo) as opposed to directly supporting PO 1.3. It is more logical for satisfaction of PO 1.3 to rely, at least in part, on separating intensive animal husbandry and agricultural activities a distance of at least 500 metres from the SSNVO.

Another failure of DTS / DPF 1.3 is the lack of support of the intent of PO 1.3 in relation to impacts on native vegetation in the NVO (noting that SSNVO is far from being fully representative of ‘higher value’ native vegetation important to retain for conservation of biodiversity). The intent of PO 1.3 requires a DTS / DPF which address the potential impact on all native vegetation – not just that in the SSNVO.

PO 2.1 Land division that does not result in the fragmentation of land containing native vegetation, or necessitate the clearance of native vegetation, unless such clearance is considered minor, taking into account the location of allotment boundaries, accessways, fire breaks, boundary fencing, and potential building siting or the like.

DTS / DPF 2.1 Land division where:

(a) an application is accompanied by:

(i) a declaration stating that none of the allotments in the proposed plan of division contain native vegetation under the Native Vegetation Act 1991; or

(ii) a declaration stating that no native vegetation clearance under the Native Vegetation Act 1991 will be required as a result of the division of land; or

(iii) a report prepared in accordance with Regulation 18(2)(a) of the Native Vegetation Regulations 2017 that establishes that the vegetation to be cleared is categorised as 'low level clearance'.

(b) an application for land division is being considered concurrently with a proposal to develop each allotment which will satisfy, or would satisfy, the requirements of DTS / DPF 1.1, including any clearance that may occur; or (c) the division is to support a Heritage Agreement under the Native Vegetation Act 1991 or the Heritage Places Act 1993.

The importance of both avoiding fragmentation of native vegetation and improving habitat connectivity is stressed. Controlling land division is vital to avoid fragmentation, but the layout of allotments may also influence opportunities to improve connectivity through re-establishment of habitat.

There is no guidance as to what is 'minor' clearance. Unfortunately, 'is considered minor' leaves wide discretion for varied and subjective interpretation. It is noted that 'low level clearance' is the term used elsewhere - SSNVO DTS / DPF 1.1. It is unclear whether these terms are meant to convey different things, or not.

It is noted that land division can be a precursor to adverse biodiversity impacts associated with a closer pattern of settlement, by virtue of straying pets, pest plants and other risks that are difficult to control once land division and development has occurred. Such risks should be able to be anticipated and taken into account by planning authorities considering land division proposals likely to promote rural living or residential uses in areas of valuable habitat.

Unfortunately, the policies proposed are too limited in this regard.

Code Spatial Application:

Appropriate, but better framework desirable (as per Code framework comment).

Referrals: Referral to the Native Vegetation Council for direction is supported.

Summary of changes sought to Native Vegetation Overlay (NVO):

- Amend Desired Outcome 1: to 'Protect, retain and restore areas of native vegetation, *habitat and the significant biodiversity associated with and present in areas of native vegetation*',
- Redraft PO 1.3 and DTS 1.3 to clarify and harmonise, ensuring that the purpose is to separate inappropriately intensive land uses from the boundaries of all native vegetation areas, not just those included in the State Significant Native Vegetation Overlay (SSNVO),
- Include a definition of 'minor' clearance that ensures an objective test is applicable for determining what is 'minor' clearance in PO2.1 for land division. Also, clarify why the term used in PO2.1 is 'minor' and not 'low level clearance' as used in SSNVO DTS / DPF 1.1.

State Significant Native Vegetation Overlay (SSNVO)

NCSSA understands that the SSNVO is similar to the NVO, but with the intent that it apply to:

- national parks, wilderness reserves, areas subject to heritage agreements, and conservation parks, and
- land within 50 metres of such parks, reserves and heritage agreement areas.

Code Framework:

NCSSA supports the SSNVO, but notes it is not the only overlay to contain significant terrestrial native vegetation (or biodiversity). The overlay is spatially derived from tenure and administrative categories, not a biodiversity inventory. 'State Significant' suggests, inaccurately, that native vegetation (or biodiversity) of State significance is confined to one of the native vegetation overlays (SSNVO) and is not present in the other (NVO) or elsewhere.

Alternative names for the two overlays should be considered to avoid misunderstanding of intent. NCSSA suggests renaming the SSNVO to “Reserves and Heritage Agreement Native Vegetation Overlay”, since it is derived from tenure and administrative categories rather than on an assessment of significance at a state level.

