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FOR COUNCIL MEETING TO BE HELD ON

28 NOVEMBER 2022 AT 6.30 PM

IN THE COUNCIL CHAMBER, 34 CHURCH STREET, SALISBURY

Discussion Paper – Planning and Design Code Reform Options

Expert Panel for the Implementation Review

October 2022

Planning System Implementation Review

Government of South Australia


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Message from the Chair

South Australia's planning system has undergone significant change in recent years. Firstly, with the implementation of the *Planning, Development and Infrastructure Act 2016* and *Planning, Development, and Infrastructure (General) Regulations 2017* and more recently with the introduction of the state-wide Planning and Design Code.

In response to concerns raised by local communities and industry groups, the Minister for Planning, the Hon. Nick Champion MP, has commissioned a review of South Australia's planning system and the implementation of recent reforms made to it.

I am honoured to have been appointed Presiding Member of the independent panel of experts that has been established to undertake this review. Importantly, each of the Panel members has significant experience with the South Australian planning system, having all lived and worked in South Australia for many years.

I'm delighted to be joined on the Panel by **Lisa Teburea**, independent consultant and former Executive Director of Public Affairs with the Local Government Association of South Australia, **Cate Hart**, President of the Planning Institute of Australia (SA) and Executive Director, Environment Heritage and Sustainability for Department of Environment and Water, and **Andrew McKeegan**, former Chief Development Officer and Deputy Chief Executive for the Department of Planning, Transport and Infrastructure.

The Panel has been tasked with reviewing key aspects of the planning system and identifying opportunities to ensure planning decisions encourage a more liveable, competitive, affordable, and sustainable long-term growth strategy for Greater Adelaide and the regions.

We are pleased to present these Discussion Papers which outline the key areas in the Act, Code and e-Planning system that the Panel has identified warrant further examination. We encourage all South Australian's – whether industry groups, practitioners, community groups, local government, or the general public - to consider these Papers, share their feedback and contribute to the review.

After all, South Australia's planning system affects all of us.

John Stimson

Planning System Implementation Review

Introduction

The South Australian planning reforms commenced in 2012 with the appointment of the former Expert Panel, which made a series of initial recommendations that shaped new legislation that we now know as the *Planning, Development and Infrastructure Act 2016* (the PDI Act).

For the past ten (10) years, South Australians have considered and contributed to planning policy, and have now lived with the provisions of the PDI Act and Planning and Design Code (the Code) for 18 months.

The Expert Panel for the Planning System Implementation Review was appointed by the Minister for Planning, the Hon. Nick Champion, to review the new system and to consider where there is scope for improvement.

The Panel has been given a Terms of Reference to review:

- the PDI Act;
- the Code and related instruments, as it relates to infill policy, trees, character, heritage and car parking;
- the e-Planning system, to ensure it is delivering an efficient and user-friendly process and platform; and
- the PlanSA website, to check usability and ease of community access to information.

Importantly, the Panel is not a decision-making body, but rather, a group of subject matter experts brought together to review, consider, consult, and make recommendations to the Minister as to what improvements to the new planning system could be. Those recommendations will, of course, be influenced by the feedback received from the community throughout this engagement process.

In preparing its Discussion Papers, the Panel has acknowledged the volume of submissions and representations that have been made by groups and individuals during previous engagement and review processes. Many of the issues that have been raised over the course of the past ten (10) years have already been thoroughly examined by various bodies, and the Panel considers that the fundamental elements of the PDI Act are sound.

However, this review is an opportunity to reconsider some of the details and the Panel is looking for new information, new feedback and experiences directly related to the implementation of the PDI Act and the Code, and how the community is interacting with the e-planning system.

In undertaking this review, the Panel will play a key part at a point in time. A time where the system is still young and arguably in its 'teething' phase, but equally a time that is ripe for considering what amendments – big or small – could make what is already a comprehensive planning regime, even better.

This Discussion Paper seeks to identify the known opportunities for improvement identified in the Code through addressing character and heritage, trees, infill and carparking policy.

It will guide you, as the reader, through how the Code addressed the feedback received during Phase Three of the implementation, what the current policy position is and identify areas of known frustration. It will then ask questions for your consideration and response. Notwithstanding, the Panel is, of course, interested to hear about all ideas for reform that may benefit the South Australian community and encourages you to raise any matters that have not otherwise been canvassed in this Discussion Paper.

Finally, and for the avoidance of doubt, the Panel acknowledges that that there are matters that have been (or are currently) the subject of proceedings in the Environment, Resources and Development Court relevant to the Code. The Panel recognises that the outcomes of those proceedings may require it to consider additional matters not otherwise addressed in this Discussion Paper and confirms that, where necessary, it will address those in its final report to the Minister.

The Panel acknowledges and appreciates the time and effort that will be put into preparing submissions for its consideration and looks forward to reviewing and considering all the feedback.

Implementation of the Planning and Design Code

To understand what reform options may be available for the Panel's recommendation, it is appropriate to consider the matters that were raised and/or addressed when the Code was initially consulted upon, in advance of its implementation.

The Panel has no intention to re-prosecute issues that were appropriately dealt with by the State Planning Commission (the Commission) in arriving at the iteration of the Code that was ultimately introduced. However, it also recognises that there are matters that were unable to be managed in the initial implementation because of not yet having a 'lived' understanding of how those provisions would operate practically.

The Code has now been operational for a period of 18 months and whilst there is still limited data arising from several aspects of its operation (including but not limited to the effect of infill housing and tree policy, discussed later in this Paper), consideration can now be given to the lived experience of the Code provisions and where there is opportunity for further refinement and/or improvement. For the avoidance of doubt, the Panel notes that there is limited operational data available not because the e-Planning system is unable to obtain the data, but because insufficient time has passed for matters to move through the lifecycle of planning approval to completion.

The following table summarises the key issues raised by stakeholders in the Phase Three consultation on the Code and how the final iteration of the Code responded to the feedback. This data was collated and summarised by the Commission in its 'What We Heard' Report.

Note: Where possible, the table has been divided into the relevant policy matters being considered by the Panel, as reflected in this Discussion Paper. However, it is noted that there are matters that necessarily overlap (particularly as they apply to infill) and which may be relevant in multiple policy categories.

Phase 3 Code – Feedback and Policy Response

Stakeholder	Key Issue or Feedback	Policy Response
Character and Heritage Policy Matters		
Localised Policy		
Councils, Community	More localised policy should be included in the Code to assist in protecting areas of heritage and character.	Introduction of Historic Area Statements and Character Area Statements to better reference the valued attributes of a particular area, and which could add additional details in relation to matters such as roof form and pitch, wall height, fencing types and the siting, design and scale of carports, garages, outbuildings and vehicle access points.

Stakeholder	Key Issue or Feedback	Policy Response
Various	The Code should provide a zone that reflected areas with stronger built form characteristics, as was contained in previous Development Plan policy.	Introduction of the Established Neighbourhood Zone. This zone includes Technical Numeric Variations (TNVs) for matters such as site areas, site frontages, side setbacks, site coverage and height, which provide room for local variation in policy.
Demolition Controls		
Various	• Stronger demolition controls should be provided in historic areas • Public notification should be required for proposals involving demolition of a property in a historic area	• Enhanced demolition controls applied to areas subject to the new Historic Area Overlay • Demolition tests within the Historic Area Overlay revised to replace the 'economic test' with one of 'reasonableness'.
Representative Buildings (formerly Contributory Items)		
Councils, Community	Contributory Items should be re-introduced into the Code	Contributory Items were transitioned into the final version of the Code as 'Representative Buildings', and are referenced in the Historic Area Statements and Character Area Statements and are mapped in the SA Planning and Property Atlas (SAPPA)
Tree Policy Matters		
Tree Planting		
Various	• Observations that the Urban Tree Canopy Overlay does not go far enough to increase urban tree canopy. Suggestions that minimum tree requirements be increased to reflect higher tree canopy targets and policy regarding the retention of mature trees be strengthened • Concerns that paying a fee in lieu of planting new trees was not appropriate (i.e. the Urban Tree Canopy Offset scheme), and that the fee would be too low and should be increased. Additional suggestions that the scheme should only apply where the cost of footings is unreasonable.	• Amend the Urban Tree Canopy Overlay to add a note referring to an Off-set Scheme established under section 197 of the PDI Act. • Further investigations were undertaken in relation to tree canopy cover which demonstrated that in the most common infill development scenario (which represents 75% of new houses), house footings are not affected by the Code's mandatory tree planting policy.

Stakeholder	Key Issue or Feedback	Policy Response
	• Requests for tree species and setbacks between buildings and trees to be stipulated in the overlay • Concern that the requirement to plant a tree will increase footing costs	
Infill Policy Matters		
Localised policy		
Councils, community, Planning Institute of Australia (PIA)	More localised policy needed to reflect neighbourhood characteristics and development plan policies (e.g. site areas, building heights, setbacks)	• Expand the suite of neighbourhood zones to provide more nuanced policy for areas with: o an established character (new Established Neighbourhood Zone) o waterfront areas (new Waterfront Neighbourhood Zone) o undulating land (new Hills Neighbourhood Zone) o residential parts of townships (new Township Neighbourhood Zone). • Provide for additional variations to populate policy in certain zones (including minimum site area/frontage in the Housing Diversity Neighbourhood Zone, building height in the Urban Renewal Neighbourhood Zone).
Minimum site dimensions, density		
Councils, community	Increase in minimum site areas in the General Neighbourhood Zone, particularly for row dwellings.	Amend the General Neighbourhood Zone (DTS/DPF 2.1) to increase the minimum site area for row/terrace dwellings from 200m2 to 250m^2.
Development industry	Seek higher densities in the Established Neighbourhood Zone, smaller site areas for retirement villages, larger sites where interface outcomes can be addressed (i.e. 'catalyst' sites).	**No policy change**: where supported accommodation, retirement living and student accommodation are envisaged forms of development in the zone and are performance-assessed, density higher than the minimum prescribed in a DTS criteria can be considered on merit. It was appreciated that amalgamated/ large development sites can often address interface issues in a more suitable manner than small-scale infill. However, such dispensation would be appropriately

Stakeholder	Key Issue or Feedback	Policy Response
		considered in a performance assessment, taking into account the site context and how interface is handled in the particular circumstance.
	Soft landscaping	
Development industry	• The requirement for soft landscaping is too great an area, particularly for small/narrow sites, and should only apply to the front yard area. • Minimum pervious percentages should be reduced to align with POS requirements. • The policy should not apply in Housing Diversity, Urban Corridor or Urban Renewal Neighbourhood zones.	• Amend soft landscaping policy to: ○ increase the minimum proportion of soft landscaping forward of the building line to 30% ○ increase the minimum dimension of landscaping from 0.5 to 0.7m ○ include an additional category of dwelling Site Area (less than 150m2) with a 10% landscaping requirement • Create new administrative definition of soft landscaping to clarify that it does not include artificial lawn.
Councils	• More policy is needed in the Code to address urban heat effects. • The requirement to provide 15-25% soft landscape areas and a minimum of one (1) tree per dwelling is positive and strongly supported but should apply to all development regardless of type or scale. • An additional category of soft landscaping is needed to address very small allotments.	
Community	• Concerns about the impacts on urban heat, biodiversity and pollution resulting from Plastic lawns instead of porous paving, gravel or vegetation • Smaller sites should be required to have a higher proportion of soft landscaping • Policy to stipulate where greenspace should be located for maximum microclimate benefit • Permeable paving not be a predominant feature of soft landscaped areas.	

