PLANNING, DEVELOPMENT AND INFRASTRUCTURE (CODE AMENDMENTS) AMENDMENT BILL

Introduction and First Reading

The Hon. M.C. PARNELL (16:20): Obtained leave and introduced a bill for an act to amend the Planning, Development and Infrastructure Act 2016. Read a first time.

Second Reading

The Hon. M.C. PARNELL (16:21): I move:

That this bill be now read a second time.

This bill is incredibly simple; the operative provision of the bill consists of five words and some numbers, but what is at stake with this bill is incredibly important. What is at stake is the future protection of tens of thousands of heritage buildings in South Australia, tens of thousands of buildings that have been listed, often for many years, in council development plans, areas that have been zoned for conservation purposes for many years. All these are at risk unless this bill passes.

Let me explain. One of the most fundamental underpinnings of the planning system is that decisions are made in the public interest and pursuant to clearly articulated planning policy. The community has a range of opportunities to be involved in the development of planning policy. Under our planning laws, citizens have a right to make submissions and decision-makers are obliged to take those submissions into account.

Nowhere in our planning laws does it say that planning policy is the exclusive domain of an exclusive few. Nowhere does it say that only those with a direct vested interest can participate in the decision. We have not had a system such as I have described in South Australia since the property franchise was abolished for elections many decades ago. You do not have to be a property owner in order to vote these days, and you do not have to be a property owner to participate in planning decisions that affect your neighbourhood, your quality of life, or any of the things that connect us to our communities and our local environment.

However, there is one exception. Back in 2016 the parliament wound back the clock several decades and decided that only certain property owners would be entitled to vote on whether or not certain planning provisions applied to the properties they owned. The circumstances were that in the debate on the Planning, Development and Infrastructure Bill a party—which you will be familiar with, Mr Acting President, the former Family First party—moved that when it comes to zoning areas such as historic conservation zones to protect their heritage value, that zoning could not take place unless more than half the affected property owners agreed.

So a test was put into the law, a unique test, a test that applies nowhere else in our statute books. Effectively, the law that passed this parliament back in 2016 said—and I will quote the words; they are legalistic but it is important—in section 67(4):

...an area cannot be designated under an amendment to the Planning and Design Code as constituting a heritage character or preservation zone or subzone unless the amendment has been approved by persons who, at the time that consultation...constitute at least the prescribed percentage of owners of allotments within the relevant area...

It goes on to say that one owner gets one vote. The prescribed proportion was 51 per cent. What that says is that the government cannot create any historic conservation zones, or similar, unless more than half of the affected property owners agree. In my view, this was a throwback to the past. I have spent a lot of time and I have studied thousands of pages of planning laws, rules, regulations and guidelines, and I cannot find any other example where affected property owners have an effective right of veto over zoning decisions that would normally be made by planning authorities or the minister.

When the Liberal Party supported this measure back in 2016, it did not really have any immediate impact. The Liberal Party, then in opposition, knew that the next state election was still two years away. They knew that the planning system was going to be rolled out over a five or more year period, so nothing was going to happen anytime soon. So the Liberal Party voted for this measure in opposition, but now they are in government and they now have access to professional advice that is available to them through government departments and through the State Planning Commission.

I hope they are now having second thoughts about the decision that they made back in 2016. If they talk to people in the planning department or the Planning Commission they will no doubt be told that what I am saying is correct and that giving property owners a right of veto over planning policy has no place in a modern planning system. As I have said, nowhere else do we give property owners a right of veto. We did not give any other category of property owner this right.

We did not allow the owners of city properties to determine how high the buildings should be. We do not allow farmers on the fringes of our cities to determine whether those farms should be subdivided for housing or remain as farmland. These are public policy questions that are decided by the community as a whole, not a popularity vote of those with the greatest vested interest. We do not do that anywhere else except for this one example in the Planning, Development and Infrastructure Act. That provision back in 2016 was, in my view, a thought bubble that now needs to be burst.

Why is it important to do this now? The provisions that I am seeking to remove from the act—there are two subsections of section 67—have not yet been brought into operation. They are not currently effective as law, and I understand the government does not intend to bring them into operation anytime soon, so now is the time to get rid of them before they can do harm. But there is in fact an even more pressing reason, and that relates to another provision of the Planning, Development and Infrastructure Act that creates the Planning and Design Code. I know this is a highly technical matter that has most people's eyes glazing over, but I come back to my main point: at risk are tens of thousands of properties that have been identified as heritage and risk losing that status if we do not pass this bill.