Code Content:

PO 1.1 Development enhances biodiversity and habitat values through revegetation and avoiding native vegetation clearance except to promote an appreciation and awareness of wildlife areas, including visitor parking and amenities, or for the administration and management of a reserve or park established for the protection and conservation of wildlife.

DTS / DPF 1.1 An application is accompanied by:

(a) a declaration stating that the proposal will not, or would not, involve clearance of native vegetation under the Native Vegetation Act 1991, including any clearance that may occur:

(i) in connection with a relevant access point and / or driveway;

(ii) within 10m of a building (other than a residential building or tourist accommodation);

(iii) within 20m of a dwelling or addition to an existing dwelling for fire prevention and control; and/or

(iv) within 50m of residential or tourist accommodation in connection with a requirement under a relevant overlay to establish an asset protection zone in a bushfire prone area; or

(b) a report prepared in accordance with Regulation 18(2)(a) of the Native Vegetation Regulations 2017 that establishes that the clearance is categorised as ‘low level clearance’.

The way in which SSNVO PO 1.1 refers to biodiversity and habitat values is supported but it is inconsistent to not also do in NVO PO 1.1 given that the difference between the two overlays is administrative, not that one contains significant native vegetation and biodiversity while the other does not.

Referrals:

Referral to the Native Vegetation Council for direction is supported.

Code Spatial Application:

Inclusion of Heritage Agreement areas is supported.

For consistency, NCSSA believes the SSNVO should be expanded to cover:

- all reserves containing native vegetation, including Game Reserves, Recreation Parks and Regional Reserves, where applicable. For example, Loch Luna Game Reserve in the Riverland is an example of a NPW Act reserve containing native vegetation that appears to be arbitrarily excluded from the SSNVO, and should be included.
- all additional areas of conservation significance that we suggest including in the Conservation Zone, e.g.:
 - Proclaimed Native Forest Reserves.,
 - Crown Land dedicated as Conservation Reserve under the *Crown Land Management Act 2009*, and
 - private conservation areas included in Australia’s National Reserves System.

Summary of changes sought to State Significant Native Vegetation Overlay (SSNVO):

- Reconsider name of SSNVO, suggest change to 'Reserves and Heritage Agreement Native Vegetation Overlay', since the overlay is spatially derived from tenure and administrative categories, not a biodiversity inventory of state significance,
- Include all reserves containing native vegetation, including Game Reserves, Recreation Parks and Regional Reserves, where applicable, as well as areas we suggest adding to the Conservation Zone ie. Native Forest Reserves, Crown Land dedicated as Conservation Reserve and private conservation areas in our national Reserve System.

Suggested additional overlay – the Critical Habitat Overlay

As discussed earlier in this submission, the limitations of policies and spatial information incorporated in the Code as currently drafted will not fully support the implementation of State Planning Policy 4 - Biodiversity.

A reasonable expectation of the planning system is that it can draw upon robust inventories of biodiversity so that decisions are informed by 'what is where' (not just if the *Native Vegetation Act 1992* applies, or not) so that conflict can be anticipated and avoided and cumulative impact on biodiversity can also be planned for and avoided. NCSSA notes there are precedents for including this kind of information within state planning systems (as mentioned earlier in this submission, see Queensland example⁶).

The State Planning Policy 4 – Biodiversity specifically refers to the importance of protecting critical habitat for threatened species and ecological communities. This includes for species and ecological communities that will occur across the proposed Zones and Overlays, such as:

- The Glossy Black Cockatoo (Kangaroo Island), which is listed at both the state and national levels as endangered and relies on both reserved and non-reserved areas for feeding and breeding⁷,
- The Chestnut-rumped Heathwren of the Mount Lofty Ranges, which is also listed at both the state and national levels as endangered. Incremental loss of habitat through urban sprawl and rural residential development is an ongoing threat to the species⁸,
- Woodland communities like the critically endangered Peppermint Box (*Eucalyptus odorata*) Grassy Woodland of South Australia, threatened by grazing, and the endangered Grey Box (*Eucalyptus microcarpa*) Grassy Woodlands and Derived Native Grasslands of South-eastern Australia for which urban infill and peri-urban expansion, plus degradation associated with urban encroachment, is a major threat⁹
- Shorebird species of conservation significance, including migratory and threatened species such as the Eastern Curlew and Painted Snipe, habitat for which is unlikely to be included in the NVO and that may be impacted by development, for example a 2015 report concluded that:

“Potential developments are likely to create a further range of impacts. The proposed developments discussed in this report include new residential developments at Buckland Park and Dry Creek, new industrial precincts at Outer Harbor and Gillman, new road and rail infrastructure, altered recreational access and the expansion or relocation of the Dry Creek saltfields. Individually, each development appears reasonably small. However if all proposed developments were to go ahead a significant area of shorebird habitat would be altered. The developments directly affect about 25% of the mapped high-tide habitats”¹⁰.