Stakeholder	Key Issue or Feedback	Policy Response
Councils	Request that soft landscaping policy should apply to ancillary structures such as outbuildings, verandahs and carports	Apply minimum soft landscaping criteria for ancillary buildings in neighbourhood zones (ancillary accommodation, outbuildings, verandah, carport) or maintain the current percentage of soft landscaping where it is already less than the criteria.
Rainwater tanks, stormwater management/Water Sensitive Urban Design (WSUD)		
Various	• Increase stormwater detention capacity (and reduce retention capacity) • Focus on controlling output rather than water re-use • Amend the criteria requiring 80% roof capture area to 50% for row dwellings and semi-detached buildings to help decrease risk of water damage to property due to complex design issues builders' face when facilitating an 80% capture • Concerns regarding the suitability of criteria to control stormwater pollutants and run-off quantities • Request for a portion of 2000L retention tanks <200m2 to be used for detention (1000L for detention and 1000L for retention) • Request for the water tank connections be made to all toilets (not just one toilet) • The installation of the rainwater tank and connection to approved uses should be mandated prior to occupying new houses	Amend the Stormwater Management Overlay to: • Require 60% of the roof area to be connected to tanks (not 80%) for detached (non-battle axe), semi-detached and row dwellings. • Require half (1000L) of the 2000L rainwater tanks for lots <200m^2 to be used for detention • Amend the stormwater management policies in the Design in Urban Areas, Design and Land Division General Development Policies to remove the Deemed-to-Satisfy/ Designated Performance Feature criteria regarding pollutant percentages and run-off quantities.
Private Open Space		
Councils, community	The total area of Private Open Space (POS) required for detached, semi-detached, row, group and residential flat dwellings was set too low at 24m^2.	Increase POS policy requirements in line with existing Residential Code (Res Code) parameters, wherein a minimum POS requirement of 60m^2 will apply for sites above 300m^2.
Setbacks		

Stakeholder	Key Issue or Feedback	Policy Response
Community, local government and planning practitioners	Concerns around the setbacks from side and rear boundaries, including: • Rear setback to match what is currently prescribed in the complying criteria of the Res Code • The front setback criteria in the Res Code (being the average of adjoining minus one metre) to form the DTS criteria in the neighbourhood zones • Use the average of adjoining policy to determine the front setbacks in neighbourhood zones • Transition existing upper level side setbacks from development plans into the Established Neighbourhood Zone.	• Amend the rear setback Deemed-to-Satisfy/Designated Performance Feature (DTS/DPF) to add a new category for sites >300m^2 for a rear setback of 4m for ground level and 6m for upper level in the following zones: ○ General Neighbourhood Zone ○ Suburban Neighbourhood Zone ○ Neighbourhood Zone ○ Waterfront Neighbourhood Zone. • Amend the side boundary setback Technical and Numerical Variation (TNV) in the Established Neighbourhood Zone and Township Neighbourhood Zone to transition upper level setbacks as well as ground levels (as per Development Plan parameters). • Amend the primary street setback policy to allow for the primary street setback to reflect the average of the adjoining buildings minus one metre in the General Neighbourhood Zone and Suburban Neighbourhood Zone.
Waste storage		
Councils, community	Waste storage criteria to apply to all dwellings and to include consideration of gradient for path of travel between waste bin storage and the street (<1:10).	Amend 'Waste storage' policy to: • Decrease the area from 3m^2 to 2m^2 and prescribe a minimum dimension of 0.9m. • Clarify the requirement for a continuous unobstructed path of travel doesn't include moveable objects like gates and roller doors
Development industry	The requirement for waste bin storage mandates additional area that may or may not be used by homeowners. Further, the 3m^2 area for waste and unobstructed path to the street would not be achievable for narrow sites and will require additional POS.	
External appearance		
Councils	Improve façade design policy by increasing the number of techniques required to achieve Deemed-to-Satisfy (DTS) and remove the mix of materials as a technique	Amend policies on front elevations and passive surveillance' to:

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Stakeholder	Key Issue or Feedback	Policy Response
Development industry	• A minimum room width of 2.7m could have impact on internal design and overall built width will have a negative impact on narrow blocks. • The requirement for the entry door to the front elevation to address the street is too prescriptive and will preclude different design options. • The requirement for 3 minimum design features to the front elevation from 4 possible alternatives for single-storey dwellings is too restrictive and it is possible that streetscapes will become repetitive. Suggest additional option for at least two materials/colours on the front facade. • Additional design criteria should be provided for front and side/rear façades, especially façades which present to public spaces such as secondary streets.	• clarify that 2m^2 window area relates to the total aggregate area of all windows on front facade • allow a dwelling's entry door to be 'visible' from the street rather than facing the street. Amend policy on 'external appearance' to: • add new criteria to external appearance policy to allow a minimum of two different colours/materials incorporated on the front façade to satisfy 1 of the 3 required treatment options. • require dwelling façades facing a secondary street frontage to satisfy 2 treatment options. • Remove policy requiring recessing of the secondary street façade as articulation of secondary street frontages will be achieved through the other 'External appearance' policy.
Car Parking Policy Matters		
Car parking		
Councils, community	• Require at least one (1) on-site car park to be covered (i.e. carport or garage) • Concerns that provisions for off-street parking is too low.	• Increase on-site car parks from one (1) to two (2) spaces for 2-bedroom detached, semi-detached and row dwellings (except where rear loaded) • Require one (1) car parking space to be covered.
Garage dimensions		
Development industry	The proposed minimum internal garage widths of 3.2m (single garage) and 6.0m (double garage) and length 6.0m would exceed many builder's designs and Australian Standards.	Amend 'Car parking, access and manoeuvrability' policies to align minimum car parking and garage dimensions with current Australian Standards for carparks and enclosed garages.
Councils, community	Request to increase minimum internal garage dimensions to ensure	

Stakeholder	Key Issue or Feedback	Policy Response
	convenient parking and provide more room for internal storage	

Character and Heritage

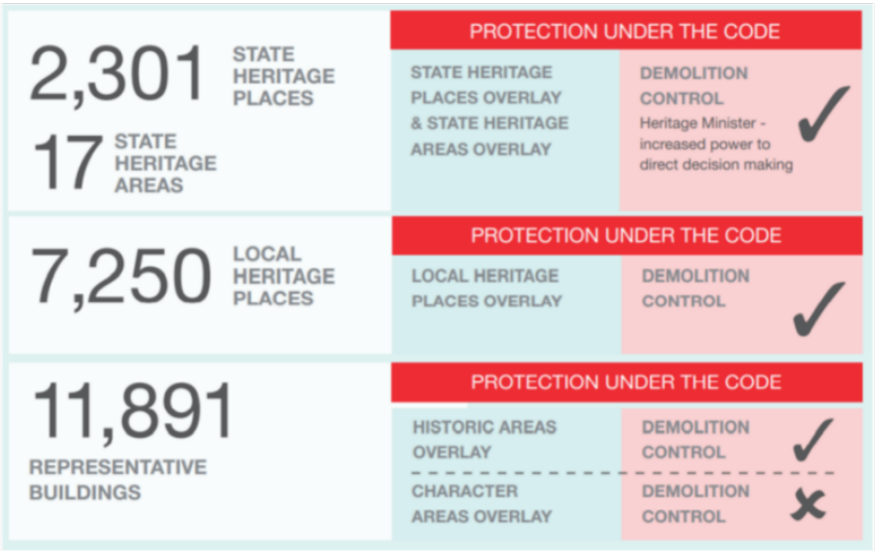
Background

Heritage in South Australia is protected by heritage specific legislation, primarily:

1. State Heritage – *Heritage Places Act 1993*; and
2. Local Heritage – PDI Act.

As such, heritage is a joint responsibility of the Minister for Planning and the Minister for Climate, Environment and Water.

This legislative framework provides protection to approximately **2,300** State Heritage Places, **17** State Heritage Areas and approximately **7,250** Local Heritage Places.



The number of heritage listings varies across local government areas, particularly in relation to Local Heritage. At present, 29 councils do not have Local Heritage Places and one (1) Council (Roxby Downs) has no heritage listings (neither State nor Local Heritage).

In addition, whilst not legislatively protected, 25 of 68 councils have Representative Buildings identified in the Code, totalling approximately **11,831** buildings. Of these, **11,752** are located within the Historic Area Overlay and have the benefit of demolition control; whilst **79** are located in the Character Area Overlay with no demolition control.

The cumulation of the above provisions results in the Code affording the following local government areas with a high percentage of heritage and character protection (excluding roads and open space):

- City of Unley – 72.89%
- City of Prospect – 77.39%
- City of Norwood, Payneham and St Peters – 49.47%
- Town of Walkerville – 41.9%

It is relevant to note that the Expert Panel on Planning Reform recommended in its 2014 report 'Our Ideas for Reform' that heritage laws ought to be '*consolidated into one integrated statute*'[1] rather than continue to sit across both planning and heritage legislative instruments.

In addition, it was also noted that local heritage is increasingly being confused with character issues and that '*character is not heritage*[2]'. It sought to distinguish the two (2) terms, and to outline a new heritage framework that would '*value the state's past, while also catering for future needs*'[3].

