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State Planning Commission
Department for Trade and Investment
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Friday 5th April 2024

Re: Submission – State-wide Bushfire Hazards Overlay Code Amendment

To whom it may concern,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to provide feedback on Planning SA's draft amendments to the state-wide Bushfire Hazards Overlay Code.

Since 1962, the NCSSA has been a strong advocate for the protection of nature, with particular emphasis on nationally and state-listed threatened plants, animals and ecological communities, and the management of protected areas.

NCSSA has extensive experience of engagement with issues relevant to bushfire management and native vegetation management, including:

- several recovery and bushfire mitigation projects following the 2019–2020 Kangaroo Island bushfires
- a major consultation project on the intersection between bushfire hazard management and biodiversity conservation in the Adelaide, Fleurieu Peninsula and Kangaroo Island regions, and
- regular contributions on the application of the Native Vegetation Act and its Regulations since the inception of the Act over 30 years ago.

NCSSA's position

NCSSA appreciates the need to protect life and property from unacceptably high bushfires hazards, and recognises that the goals of conservation sometimes come into conflict with the goals of bushfire hazard reduction. This conflict requires careful management through good policy, especially with forthcoming climate change.

In relation to property and infrastructure development, NCSSA has always advocated strongly for the retention of native vegetation, including isolated remnant trees, wherever feasible. This is necessary to protect native habitats and the species they support from ongoing attrition and continued decline.

NCSSA supports some aspects of the proposed updates to the Bushfires Hazards Overlay in the Planning SA mapping portal. However, the submission below raises significant concern about other changes to the Code.

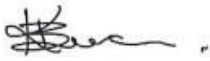
Of prime concern to NCSSA are changes that would create a pathway for ***pre-emptive clearance of native vegetation*** – that is, vegetation clearance that could occur *ahead* of property development proposals even being submitted for approval. This is completely unacceptable, and could lead to increases in native habitat clearance unparalleled in South Australia in modern times.

It is also unclear how the requirements of this Overlay would interact with existing protections for native vegetation, which will create further confusion in an already complex regulatory landscape. Under the *Native Vegetation Act 1991*, planning permission is required before permission can be given for native vegetation to be cleared, and clearance can only happen in a way that is consistent with the Native Vegetation Act and its Regulations.

The proposed pre-emptive pathway threatens increased clearance of native habitats, and increases the likelihood that clearance will be done in ways that are not consistent with the requirements of the Native Vegetation act and its Regulations. Rather than creating 'certainty', ***it increases the risk that developers could face penalties for breaching other regulatory requirements.***

These and other issues are discussed in detail in the submission appended to this letter. If you would like to clarify or discuss any of the issues in this submission please contact me on 0431 448 133, or via email at kirsty.bevan@ncssa.asn.au.

Yours sincerely,



Kirsty Bevan

CEO, Nature Conservation Society of South Australia

General comments about updating the hazard overlay mapping

In general, NCSSA supports updating the bushfire hazards mapping overlays, including updating the data underlying the models on which the bushfire hazard zones are based.

The current consultation process is valuable and is likely to improve outcomes for planners, developers, residents, and conservation. However, NCSSA notes that any future updates to the bushfire hazard mapping overlays will be made live by Planning SA 'from time to time', without any further need for further community engagement (see p.16 of the consultation document).

Such changes could have profound impacts on people and the environment, and are too important to be done silently and without community input. ***NCSSA seeks a commitment from the SA Government that future changes will be made to a regular schedule, transparently, and with opportunity for community feedback.***

Determination of bushfire hazard levels

The consultation document explains the nature of the vegetation and spatial data that was used in the modelling to determine bushfire hazard mapping categories (Attachment F of the document). If applied correctly, this modelling should result in objective mapping of bushfire hazards in different regions.

NCSSA requests clarification about how bushfire hazard mapping has been applied to Kangaroo Island based on the following excerpt (p.225 of the consultation document):

"A High Bushfire Hazard has been applied to Medium Bushfire Hazard Areas in parts of Kangaroo Island to reflect the extent of the recent bushfires. Many of these areas were originally mapped as High hazard, and subsequently reduced to medium rating during the PAR process 2009–2012."

This statement appears to imply that the hazard rating determined by the hazard modelling has been overridden for Kangaroo Island, and that a *High* hazard level has been manually applied to much of the Island based on its 'perceived' bushfire threat.

Is this the case? If so, why has this region been treated differently to other regions? If the outcomes of the bushfire hazard modelling are not trusted for this region, why is the mapping trusted elsewhere in South Australia?