NCSSA believes there is currently sufficient information held in databases, such as the Biological Databases of SA¹¹, to map likely critical habitat of threatened species and ecological communities to the level of accuracy needed to underpin the Code. This should include both species and ecological communities listed nationally under the *Environment Protection and Biodiversity Conservation Act 1999* and also species at the state level under the schedules of the *National Parks and Wildlife Act 1972*.

⁶ <http://eplan.brisbane.qld.gov.au/CP/BiodiversityOC>

⁷ https://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=64436

⁸ <http://www.environment.gov.au/biodiversity/threatened/conservation-advice/hylacola-pyrrhopygia-parkeri>

⁹ <http://www.environment.gov.au/biodiversity/threatened/communities/pubs/86-conservation-advice.pdf>

¹⁰ https://www.sa.gov.au/data/assets/pdf_file/0011/153758/Shorebird_Management_and_Conservation_July_2015.pdf

¹¹ https://www.environment.sa.gov.au/topics/Science/Information_data/Biological_databases_of_South_Australia

This information could then be used to alert individuals to the likely presence of important biodiversity in a given area (in addition to Zoning and any other applicable overlays), in the same way that they will access all other planning policies and applicable restrictions through the ePlanning system.

On a strategic level, including this information is essential for the development of Regional Plans, a mechanism with significant potential for addressing cumulative impacts on biodiversity, i.e. by identifying areas of critical habitat (which may or may not be part of native vegetation overlays) and guiding development accordingly.

Summary of change sought to better implement SSP4 - Biodiversity:

- Develop and implement a Critical Habitat Overlay that includes likely critical habitat for threatened species and ecological communities listed nationally and at the state level.

Regulated Tree Overlay (RTO)

Code Framework: Inclusion of an overlay to protect regulated trees is supported, particularly where these are not protected by the NVO. NCCSA notes that community support for urban green canopy protection is high - a 1996 community attitude survey conducted by McGregor Marketing in City of Burnside found that only 22% of respondents were of the opinion that one should not have to apply for consent from the Council to remove trees on private property.

Code Content: NCCSA has yet to thoroughly review the Regulated Tree Overlay, which affects the Phase 3 area, rather than Phase 2. Our initial response, however, is that the limited regard for biodiversity in the Overlay is a significant issue of concern. We reserve the right to make additional comment during the consultation period on Phase 3.

Desired Outcome

DO 1 The conservation of regulated trees to provide aesthetic and environmental benefits and to mitigate tree loss through appropriate development and redevelopment.

PO 1.1 Regulated trees are retained where they make an important visual contribution to local character and amenity.

PO 1.2 Regulated trees listed as rare or endangered under the National Parks and Wildlife Act 1972 are conserved.

DTS / DPF 1.2

A tree not listed as rare or endangered.

This sets the bar absurdly high. Very few tree species which grow to a significant size found in the Mount Lofty Ranges and Adelaide Plains are listed as rare or endangered species, while other indigenous trees that are not listed, like *Eucalyptus camaldulensis* (River Red Gum), provide valuable habitat and hence are highly valued.

PO 1.2 should therefore be replaced with a policy that captures and protects the biodiversity values of significant trees within the Regulated Tree Overlay.

NCCSA is also concerned that in combining regulated and significant trees into one overlay, as appears to have been the case in the Code, protection for significant trees has been reduced. We therefore suggest wording for PO 1.1 that is similar to what is used to protect significant trees in the current system, including reference to being indigenous to the locality, important habitat for native fauna, part of a wildlife corridor of a remnant area of native vegetation and/or are important to biodiversity of the local area.

Code Spatial Application: Support application of this overlay, particularly where it applies outside the NVO and SSNVO.

Other Comment:

The use of a large circumference to define when a tree is a regulated tree (in the DPI Regulations) means that indigenous species like Grey Box (*Eucalyptus macrocarpa*) which is of conservation significance and not generally of wide girth, are unprotected in areas where the Native Vegetation Act does not apply. Similarly, NCCSA is concerned that some of the species listed as rare or endangered, such as mallees, do not grow to a large girth and therefore question whether trunk circumference at 1m is an appropriate measure for such species.