The Code has delivered a new policy approach to protect heritage and character by:

1. transitioning existing contributory items from Development Plans as 'Representative Buildings';
2. creating a new Heritage Adjacency Overlay to provide distinction between heritage places and areas surrounding such places;
3. creating a new Character Area Overlay and Historic Area Overlay to sit over zones which apply to areas of established heritage and character value;
4. accurately mapping all places of significance within the planning system (State Heritage, Local Heritage and Representative Buildings) in a way that is more transparent and accessible;
5. consistently applying demolition controls to State Heritage Places, State Heritage Areas, Local Heritage Places and Historic Areas (which include the majority of Representative Buildings) in a way that is equitable and fair;
6. elevating the role of State Heritage Guidelines, Statements of Significance for State Heritage Areas (such as Hahndorf and Colonel Light Gardens) and State Heritage Places in the planning system by including a link in the Code to these documents directly under Desired Outcome 1 of the State Heritage Area Overlay and Desired Outcome 1 of the State Heritage Place Overlay, respectively; and
7. including local policy that reflects the important elements of an area through the use of Historic Area and Character Area Statements (i.e. era, built form, architectural styles, street patterns etc) that underpin the Overlays. Depending on the applicable zone, Technical and Numeric Variations (TNV) are also used to

[1] South Australia's Expert Panel - Our Ideas for Reform (dit.sa.gov.au), 66.
[2] Ibid, page 63.
[3] Ibid, page 67.

address matters such as building heights and site areas within zones and provide room for local variation in policy e.g., allows for differences in building heights and minimum site areas from one area to another.

Importantly, prior to the implementation of the Code, the Commission engaged the Chair of the Expert Panel on Planning Reform, Mr Brian Hayes KC, to review the proposed heritage and character policy construct. Mr Hayes KC determined that the abovementioned approach was appropriate to address the matters raised in the previous Expert Panel's 2014 report.

A summary of the key policy changes introduced through the Code are set out in the Commission's brochure, 'Protecting Heritage and Character in the Planning and Design Code' (October 2022).

Relevantly, it is also acknowledged that the Miscellaneous Technical Enhancement Code Amendment (which is currently out for public consultation) proposes to move the identification of Representative Buildings from the reference layers of SAPPA and add them to the spatial mapping layer of the Historic Area and Character Area Overlays, as relevant. It is considered that this approach will ensure Representative Buildings become more visible within the Code, creating more certainty for property owners and relevant authorities without elevating their status.

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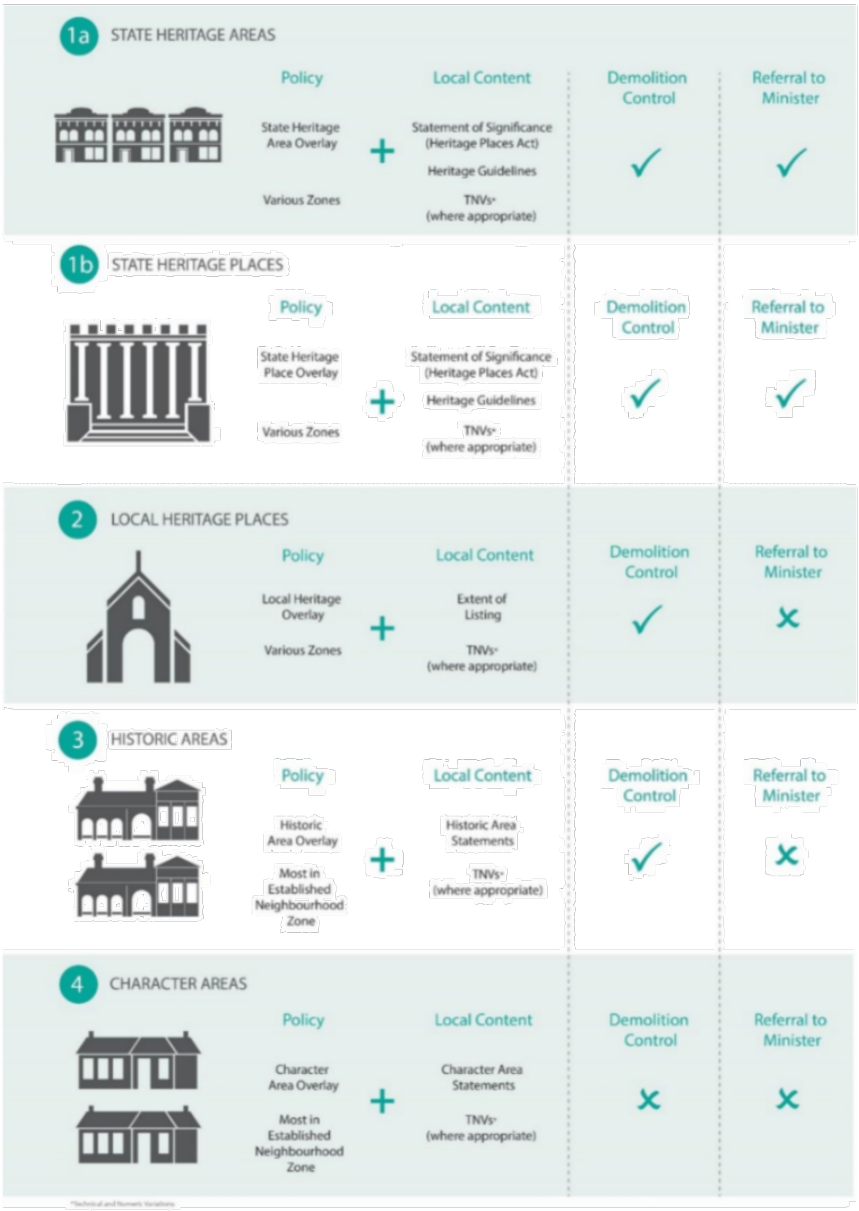
Character and Heritage Overlays

The following graphic identifies the relevant Overlays found in the Code which relate directly to matters of character and heritage, and what each of those Overlays provides by way of application and protection.



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The above graphic does not reference the Heritage Adjacency Overlay. However, for the avoidance of doubt, it is noted that that Overlay does not provide demolition control but does include a referral to the Minister responsible for the administration of the Heritage Places Act where development is proposed that may materially affect a State Heritage Place. The Minister is requested to provide expert assessment and direction on the potential impacts of development adjacent State Heritage Places.

State Heritage Standards

Linked to the State Heritage Area Overlay are Heritage South Australia's Heritage Standards, which provide principles and acceptable minimum standards for development proposals and form the basis of Heritage South Australia's decisions on proposed development referrals.

Heritage Standards are being progressively developed for all State Heritage Areas, in consultation with landowners and key stakeholders, replacing the current State Heritage Area guidelines for development.

At the present time, the only Heritage Standard that has been completed is for the Colonel Light Gardens State Heritage Area. The Panel understands that Heritage South Australia have commenced preparing Heritage Standards for Hahndorf, with other State Heritage Areas to follow.

In the meantime, Heritage South Australia will continue to use the existing Guidelines for Development for other State Heritage Areas as the basis for heritage assessments and decisions for any referred development proposals, until such time as new Heritage Standards are developed.

Design Guidelines

Also sitting beside the Code are three (3) advisory documents which assist with contextually responsive development in both heritage and character areas.

The first is the Historic Area Overlay Design Advisory Guidelines which provide guidance to applicants and designers on key design considerations to help achieve an appropriate contextually responsive design.

The guidelines identify a range of common design attributes that may be relevant when responding to Desired Outcome 1 in the Historic Area Overlay. The guidelines are not intended to be a 'check list' to the design or assessment process, but rather support the Desired and Performance Outcomes of the Code. They are not additional policy.

The second advisory document, the Character Area Overlay Design Advisory Guidelines, fulfil a similar role to the guidelines above, but are applicable to development in areas subject to the Character Area Overlay.

Both of these advisory guidelines are supported by Style Identification Advisory Guidelines. By providing examples of common styles of development (for example Victorian villas, Tudor revival, Federation cottages or Austerity houses) this guideline

can be used to assist applicants and designers to identify places that display the historic themes and characteristics expressed by the Historic Area Statements and Character Area Statements. It is these places that the design of new development (or additions or alterations) should contextually respond to. In some areas, these places have been identified as Representative Buildings.

The Panel also understands that a Local Design Review Scheme has recently been established under the PDI Act. While no councils are yet to establish a Local Design Review Panel (LDRP) for their area, a LDRP could assist in good decision making at the development application stage. Such an approach may also assist in up-skilling assessment staff in considering the design merit of a development application in a historic or character area.

Discussion

Matters of character and heritage are some of the most emotive and tumultuous to arise in connection with the planning framework.

Indeed, since the full implementation of the Code in March 2021, the Panel is aware that there has been significant public attention on these aspects, with an overarching implication that the new planning system 'waters down' previous heritage protections and therefore makes it easier to undertake infill development in areas of notable character and heritage.

However, in the Panel's view, the framework under the new planning regime has, in fact, strengthened character and heritage protection. This is through the introduction of the numerous mechanisms identified earlier in this Chapter, including but not limited to the creation of Character Area and Heritage Area Overlays and consistently applying demolition controls to State Heritage Places, State Heritage Areas, Local Heritage Places and Historic Areas.

It is also important to recall (and as will be repeated in numerous locations throughout this Discussion Paper) that the full effect of the Code's provisions may not have yet been witnessed in our suburbs. This is because the Code has only been operational for 18 months.

Consequently, several properties demolished and/or constructed in character and heritage areas since the implementation of the Code have resulted from approvals granted under the former *Development Act 1993*. That is, despite the Code being operational for 18 months, given the delays in the construction industry occasioned by the pandemic, we may still be witnessing demolitions and/or constructions that were not subject to the provisions of the Code.

Notwithstanding the above, specific matters that have been identified in the media and to the Department for Trade and Investment (the Department) directly include (but are not necessarily limited to):

- Representative Buildings not being clearly identified in the Code, and a need to identify additional Representative Buildings;
- the broad and non-specific nature of the Historic Area and Character Area Statements;
- the need for improvements to better guide built form outcomes within historic and character areas, and allow provision for greater local policy content; and
- the need for more local government and community contribution to decision making regarding development in character and heritage areas (including the demolition of buildings).

These matters indicate that there appears to be a lack of recognition and/or awareness of the period of time it takes to see the 'on ground' impacts of systemic change, particularly the scale of the PDI Act and Code.

State Planning Commission Proposal

Noting the significant public interest in character and heritage matters, the Commission has been working on a reform package for the consideration of the Minister for Planning (the Minister).

The Commission provided its proposed 'three (3) pronged' approach to character and heritage reform to the Minister in August 2022. The three (3) prongs of the Commission's proposal are:

1. **Elevate Character Areas to Historic Areas**

   Support and facilitate councils to undertake Code Amendments to elevate existing Character Areas to Historic Areas (where appropriate criteria or justification exists).

   This option will allow demolition controls to apply across a broader area of the State, while still maintaining the integrity and consistency of the Code. Councils would be required to consult with their communities on any proposed Code Amendments to elevate character areas to historic areas.