Bushfire Attack Level assessments

NCSSA supports the principle of requiring site-specific Bushfire Attack Level (BAL) assessments in High Bushfire Hazard Areas. Before implementing this on a broad scale, consideration needs to be given to how this will be achieved in practice, including how such assessments will be resourced, managed, and regulated, and how data will be managed.

Currently the CFS conducts BAL assessments when required. It is NCSSA's understanding that there are only a very small number of individuals who conduct these assessments for the entire state. Updates to the Code would see an intensification of BAL assessments, which could be conducted by the CFS or by 'authorised persons', as occurs in at least some other states.

If these assessments are delegated to third parties, there will be a need for ongoing training and regulation of this sector, to ensure that individuals are suitably qualified and that their knowledge is current. There will also be a need to ensure that property assessments are properly documented and that data is collected and stored consistently.

Implications for native vegetation

The implications for native vegetation are mixed, but on balance the proposed changes to the Code appear to create a major risk for increased clearance of native vegetation.

On the positive side, a major improvement in the proposed amendments is the change to Schedule 4 to reduce the vegetation clearance exclusion zone from 20 m to 10 m of a building, to avoid the unnecessary removal of unregulated trees (p.18 of the consultation document). This would likely have a positive impact on retention of tree canopy cover in existing urban areas in particular, and NCSSA supports this change.

However, NCSSA expresses grave concern that the proposed changes also provide a major novel pathway for ***unregulated clearance of native vegetation for new developments in some of South Australia's most biodiverse regions, including the Mt Lofty Ranges and Kangaroo Island.***

According to the consultation document, SA's *State Planning Policies* Key Principle 15.6 is to:

'Avoid development in high or extreme hazard risk areas [...] that will necessitate the removal of native vegetation' (p.175).

Avoiding siting new developments in areas with high bushfire hazards sounds, on the surface, to be sensibly cautious. However, in practice, the proposed Code amendment appears to allow developers to pre-emptively clear large areas of native vegetation to create an asset protection zone for a new division of 10 or more allotments, thus reducing the site's bushfire hazard from a *High* to *Medium* hazard rating, *before* submitting a development application (see p.175 of the consultation document).

The proposed amendment therefore seems to create a perverse situation. Rather than bushfire hazard ratings dictating where development should occur, actual or even *planned* development could instead dictate what bushfire hazard rating would apply to the development location.

This creates a ***gateway to broadscale native vegetation clearance by developers***, encouraging actions that would be contrary to the *Native Vegetation Act 1991*, and which would erode South Australia's remaining high-quality native habitats.

Incentives to clear native vegetation

Developers would effectively be incentivised to clear vegetation in *High* bushfire hazard risk areas because this would facilitate the development application process, by removing the need for a site-specific BAL assessment by the CFS or delegate. Clearing vegetation at the proposed development site, including a large 50–100 m 'asset protection zone' (essentially a fire break), would automatically reduce the hazard rating of the site from *High* to *Medium* by reducing the site's BAL rating to a default value, thereby allowing the developer to follow a 'Deemed to Satisfy' pathway to approval, and eliminating the need for a CFS BAL assessment.

Because information in the consultation document is fragmented, duplicated, and spread throughout text, tables and attachments of a 235-page document, it is ambiguous where this would apply, and thus it is hard to judge the potential extent of the impact on native vegetation. According to Attachment F2 (p.235 of the document), it appears intended to apply to new developments in 'neighbourhood zones' – which is itself ambiguous: a Neighbourhood Zone (with initial capitals) has a specific meaning according to definitions in the Planning and Design Code, whereas a 'neighbourhood-type' zone (lower-case) includes 21 different planning zone types, including some that are rural, and some that expressly limit the extent of development and the removal of native vegetation (see p.4994 of the Planning and Design Code), such as the Hills

Neighbourhood Zone, and Rural Shack Development Zone. NCSSA therefore calls for ***clarification of which planning zones will be affected.***

In addition, Attachment F2 of the consultation document implies roles for both the CFS and the Native Vegetation Council in allowing clearance of native vegetation for new divisions of 10 allotments or more in *High* hazard areas, in order to reduce the hazard level to *Medium*. However, Attachment 2 does not reference all applicable sections of the Native Vegetation Regulations pertaining to fire hazard reduction (e.g. Division 3 – Fire hazard reduction) or address in detail the steps that would be taken to engage the CFS and the Native Vegetation Council.

NCSSA therefore calls for ***urgent clarification of the steps that developers would be required to take in order to clear native vegetation*** for a new 10-allotment division in a *High* bushfire hazard area, including a ***detailed explanation of how, when, and in what circumstances the CFS and Native Vegetation Council would be engaged.***