Summary of change sought to Regulated Tree Overlay:

- Redraft PO 1.2 to 'Regulated and significant trees should be preserved, particularly if they are indigenous to the locality, important habitat for native fauna, part of a wildlife corridor of a remnant area of native vegetation and/or are important to biodiversity of the local area' (noting that other changes may be suggested in our subsequent 'Phase 3' comments).

Comments on General Provisions

Infrastructure and Renewable Energy Facilities

Code Content:

DO 1

Efficient provision of infrastructure networks and services, renewable energy facilities and ancillary development in a manner that minimises hazard, is environmentally and culturally sensitive and that suitably manages adverse visual impacts on natural and rural landscapes and residential amenity.

As mentioned earlier in this submission, the current leading cause of approval for native vegetation clearance in South Australia is for solar farms. Therefore NCSSA suggests that the general provisions relating to renewable energy should address this directly by adding "... is environmentally and culturally sensitive (*particularly by avoiding native vegetation clearance and impacts on biodiversity more generally*)..."

Summary of change sought to Infrastructure and Renewable Energy Facilities general provisions:

- Redraft DO 1 to add '*... is environmentally and culturally sensitive (particularly by avoiding native vegetation clearance and impacts on biodiversity more generally)*'.

Design in Urban Areas

Code Content:

The Code includes landscaping provisions, PO 10.1-4 and associated 'techniques' to offset the impacts of the increased hard surfaces characteristic of denser forms of urban development. This is supported as an important step toward maintaining the 'liveability' of urban environments especially in a time when climate change will increasingly play a role in accentuating hotter conditions.

The outcomes sought that we support are:

- development facing a street provides a well landscaped area that contains a deep soil space to accommodate a tree of a species and size adequate to provide shade, contribute to tree canopy targets and soften the appearance of buildings (PO 10.1);
- deep soil zones provided to retain existing vegetation or provide areas that can accommodate new deep root vegetation, including tall trees with large canopies to provide shade and soften the appearance of multi storey buildings (PO 10.2);
- deep soil zones provided with access to natural light to assist in maintaining vegetation health (PO 10.3).
- unless separated by a public road or reserve, development sites adjacent to any zone that has a primary purpose of accommodating low rise residential development incorporate a deep soil zone along the common boundary, to enable medium to large trees to be retained or established to assist in screening new buildings of 3 or more storeys in height (PO 10.4).

NCSSA also supports inclusion of Water Sensitive Urban Design policies.

Summary of supportive comment on Design in Urban Areas general provisions:

- Support outcomes sought for landscaping and intent of PO 10.1-4 supported by appropriate techniques.
- Support inclusion of Water Sensitive Urban Design policies.

Code Content:

DO 1 Land division that:

- (a) creates allotments having appropriate dimensions and shape for intended use;*
- (b) allows efficient provision of new infrastructure and optimum use of existing underutilised infrastructure;*
- (c) integrates and allocates adequate and suitable land for the preservation of site features of value including significant vegetation, watercourses, water bodies and other environmental features; and*
- (d) supports energy efficiency in building orientation;*
- (e) creates a compact urban form that supports active travel, walkability and the use of public transport; and*
- (f) avoids areas of high natural hazard risk*

PO 1.1 Land division creates allotments suitable for their intended use taking into account physical characteristics of the land, preservation of environmental and cultural features of value and the prevailing context of the locality.

Part (c) of DO 1 should include the words 'biodiversity habitat' after 'vegetation'. This is to make sure that biodiversity habitats including those not possible to characterise as vegetation (or only vegetation), such as certain mud flats that are highly important roosting or resting areas for shorebirds, are covered.

The phrase 'prevailing context of the locality' is extremely vague and should be amended to clarify the intent.

9 2.3 Land division maximises the number of allotments that face public open space and public streets.

It may well be undesirable to maximise the number of allotments that face public open space containing native vegetation (including reserves under the National Parks and Wildlife Act) given potential impact on biodiversity and in view of bushfire risk.

In addition, Coastal Area policies in Development Plans have sought to minimise the number of allotments outside designated urban or settlement areas abutting the coast or a reserve.

Summary of change sought to Land Division in Rural Areas:

- Redraft DO 1 to add 'biodiversity habitat' in (c).
- Redraft PO 1.1 to clarify expression 'prevailing context of the locality'.
- Redraft 9.2.3 to avoid inappropriate concentration of allotments alongside reserves established to conserve natural coastal environments, native vegetation, and other sensitive environments.