   To facilitate this body of work, the Commission plans to request Planning Land Use Services (PLUS) to prepare updated guidance materials to provide support to councils in undertaking this process. It is thought that those guidance materials will include detailed information requirements regarding the preparation of heritage surveys, as well as procedural requirements for undertaking Code Amendments.

2. **Character Area Statement Updates**

   Support and facilitate councils to review and update their Character Area Statements (and Historic Area Statements) to address identified gaps or deficiencies. This might include updating themes of importance, incorporating additional design elements, and including illustrations where appropriate.

   These enhanced Statements will provide a stronger focus on design which is bespoke to local character and heritage areas and will provide better tools for assessment of character and heritage values.

   To facilitate this body of work, the Commission plans to request that PLUS work with councils to better understand the current situation (that is, what is working, what is not working, and identify any gaps and deficiencies). PLUS will subsequently prepare guidance material to assist in the addition of policy content within the Statements for councils that want to pursue changes.

3. **Tougher demolition controls in Character Areas**

   Introduce a development assessment pathway that only allows for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved.

   This change is aimed at ensuring that existing buildings in Character or Historic Areas are only demolished when the replacement building is in keeping with the character or historic value of the area.

Following receipt of the three (3) pronged approach and noting that the Panel's Terms of Reference require it to consider character and heritage in the Code, the Minister referred the Commission's proposal to the Panel for its consideration. In doing so, the Minister also asked that the Panel provide its advice and early recommendations for those aspects of the Commission's proposal that it was willing to endorse. This is consistent with, and permitted by, the Panel's Terms of Reference.

The Panel has considered the Commission's proposal and determined to **provide its support** to 'prongs' one (1) and two (2). The Panel has advised the Minister of the same.

The Panel resolved to provide early support for these two (2) prongs of the proposal on the basis that they represent sensible improvements to the character and heritage framework in South Australia, and both can occur with limited intervention from the State. Indeed, the power already exists for councils to undertake the body of work envisioned by these reform proposals.

Despite this, the Panel recognises that the preparation of guidance materials by PLUS will substantially assist in empowering the local government sector to take responsibility for the transition to enhanced heritage protections at a local level.

Separately, the Panel also notes that the advancement of these two (2) prongs does go some ways toward addressing the concerns that have been raised in the media and with the Department, particularly those around local policy and seeking additional guidance in character and heritage statements

Notwithstanding, noting that prong three (3) is the most significant of the reforms proposed, the Panel determined that it was not willing to provide its early support for the reform in the absence of conducting public consultation on the same.

Whilst effecting such a change would only be able to be facilitated through both legislative change and a Code Amendment which would, itself, be subject to public consultation, the Panel considers that it is appropriate to ascertain the appetite to incorporate demolition controls of the nature proposed in advance of a Code Amendment being prepared.

Planning System Implementation Review

The Panel now seeks community and stakeholder feedback in relation to this proposal and whether there is community and stakeholder support for requiring a replacement building to be approved in advance of demolition approval being granted.

Questions for Character and Heritage Policy

1. In relation to prong two (2) pertaining to character area statements, in the current system, what is and is not working, and are there gaps and/or deficiencies?
2. Noting the Panel's recommendations to the Minister on prongs one (1) and two (2) of the Commission's proposal, are there additional approaches available for enhancing character areas?
3. What are your views on introducing a development assessment pathway to only allow for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved?
4. What difficulties do you think this assessment pathway may pose? How could those difficulties be overcome?

Planning System Implementation Review

Tree Policy

Background

The current policy position on urban trees is focused on the retention and increase of tree canopy cover.

The 30-Year Plan for Greater Adelaide (2017 update) contains a target that "*urban green cover is increased by 20% in metropolitan Adelaide by 2045*", noting that councils currently have varying amounts of tree canopy cover.

It is proposed that council areas that currently have less than 30% tree canopy cover should seek to increase their canopy by 20% by 2045. Council areas that currently have more than 30% tree canopy cover should maintain the current level of cover, ensuring no net loss over the years to 2045.

These current policy targets were based on a reported average 27.28% tree canopy cover across the local government areas, as captured in research undertaken in the national benchmarking report to the Institute of Sustainable Futures of the University of Sydney in 2014, where an indicative rating of canopy cover was provided as the original baseline data.

Since the release of the *30-Year Plan for Greater Adelaide* (2017 update) and the *2017 Update Report Card 2020-2021* progress has been made in data capture and analysis. Tree canopy cover was further measured across 18 metropolitan councils in 2018/19 using Light Detection and Ranging (LiDAR) data, providing a more accurate method of measuring tree canopy. This change in method means that it is not possible to measure progress against the original baseline data in the Plan.

New LiDAR data capture across metropolitan Adelaide is progressing this year (2022) and this will present an opportunity for a first like-for-like comparison of tree canopy change against those 18 councils and tree canopy data captured in 2018/19. It is anticipated that the analysis of tree canopy data will be available in the first half of 2023.

Tree Protections

Part 1 of the PDI Act provides the definition of ***development*** as including any tree damaging activity in relation to a regulated tree.

Pursuant to regulation 3F(1)(a) of the PDI Regulations, a ***regulated tree*** is:

> *A tree within a designated regulated tree overlay that has a trunk with a circumference of 2 m or more or, in the case of trees that have multiple trunks, that have trunks with a total circumference of 2 m or more and an average circumference of 625 mm or more, measured at a point 1 m above natural ground level.*

The PDI Regulations also provide that for a ***significant tree*** is:

> *A tree with a trunk with a circumference of 3 m or more or, in the case of a tree with multiple trunks, has trunks with a total circumference of 3 m or more and an average circumference of 625 mm or more, measured at a point 1 m above natural ground level.*

Trees and/or stands of trees are also able to be declared as significant pursuant to Section 68 of the PDI Act based on whether a tree:

1. makes a significant contribution to character or visual amenity in the local area; or
2. is indigenous to the local area, it is a rare or endangered species taking into account any criteria prescribed by the regulations, or it forms part of a remanent area of native vegetation; or
3. is an important habitat for native fauna taking into account any criteria prescribed by the regulations; or
4. satisfies any criteria prescribed by the regulations.

Trees declared as significant for the purposes of section 68 of the PDI Act are listed in Part 10 of the Code. Four (4) councils currently have listings in the Code – City of Adelaide, City of Unley, City of Burnside, and City of Prospect.

Code Overlays

The Code includes two (2) overlays that contain policy relevant to urban trees – the Urban Tree Canopy Overlay and the Regulated and Significant Tree Overlay.

The Urban Tree Canopy overlay provides policy for assessment of new dwellings within the overlay and seeks to ensure that residential development preserves and enhances urban tree canopy through the planting of new trees and retention of existing mature trees where practicable.

Conditions relating to the policies contained in the Urban Tree Canopy Overlay are prescribed in Practice Direction 12.

The Urban Tree Canopy Overlay seeks tree planting in accordance with the following:

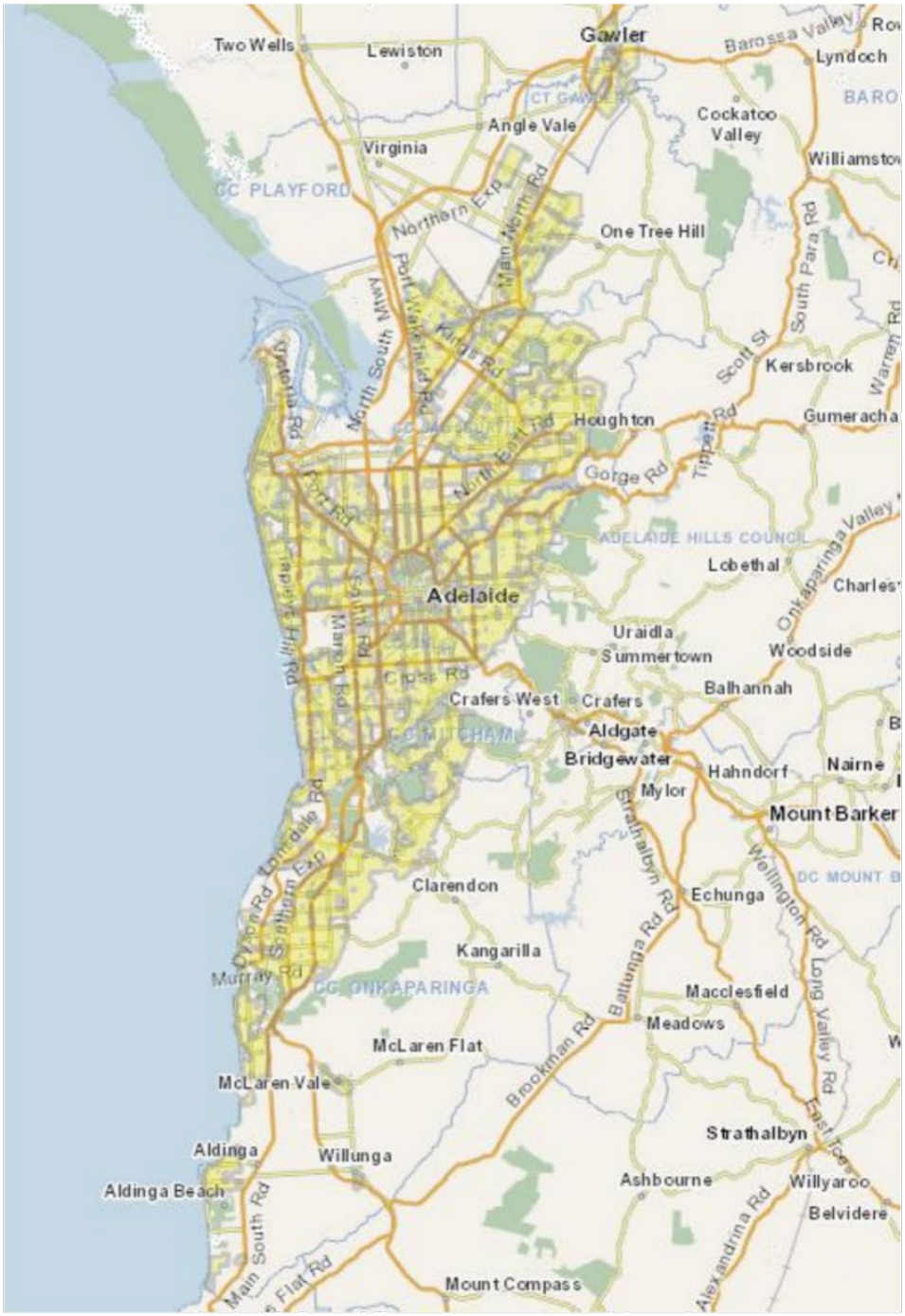
Site size per dwelling (m^2)	Tree size* and number required per dwelling
<450	1 small tree
450-800	1 medium tree or 2 small trees
>800	1 large tree or 2 medium trees or 4 small trees

For the purposes of the above requirements, tree size is prescribed in the Code as:

Tree size	Mature height (minimum)	Mature spread (minimum)	Soil area around tree within development site (minimum)
Small	4 m	2 m	10 m^2 and minimum dimension of 1.5m
Medium	6 m	4 m	30 m^2 and minimum dimension of 2m
Large	12 m	8 m	60 m^2 and minimum dimension of 4m

Planning System Implementation Review

The Urban Tree Canopy Overlay applies to the areas highlighted in yellow on the following map:



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The Regulated and Significant Tree Overlay provides policies against which a proposal for tree damaging activity in respect of a regulated or significant tree can be assessed on its merits. It also serves to delineate the area that the regulated tree controls in the PDI Act apply – see highlighted area on the following map:

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Trees not in metropolitan Adelaide

Trees that are not in the Adelaide metropolitan area are generally subject to regulation via the *Native Vegetation Act 1991* (Native Vegetation Act).