This new Planning and Design Code is going to replace the 68 or so individual development plans that apply to each local council area, and there are some others for the outback and coastal waters. That is under the old system. We are going to have a single code to replace all those documents. This code is going to come into operation for the first time around the middle of this year. The first part of the code is only going to cover the outback and coastal waters. In other words, it is only going to cover those areas that lie outside of local government boundaries. Later, next year, we are going to deal with country areas: we are going to deal with the regions and we are going to deal with country towns. Finally, the Planning and Design Code will be extended to cover the city and the suburbs.

I note that, under the 68 development plans in existence, there are dozens of historic conservation zones already in existence. The question is: will they be lost in translation? When we move away from those 68 plans to a single Planning and Design Code, will they be lost? I think there is a serious risk that they will be.

The legal argument goes like this. There is only one code. The code is going to be released in the middle of this year. It is going to cover the outback. Next year, more parts of the code will be released. They will be amendments to the code. They will be amendments to the existing code that was introduced in July 2019. If there are amendments, section 67 kicks in and none of these historic conservation zones can be translated across unless you have a popular vote in that area and 51 per cent of people agree to keep their area zoned as an historic conservation zone.

I think there is a real risk that if we do not fix this provision now we will see the act come into force as it was passed back in 2016. We will see a series of these votes, and it will depend on who the property owners are. If they are all property speculators who would love to knock down the historic houses and build blocks of flats, then that is what will happen. They will not be able to bring the historic zoning across. It is a serious matter.

The bill that I have introduced actually fixes the problem. To be really clear, people are saying, 'Hang on.' They might have heard that the government promised to bring existing local heritage areas across into the new system. That is correct. The government has agreed that, I think, 6,000 or 7,000 local heritage places will be transferred into the new system. There are about 2,000 state heritage places that will be transferred into the new system, but they have not committed to bringing across these 12,000 contributory items that are currently under the development plans.

People might think, 'What are contributory items? What are they? Are they really heritage? Are they heritage light?' The answer is that it is hard to say, because some councils have approached this issue very differently. There are some local council areas where there is almost no local heritage listed and just about everything is listed as a contributory item. They are recognised as being historic, but they have not actually been given the label of local heritage.

Members can look for the definitions of contributory items themselves online, but the point to note is that there are 12,000 of them. The list has been frozen in time since 2012, so for the last seven years there have been no new additions to it. They are in some ways an historical throwback to earlier attempts to identify historic properties in different areas, and they are at risk.

Why do I say they are at risk? That is because senior officials from the planning department have told us that they are risk. When I have asked officials, 'Can you guarantee that these 12,000 contributory items listed in development plans under the local heritage area will be brought across?' this is the answer that I got. A senior planning official stated:

I don't think we can say definitively that contributory items will be translated exactly as they are now. I think the commitment we can make is that the outcome that is being sought through contributory items will be retained in a policy environment. For example, I don't think we have very well described the role of historic conservation zones and character areas and how we can be really clear about their different functions.

I know it is technical, but the relationship is that the government will not promise to bring across this list of 12,000 historic properties. What they are saying instead is, 'We might use a zoning approach. We might zone these areas as historic conservation.' The relevance of my bill is that unless my bill passes, that zoning is not likely to happen, because there is going to be a popular vote of affected property owners only. That, I think, puts these properties at great risk.

I do not think I am overreacting. In fact, I have consulted very widely with lawyers, the National Trust, the Community Alliance, and the Environmental Defenders Office, and they are all terribly worried about what is going to happen to these items. I will give you an example. I gave an interview to country radio the other day and I tried to pick a good example for a country audience. In the town of Crystal Brook, you have the old heritage main shopping street. There are two properties across the road from each other, the old hotel and the old post office. The hotel is local heritage. Tick: that will be protected. Across the road is the post office. That is a contributory item; it might not be protected.

The whole street is in an historic conservation zone. There are about 32 certificates of title. I am not sure if they are all in single ownership, or whatever, but only nine of the properties are listed as local heritage: tick, they will be protected. Nine of them are contributory items; big question mark. And then the other 15 or 20 or so properties are also a question mark because we do not know whether the historic conservation zone will survive the translation from the old planning system to the new. So this is a live issue.

I do not propose to go into any more detail. In fact, I did say at the outset that this bill only consists of effectively five words and some numbers. The bill repeals those parts of section 67 of the Planning, Development and Infrastructure Act that give this right of veto to property owners to strip heritage status from the areas where they live or they own property. It is a very simple bill. I really do hope now the current government has access to professional advice that they will heed that advice and that we can pass the bill through both houses of parliament before any harm is done and before heritage properties in fact lose all of their protection. I commend the bill to the house.

Debate adjourned on motion of Hon. T.T. Ngo.

Mark Parnell MLC