In terms of Code policy, there is policy that provides a framework for assessing the impact of development on native vegetation (the Native Vegetation and Significant Native Vegetation Overlays).

Tree canopy and stormwater

In formulating the draft policy improvements, feedback from the community and industry highlighted tree canopy, stormwater management and rainwater tanks as areas of particular concern.

In response, the Commission contracted engineering consultants to produce two (2) Options Analysis reports, addressing the costs and benefits of stormwater management and tree canopy cover.

This evidence-based research informed the Code's policy, resulting in new criteria:

1. mandatory tree planting policy in urban infill areas to ensure at least one (1) tree is planted per new dwelling (or option for payment into an offset fund where tree planting is not feasible on-site due to reactive soils or allotment size);
2. minimum soft landscaping of 10 per cent to 25 per cent over the whole site, with 30 per cent of front yards landscaped; and
3. retention and/or detention rainwater tanks required to be plumbed to at least one (1) toilet and water outlet. The combined use of retention (reuse) and detention (hold and release) tanks provide greater benefits to homeowners and the wider community.

It is noted that these criteria for tree planting and rainwater tanks for individual dwellings do not apply to master planned/greenfield development areas (e.g., Mount Barker, Aldinga, Gawler East).

In these master planned areas, the Code's policies seek the provision of public reserves/parks, street tree planting and stormwater management systems at the master planning and land division stage, ensuring that tree canopy and water sensitive urban design solutions are integrated at the neighbourhood level, rather than retrofitting site-specific measures into infill houses.

The Urban Tree Canopy Off-set Scheme

The Urban Tree Canopy Off-set Scheme (the Scheme) is an off-set contribution scheme established under Section 197 of the PDI Act and which has been established to support the Urban Tree Canopy Overlay in the Code.

The Scheme allows payment into the Urban Tree Canopy Off-set Fund (the Off-set Fund) in lieu of planting and/or retaining the required trees on site in designated areas where tree planting is not feasible.

While the Urban Tree Canopy Overlay affects most residential areas in metropolitan Adelaide, the Scheme only operates in selected zones or areas where tree planting is less feasible, being:

1. Housing Diversity Neighbourhood Zone;
2. Urban Renewal Neighbourhood Zone;
3. City Living Zone; and
4. any site with a 'Designated Soil Type' as described in the Scheme.

Payment in lieu of providing the tree or trees is only available in the abovementioned areas, as tree planting may not be as feasible due to soil type (specified in accordance with Australian Standard AS2870, highly reactive sites) or due to limited building setbacks.

A review of available data indicates that 193 applications for residential development were approved within the above zones between the commencement of full operation of the Code (19 March 2021) and 30 June 2022. Of these approvals, ten (10) (i.e. approx. 5% of eligible applications) have elected to pay into the Off-set Scheme.

> **Note:** At this stage it is not possible to quantify how many development proposals within the Urban Tree Canopy Overlay may be eligible for the Off-set Scheme due to a 'Designated Soil Type'.

The funds paid into the Off-set Scheme are to be used for the planting, establishment and maintenance of trees within reserves or public land anywhere within a designated local government area. It can also be used to purchase land within a designated local government area for the preservation or establishment of trees in areas with lower urban tree canopy levels or demonstrated loss of tree canopy.

Payments into the Off-set scheme are calculated as follows:

Tree Size	Rate ($ per tree)
Small - minimum mature height of 4 metres and minimum mature spread of 2 metres	$300
Medium - minimum mature height of 6 metres and minimum mature spread of 4 metres	$600
Large- minimum mature height of 12 metres and minimum mature spread of 8 metres	$1,200

In addition to the above, section 127(4) to (8) of the PDI Act provides that where a development approval authorises the killing, destruction, or removal of a regulated or significant tree, an applicant can elect to plant replacement trees or pay a fee into a relevant fund (being either the relevant urban trees fund or, if no fund has been established, the Planning and Development Fund). Conditions relating to these requirements are prescribed in Practice Direction 12.

The *Planning, Development and Infrastructure (Fees) Notice 2022* prescribes that the relevant fee for each replacement tree prescribed in Section 127 (6) that is not planted is **$156.00**.

State Planning Commission Open Space and Trees Project

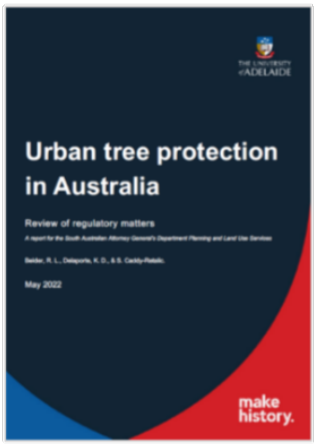
The Commission has commenced the Open Space and Trees Project (the Project) which includes a review of exempt tree species in relation to regulated and significant trees, a review of regulatory matters in relation to trees, as well as additional investigations including reporting on the Scheme and infill development.

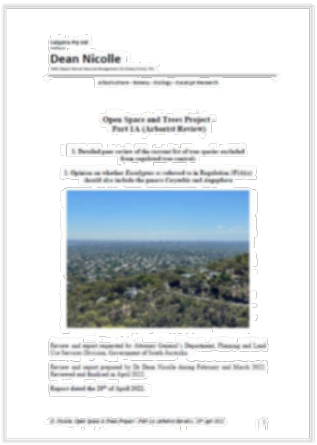
The scope of the Project includes:

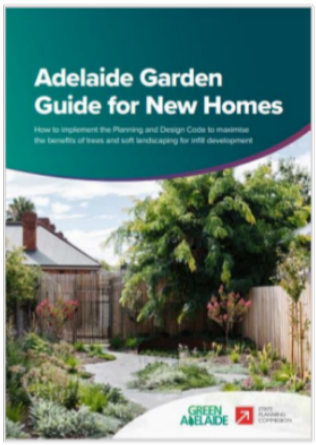
- 1 - Review of regulated tree species and off-set contributions
  - 1A—A review of the types of trees exempt from regulated tree controls
  - 1B—Research work to quantify appropriate offset contribution from the removal of regulated and significant trees (in lieu of planting replacement trees)
- 2—Review of regulated tree legislation (informed by Parts 1A and 1B)
- 3- Review of urban greening and the impact of infill development
  - 3A—Review of the Urban Tree Canopy Off-set Scheme
  - 3B—Review of infill policy in the context of urban tree policy
  - 3C—Review of tree canopy targets in *The 30-Year Plan for Greater Adelaide* (2017 Update).

In the course of undertaking Part 1 and Part 2 of the Project, the Commission obtained two (2) reports; the first being an Arborists Report titled '*Open Space and Tree Project – Part 1A (Arborist Review)*' and the second a Research Report titled '*Urban Tree Protection in Australia: Review of Regulatory Matters*'. Both reports were made available to the public on 1 September 2022 together with the release of the '*Adelaide Home Garden Guide for New Homes*'.

The '*Adelaide Home Garden Guide for New Homes*' represents collaborative efforts by the Department of Environment and Water (DEW) and PLUS in providing landscaping guidance and assistance in interpreting current landscaping policies in the Code.







The Arborist's Report contains a detailed peer review of the current list of tree species excluded from regulated tree controls and makes recommendations to contemporise the same.

The Research Report was commissioned to provide data and analysis of South Australia's tree protections, as compared to other Australian states and territories, including the size of trees protected and the various exemptions which currently apply. The Research Report identified that whilst:

> *metropolitan Adelaide does not have the weakest tree protections in the country…South Australia's laws [are] markedly less stringent than local governments in New South Wales, Victoria and Western Australia*[4].

It also noted that *"the vast majority of local governments in Australian capital cities have laws designed to protect urban trees more effectively than South Australia's laws"*[5].

In summary, further analysis and consideration of the Reports has found that:

1. exempt tree species list as per regulation 3F of the PDI Regulations is not contemporary and should be updated;
2. circumferences for a tree to be considered regulated or significant in the PDI Regulations are too generous and should be reviewed;
3. exemptions with respect to certain tree species located within ten (10) metres of a dwelling or swimming pool are too broad, and should be considered in light of the approach in other jurisdictions; and

[4] Belder, R.L, Delaporte, K.D, & S. Caddy-Retalic, *Urban Tree Protection in Australia: Review of Regulatory Matters* (University of Adelaide, 2022),2.
[5] Ibid.

4. current offset fees for the removal of regulated or significant trees are inadequate and should be reviewed.

The Arborists Report and Research Report will inform further work into potential regulatory matters on regulated and significant trees.

Parts 3A and 3B of the Commission's Project, which relate to a review of the Urban Tree Canopy Off-set Scheme and a review of infill policy in the context of urban tree policy, as well as Part 3C relating to reviewing tree canopy targets in *The 30-Year Plan for Greater Adelaide* (2017 Update), will be informed by the outcomes of the Expert Panel's review.

Government Initiatives

The State Government is currently developing an Urban Greening Strategy for metropolitan Adelaide (looking at urban trees as well as urban greening) to achieve protection and enhancement of habitat, biodiversity, promotion of green infrastructure and the protection of waterways, systems that improve amenity, urban environments, and wellbeing.

PLUS and Green Adelaide are collaborating on this project and there are obvious synergies in dealing with tree protection and urban canopy enhancements and delivery of an Urban Greening Strategy.

Jurisdictional Comparison

The Research Report prepared for the Commission and referred to the Panel provides a detailed jurisdictional comparison of tree laws in Australia. In doing so, the Research Report considered the tree protections provided by a sample size of 101 interstate local government councils against a sample size of 23 South Australian councils, to facilitate a comparison with those protections afforded in South Australia.

Of the 101 interstate councils considered, the Research Report found that:

- 51.5% (52 councils) provided a tree register or list as a form of tree protection;
- 65.3% (66 councils) provided dimension-based tree protections;
- 15.8% (16 councils) provided species-based tree protections;
- 52.5% (53 councils) provided location-based tree protections;
- 5% (5 councils) provided environmental based tree protections; and
- 6.9% (7 councils) provided additional protections deemed as 'other'.

South Australia does not currently provide species, location, or environmental based tree protections. However, South Australia does provide exemptions for certain trees based on their species or location, from the definition of Regulated or Significant tree (as described above).

To further distil these figures, with respect to dimension-based tree protections:

- 51% provided tree protection based on the **overall height** of a tree, with the average minimum height protected across the sample size being **6.32 metres tall** (it is noted that majority of the councils reviewed had a minimum height requirement of 6 metres of less, but the average was skewed by outlier councils with significantly higher minimum heights);
- 50% provided tree protection based on **trunk circumference**, with the average minimum circumference protected across the sample size being **53 centimetres**; and
- 21% provided tree protection based on the spread of the crown of the tree, with the average minimum crown spread afforded protection being **3.5 metres**.

By comparison, South Australia does not currently provide tree protections based on height or crown spread, and the minimum trunk circumference to qualify for protection is 2 metres (regulated trees).

Regarding the ability to remove protected trees in certain circumstances, the Research Report found that of the 101 councils considered:

- 16.8% permitted removal to maintain clearance of a building or dwelling;
- 3% permitted removal to maintain clearance of a garage or outbuilding;

- 1% permitted removal to maintain clearance of a carport;
- 2% permitted removal to maintain clearance of a swimming pool;
- 2% permitted removal to maintain clearance of a driveway;
- 1% permitted removal to maintain clearance of dam wall;
- 7.9% permitted removal to maintain clearance of a property line; and
- 3% permitted removal in other circumstances.

It was also recognised that in the circumstances where removal was permitted, majority of councils required a tree to be within three (3) metres of a building and even closer to other structures.

In South Australia, the PDI Act allows removal of protected trees within ten (10) metres of an existing dwelling or an existing in-ground swimming pool other than *Agonis flexuosa* (Willow Myrtle) or Eucalyptus (any tree of the genus).

Discussion

The conversation around trees is diverse. It gives rise to discussions around urban heating and cooling, biodiversity, and climate change, as well as conversations pertaining to safety, cost of development and obstacles to development.

This is because trees provide more than just amenity in our urban environments. They affect the liveability of our city through the provision of urban cooling and urban biodiversity, and add to the rich history of the State, being that many trees are culturally significant to certain communities, including Indigenous communities.

It is a complex and multifaceted policy area which is demonstrated by the significant body of work that is being undertaken by multiple agencies and stakeholder interest groups.

In its considerations to date, the Panel has received and reviewed a number of reports that have been commissioned on trees. Most notably, all these reports share the notion that South Australian tree canopy is in decline and that it needs to improve.

The Panel wholly agrees that South Australia's tree canopy needs to improve and recognises that we are unlikely to meet the tree canopy targets set out in the 30 Year Plan. However, achieving the tree canopy target is not just a planning issue and will rely on actions and improvements from the non-planning sector.

Despite this, from a planning perspective, the Panel again notes that the policy requirements set out in the Code are too early in their implementation to enable a comprehensive assessment to be undertaken as to their effectiveness. Trees take years to establish, and it will only be through LiDAR data capture and analysis, and systems monitoring on the uptake of the Urban Tree Canopy Off-set Scheme that an understanding of improvements in canopy coverage will be known.

To this end, and as noted in the background of this Chapter, the advanced LiDAR data capture that is slated for release in 2023 will act as a 'first step' to identifying whether South Australia's tree canopy is improving and whether as a State, we are heading in the right direction.

Considering the interactions between trees and the South Australian planning system, what has been published by others in relation to trees and the work undertaken by the Commission to date, it appears to the Panel that the **key issues** are:

1. **decline of urban trees** across metropolitan Adelaide leading to a decline in overall urban tree canopy cover;
2. real and perceived view that **urban infill policies** and resultant development is contributing to the loss of trees i.e. tree removal, loss of private open space on which to plant trees and impacts on tree roots and health due to proximity to structures; and

3. exacerbation of this loss of trees (canopy) with **anticipated increases in temperature due to climate change** – acknowledging that mitigation is needed to reduce heat hazard and provide for greater urban cooling.

In addition, trees in the public realm should be considered, particularly in the context of individual council tree planting strategies and own tree canopy targets. The Panel understands that the management and asset value of street trees (sometimes the lack thereof) is a point of consideration for the community. Whilst the Panel has identified that there is opportunity for further work to be undertaken specifically in relation to street trees and has posed relevant questions in the discussion that follows, for the avoidance of doubt, the Panel is primarily focused on trees in the private realm, in the context of the Code (and the PDI Act).

The Panel is also aware of distinguishing differences between inner city councils and larger, middle to outer councils, in relation to the availability of land on which to plant replacement trees as part of the Urban Tree Canopy Offset Scheme or future tree planting targets.

Trees, their healthy establishment, and ongoing management, along with their resilience to climate change (be they located on public or private land) are also key considerations. Related measures in achieving sustainable landscaping as part of new developments and Water Sensitive Urban Design (WSUD) across the State, may be considered as part of forthcoming policy and/or regulatory improvements around trees and canopy cover (and is intrinsically related to infill policy).

In light of the above, the Panel now seeks community and stakeholder feedback pertaining to a range of improvements that may be available for implementation, to aid in South Australia's efforts to increase its urban tree canopy.

Native Vegetation

Prior to the commencement of the Code and the establishment of an effective referral trigger to the Native Vegetation Council, there was limited consideration given to native vegetation in the planning and development process. This often resulted in impacts on vegetation being considered very late in the planning process, and often after Development Approval had been granted. This resulted in the loss of opportunities available to avoid or minimise impacts on native vegetation.

The lack of legislative alignment and coordination between the former planning regime and the Native Vegetation Act led to inconsistent decision making, confusion and uncertainty for applicants, duplication in process and often delays in finalising decisions. It also often resulted in increased impacts on native vegetation that likely could have been avoided if considered earlier in the process.

The introduction of the Native Vegetation Overlay and the State Significant Native Vegetation Areas Overlay in the Code has been successful in addressing many of

these issues, and the Panel acknowledges that the relationship between planning policy and native vegetation has improved under the new planning regime.

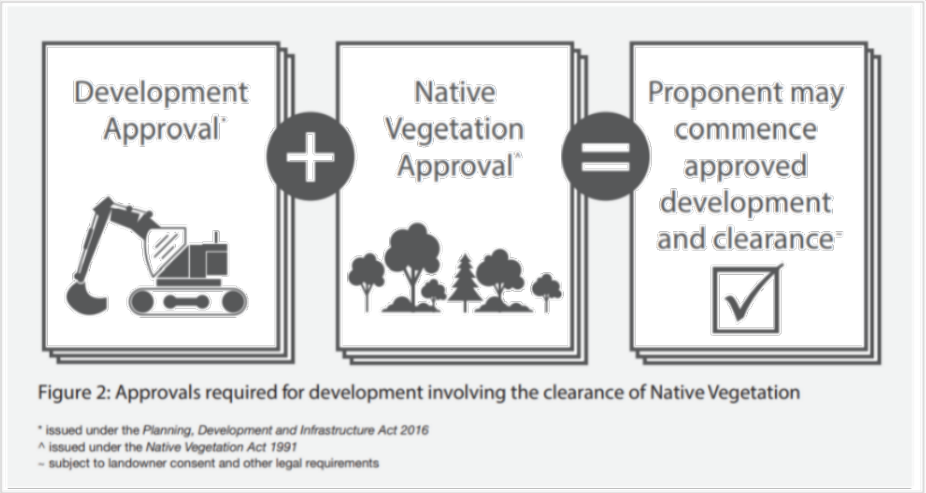


Figure 2: Approvals required for development involving the clearance of Native Vegetation

* issued under the *Planning, Development and Infrastructure Act 2016*
^ issued under the *Native Vegetation Act 1991*
~ subject to landowner consent and other legal requirements

However, the Panel also recognises that further improvements could be made to the interaction between the two (2) systems as, although improved, they remain quite separate and are not complimentary. An example of this may be the ability for applicants to access information about whether native vegetation is present on their land, and if so, how they can avoid impacting the same.

In addition, it is this lack of connectivity that can cause confusion and result in the clearance of protected trees. For example, pursuant to section 27(1)(b) of the Native Vegetation Act and Schedule 1, clause 14 of the *Native Vegetation Regulations 2017*, native vegetation may be cleared within five (5) metres of a fence line in certain circumstances. This may be erroneously understood to include the removal of a regulated tree in the absence of an approval under the PDI Act. However, this is not the case, and the requirement to obtain approval under the PDI Act for tree-damaging activity in relation to a regulated tree applies irrespective of whether the activity may be permitted under the Native Vegetation Act.

Whilst the interaction between planning policy and native vegetation is not strictly a Code matter, the Panel acknowledges the important contribution native vegetation makes to our tree canopy. In circumstances where the retention and increase of tree canopy is a key priority, it follows that consideration ought to be given to the issues being experienced in the interface between the planning system and native vegetation, and how those may be overcome.

Questions for consultation:

1. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?

2. Are there any other issues connecting native vegetation and planning policy?

Tree Canopy

As identified in the background section of this Chapter, with the implementation of the Code, it was determined that the tree planting policies would not apply to master planned/greenfield developments. The rationale was that sufficient trees would be planted throughout the development through open space, parks, road reserves etc and it was therefore unnecessary to also require a tree (or trees) to be planted on individual dwelling sites.

However, noting the increased requirement for tree canopy coverage in South Australia, the Panel has considered whether there is merit in requiring master planned/greenfield development areas to also ensure that at least one (1) tree is planted on the site of each new dwelling.

It has also considered whether there would be further merit it requiring such a tree to be planted in the rear of a dwelling site to increase the potential for it to grow large enough to provide passive shade to neighbouring allotments.

Questions for consultation:

1. What are the implications of master planned/greenfield development areas also being required to ensure at least one (1) tree is planted per new dwelling, in addition to the existing provision of public reserves/parks?
2. If this policy was introduced, what are your thoughts relating to the potential requirement to plant a tree to the rear of a dwelling site as an option?

Tree Protections

The Panel recognises that there are numerous ways to protect trees through our regulatory system, each with their own costs and benefits. These mechanisms are highlighted in the Research Report obtained for the Commission, as discussed earlier in this Discussion Paper.

However, due to the implications of amending and/or extending the current framework, the Panel considers that it is both appropriate and necessary to seek community and stakeholder input as to what tree protection mechanisms should operate in South Australia.

As it stands, Regulation 3F(1) of the PDI Regulations provides that in order for a tree to be deemed 'regulated', it must have a trunk circumference of at least two (2) metres. The Research Report states that the minimum trunk circumference used to 'trigger' regulated and significant tree protections is too generous and recommends it be revised.

It appears that this is because, by comparison to other jurisdictions (as identified earlier in this Chapter), South Australia requires the highest minimum trunk circumference in the Nation before legislative tree protection is triggered.

In addition, the Research Report identifies that South Australia is behind other jurisdictions in that it does not currently afford tree protections based on the height or crown spread of a tree. It is indicated that protecting taller trees and trees with larger crowns would ensure canopy structure is preserved, and would maximise biodiversity, amenity and public health benefits associated with the urban forest[6].

The Panel also notes that both the Research Report and the Arborists Report identify the opportunity to introduce additional tree protection mechanisms specifically relating to tree species. It is thought that this would promote biodiversity in the urban forest through the protection of rare or unusual species[7] and would also go some ways in preparing for the predicted increased stress caused to urban trees because of climate change.

Notwithstanding the findings in the Research Report, for the avoidance of doubt, the Panel does not intend to make any specific recommendations as to what the revised minimum tree circumference should be (or if it should be amended), or what any minimum height or minimum canopy spread protections ought to be introduced (if it is inclined to recommend any of the same).

This is because the Panel acknowledges the need for significant economic analysis to be undertaken before such figures could be arrived at. The economic analysis would need to identify what the broader implications of amending and/or introducing the regulations would be, and not only how that would impact development outcomes and land supply, but equally whether there is sufficient professional capability in South Australia to manage increased regulation (i.e., trained arborists to undertake tree analysis and reporting).

Question for consultation:

1. What are the implications of reducing the minimum circumference for regulated and significant tree protections?
2. What are the implications of introducing a height protection threshold, to assist in meeting canopy targets?
3. What are the implications of introducing a crown spread protection, to assist in meeting canopy targets?
4. What are the implications of introducing species-based tree protections?

Distance from Development

The South Australian regulatory framework currently provides that a tree that would otherwise be protected based on its trunk circumference may be removed if it is within ten (10) metres of an existing dwelling or an existing in-ground swimming pool

[6] Ibid, 59.
[7] Ibid, 60.

(regulation 3F(4)(a) of the PDI Regulations). This exemption does not apply to *Agonis flexuosa* (Willow Myrtle) or Eucalyptus (any tree of the genus).

As is identified in the Research Report, the existing ten (10) metre proximity "*is likely to effectively remove protections for many urban trees in Adelaide, given ongoing urban infill*"[8].

Accordingly, having considered the analogous opportunities permitted for removal in other Australian jurisdictions, the Panel considers that this provision is too generous, and that consideration needs to be given to reducing the same.

The Panel also considers there is scope for reducing, or otherwise further refining, the circumstances that are deemed suitable triggers for removing a protected tree based on its proximity. This could potentially include a requirement for the tree to be posing a significant threat to safety or infrastructure but could also be refined to only permit removal to occur if the tree is within a certain distance to a substantial building or infrastructure (this is an approach taken by some councils in other jurisdictions).

As with the tree protections discussed earlier in this Chapter, the Panel is unlikely to make specific numeric recommendations for revision of these regulations in the absence of further economic analysis. However, it deems it appropriate and necessary to obtain community and stakeholder views on the potential revision of this aspect of the tree protection framework.

Question for consultation:

1. Currently you can remove a protected tree (excluding *Agonis flexuosa* (Willow Myrtle) or Eucalyptus (any tree of the genus) if it is within ten (10) metres of a dwelling or swimming pool. What are the implications of reducing this distance?
2. What are the implications of revising the circumstances when it would be permissible to permit a protected tree to be removed (i.e. not only when it is within the proximity of a major structure, and/or poses a threat to safety and/or infrastructure)?

The Urban Tree Canopy Off-set Scheme

The Panel understands that the Commission intends to look at the Urban Tree Canopy Off-set Scheme as part of Part 3 of its Project. However, the Panel also recognises that the Scheme has the capacity to be an integral part of the tree policy framework under the Code.

Whilst it has only been used a small number of times since the implementation of the Code, there is potential for this to increase as development (and particularly infill development) increases.

[8] Ibid.

However, in the Panel's view, the cost associated with electing not to plant a tree and instead paying into the Scheme is not high enough and does not reflect the actual costs borne by local government in having to plant and maintain replacement trees elsewhere. The Panel believes there is scope to refine the fees associated with the Scheme to better reflect this.

In addition, the Panel agrees with the recommendations arising from the reports prepared for the Commission that the current offset fees for the removal of regulated or significant trees are inadequate and should be reviewed.

The off-set fees are charged in circumstances where a replacement tree is not planted. However, the overall cost to amenity, history, biodiversity and the urban heat effect is not, and cannot be, appropriately compensated with $156.00, nor can a council plant a replacement tree for this fee.

Questions for consultation

1. What are the implications of increasing the fee for payment into the Off-set scheme?
2. If the fee was increased, what are your thoughts about aligning the fee with the actual cost to a council of delivering (and maintaining) a tree, noting that this would result in differing costs in different locations?
3. What are the implications of increasing the off-set fees for the removal or regulated or significant trees?

Public Realm Tree Planting

Whilst the work of the Panel is primarily focused on private realm tree canopy, it would be remiss of it not to identify that there are significant complications arising from:

- street trees being removed (lawfully or otherwise) and not replaced;
- street trees dying;
- land costs and availability of land to plant trees for inner city councils; and
- the fact that in circumstances where street trees are planted and cared for, they are often not of a sufficient size or species to grow into a tree that will provide significant future canopy cover.

To this end, the Panel believes that there is opportunity to explore the funding options available to councils for public realm tree planting and maintenance, as a manner to encourage the planting of more substantial trees that will make a significant impact on the future urban tree canopy.

The Planning and Development Fund (the Fund) operates in accordance with Part 15, Division 1 of the PDI Act and provides the means for open space and public realm investment across South Australia.

Money paid into the Fund is derived from monetary payments made in lieu of meeting the open space requirements for development involving the division of land into 20 or fewer allotments and for strata and community titles. The Fund is expended in line with section 195 of the PDI Act and enables the Government to adopt a state-wide approach to strategically implement open space and public realm projects in an objective manner.

To achieve this, the Fund provides grant funding opportunities for local government through the Open Space Grant Program (the Grant Program). The Grant Program is application based and assists councils to provide quality open space in their areas (which can necessarily include green space).

In addition, together with the Pocket Park election commitment by the Government to help green suburbs, the Panel is aware that other Government initiatives have, in recent years, supported planting and greening of our neighbourhoods. An example of this is the Greener Neighbourhoods Grant Program operated by DEW (through Green Adelaide), which provides grant funding to eligible councils to keep suburban streets and open space green and cool.

Questions for consultation:

1. Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?

Questions for Tree Policy

Native Vegetation

1. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?
2. Are there any other issues connecting native vegetation and planning policy?

Tree Canopy

1. What are the implications of master planned/greenfield development areas also being required to ensure at least one (1) tree is planted per new dwelling, in addition to the existing provision of public reserves/parks?
2. If this policy was introduced, what are your thoughts relating to the potential requirement to plant a tree to the rear of a dwelling site as an option?

Tree Protections

3. What are the implications of reducing the minimum circumference for regulated and significant tree protections?
4. What are the implications of introducing a height protection threshold, to assist in meeting canopy targets?
5. What are the implications of introducing a crown spread protection, to assist in meeting canopy targets?
6. What are the implications of introducing species-based tree protections?

Distance from Development

7. Currently you can remove a protected tree (excluding *Agonis flexuosa* (Willow Myrtle) or Eucalyptus (any tree of the genus) if it is within ten (10) metres of a dwelling or swimming pool. What are the implications of reducing this distance?
8. What are the implications of revising the circumstances when it would be permissible to permit a protected tree to be removed (i.e. not only when it is within the proximity of a major structure, and/or poses a threat to safety and/or infrastructure)?

Urban Tree Canopy Off Set Scheme

9. What are the implications of increasing the fee for payment into the Off-set scheme?
10. If the fee was increased, what are your thoughts about aligning the fee with the actual cost to a council of delivering (and maintaining) a tree, noting that this would result in differing costs in different locations?

11. What are the implications of increasing the off-set fees for the removal or regulated or significant trees?

Public Realm Tree Planting

12. Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?

Planning System Implementation Review

Infill Policy

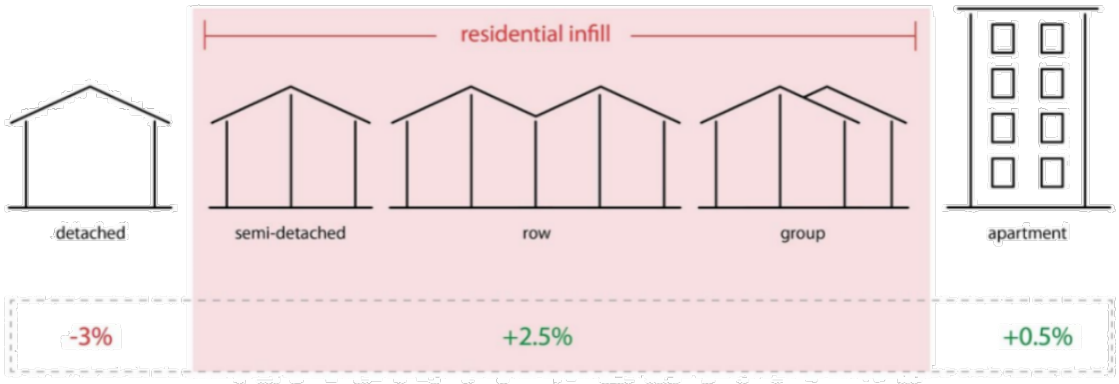
Background

The *30 Year Plan for Greater Adelaide* (2017 Update) encourages the reduction of our urban footprint and the provision of more housing diversity close to public transport options.

Target 1 – Containing our urban footprint and protecting our resources – seeks for **85 per cent** of all new housing in metropolitan Adelaide to be built in established urban areas by 2045. To achieve these targets, minor infill has become increasingly important to the overall settlement pattern of metropolitan Adelaide.

Indeed, minor infill was identified as the **single greatest provider** of new housing in Greater Adelaide in the then Department of Transport and Infrastructure's summary of minor infill activity in Greater Adelaide 2012-2018 report. This report found that minor infill development contributed to 39 per cent of the region's net dwelling increase in this time period, as compared with major/other infill (32 per cent) and broadhectare (29 per cent) sites.

Further, the 2019 'A Missing Middle Case Study' by Dr Damien Madigan (commissioned to inform the Code) observed that in areas experiencing high minor infill development activity, an opportunity exists to place a strong focus on providing diverse housing options that are universally designed, affordable, support 'ageing in place' and reflect the changing needs of our community.



2006-2016 percentage change of residential infill in SA

It follows that it was not only important, but imperative, that the new planning regime reflected the increased presence of infill development in our neighbourhoods.

The residential infill policy was consequently identified as a policy construct of the Code, with the intention of enhancing the State's liveability and prosperity in furtherance of the objects of the PDI Act.

Implementation of Infill Policy

As part of the implementation of the Code in March 2021, the Commission recommended improvements to the policies which guide residential infill in urban areas.

A 'People and Neighbourhoods' Discussion Paper was released in the course of the consultation process to explore the proposed Code policy framework that will best support the future development of homes and neighbourhoods.

Following this consultation, the Code delivered a suite of new policies to increase the design quality of infill development in residential urban areas, including:

1. increasing tree planting, urban green cover and space for gardens;
2. more effective management of stormwater associated with residential infill developments;
3. ensuring adequate on-site parking and reducing the loss of on-street parking; and
4. increasing street amenity by incorporating design features to enhance building façades.

A summary of the key policy changes introduced through the Code is set out in the Commission's brochure, 'Raising the Bar on Residential Infill Development'.

Infill policy encompasses and entwines the key areas of the Code policy that the Panel has been tasked with reviewing, and is reflected in the following areas of the Code:

- Overlays:
  - Stormwater Management Overlay and
  - Urban Tree Canopy Overlay;
- General Development Policies
  - Design in Urban Areas; and
  - Transport, Access and Parking.

Minimum site dimensions/density

The suite of zones where residential infill development is typically envisaged includes:

1. Established Neighbourhood Zone;
2. General Neighbourhood Zone;
3. Hills Neighbourhood Zone;

4. Housing Diversity Neighbourhood Zone;
5. Suburban Neighbourhood Zone;
6. Waterfront Neighbourhood Zone; and
7. Urban Renewal Neighbourhood Zone.

The policies guiding minimum site areas/densities in the Established Neighbourhood Zone, Hills Neighbourhood Zone, Housing Diversity Neighbourhood Zone, Suburban Neighbourhood Zone and Waterfront Neighbourhood Zone each have reference to any relevant Technical and Numeric Variation (TNV), providing for local variations to guide the appropriate densities.

The General Neighbourhood Zone and Urban Renewal Neighbourhood Zone have minimum site dimensions / densities set within the Site Dimensions and Land Division Policy in the zone as follows:

General Neighbourhood Zone		
Dwelling Type	**Minimum site/allotment area per dwelling**	**Minimum site/allotment frontage**
Detached dwelling (not in a terrace arrangement)	300m^2 (exclusive of any battle-axe allotment 'handle')	9m where not on a battle-axe site 5m where on a battle-axe site
Semi-detached dwelling	300m^2	9m
Row dwelling (or detached dwelling in a terrace arrangement)	250m^2	7m (averaged)
Group dwelling	300m^2 (average, including common areas)	15m (total)
Dwelling within a residential flat building	300m^2 (average, including common areas)	15m (total)
Urban Renewal Neighbourhood Zone		
Allotments/sites for residential purposes achieve a net density of up to 70 dwellings per hectare.		

Development with a net residential density over 70 dwellings per hectare on sites with a minimum area of 1200m^2 and minimum frontage width of 35m.

A fixed density policy was considered appropriate in these zones to provide a consistent set of policies for standard residential areas within Greater Adelaide.

The General Neighbourhood Zone seeks to provide greater standardisation of minimum frontage and site area requirements to deliver a steady supply of well-designed and diverse infill housing compatible with existing suburban streets and suburbs.

Importantly, in response to various requests to increase/decrease minimum site dimensions, the General Neighbourhood Zone sets minimum site areas and frontages that are designed to be in harmony with typical allotment patterns and are wide and big enough to comfortably accommodate a range of housing options.

Investigations demonstrated that:

1. sites **over 200m²** can comfortably accommodate a range of 1-storey, 2-bedroom dwellings and 2- storey, 3-bedroom dwellings with single garages;
2. sites **over 300m²** can comfortably accommodate a range of 1-storey, 3-bedroom dwellings and 2- storey, 4+ bedroom dwellings;
3. sites with a **frontage of 9m** can comfortably accommodate a 1-storey dwelling with single garage and a street-facing room and 2-storey dwellings with double garages; and
4. terrace housing/row dwellings can be developed on sites as **narrow as 4.8m**, however at 7m these can be more sensitively integrated into existing areas by providing adequate separation from neighbours and retaining on-street parking and landscaped street frontages.

Discussion

The Panel recognises that since implementation of the Phase Three (Urban Areas) Code Amendment in March 2021, issues associated with infill development such as car parking and trees/landscaping have continued to arise as key concerns of the South Australian community. Indeed, this is one (1) of the reasons that the Panel has been established and further, why it has been tasked with considering the broader impacts of carparking and trees, as well as those associated with infill development.

It is noted, however, that houses approved under the Code are only now becoming evident throughout our suburbs, as the building consent, development approval and construction process following planning consent generally takes up to one (1) year.

This is evidenced in the fact that there have only been 79 Deemed to Satisfy (DTS) infill applications assessed and approved against the new provisions (but not necessarily construction completed) since the implementation of the Code in metropolitan Adelaide (between March 2021 and October 2022). Each of these applications is identified in red on the map below. It is relevant to note that this number is lower than it could have been because:

1. the Code was deferred to allow for the HomeBuilder Scheme dwellings (approximately 12,000 homes[9]) to be assessed under the former system; and
2. of delays in the residential construction sector due to COVID-19.

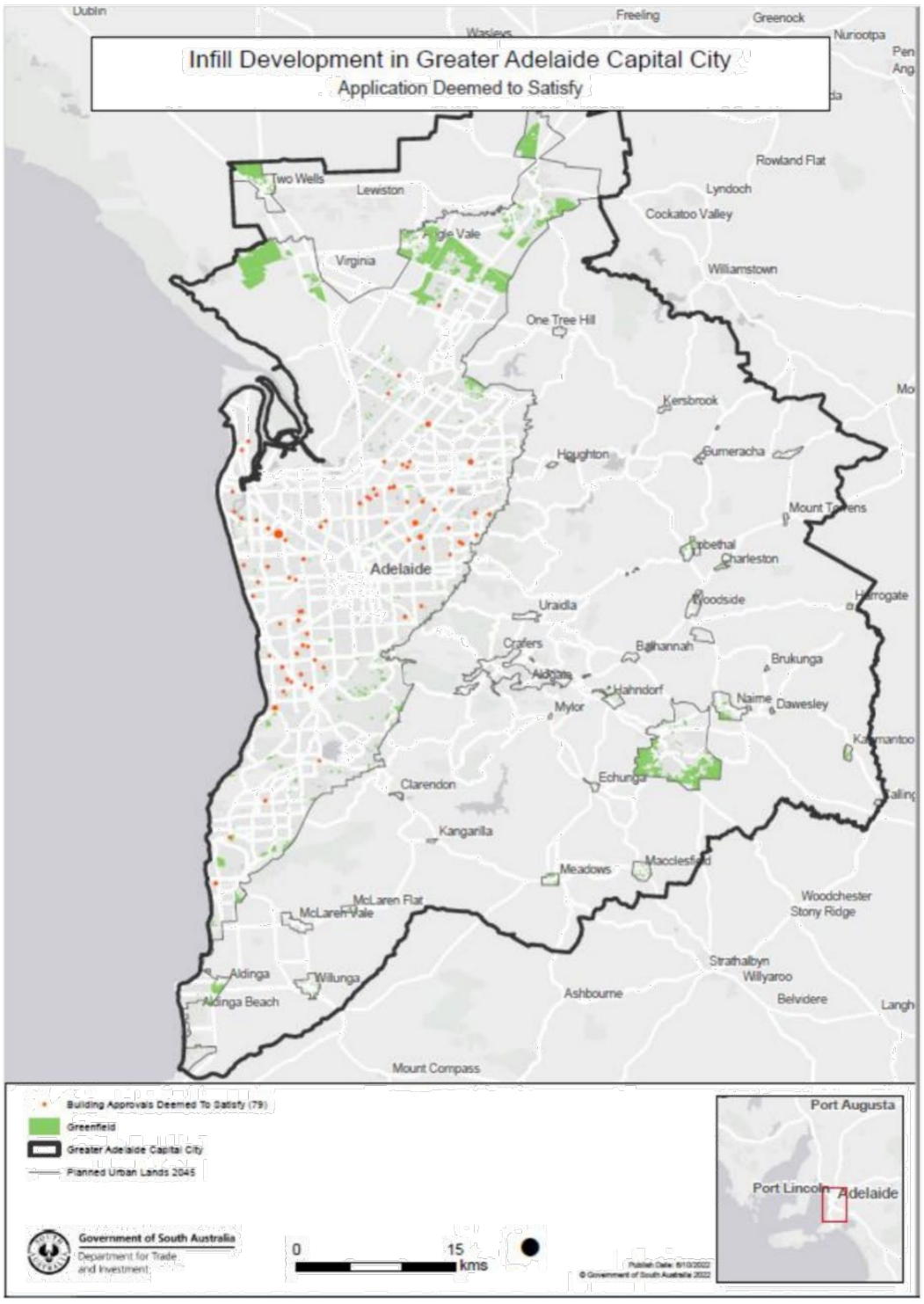
Accordingly, it is difficult to analyse the success of residential infill policies in our neighbourhoods at this early stage. As with the Code's tree policy, it will be necessary for further time to pass before substantive data is available evidencing how effectively the infill policies are working.

Notwithstanding, for the purposes of obtaining an early indication of how the policy is performing, the Panel has requested that additional data analysis be undertaken on the development applications that have received approval to ascertain what percentage of those applications comply with the infill criteria. The Panel intends to report on these findings in its final report to the Minister.

Despite this, the Panel understands that there may remain opportunities for improvement in the infill policies and explores those ideas below.

[9] This dataset is approximate as it relied, in-part, on councils identifying if an application was lodged under the HomeBuilder Scheme, which not all councils did.

Planning System Implementation Review



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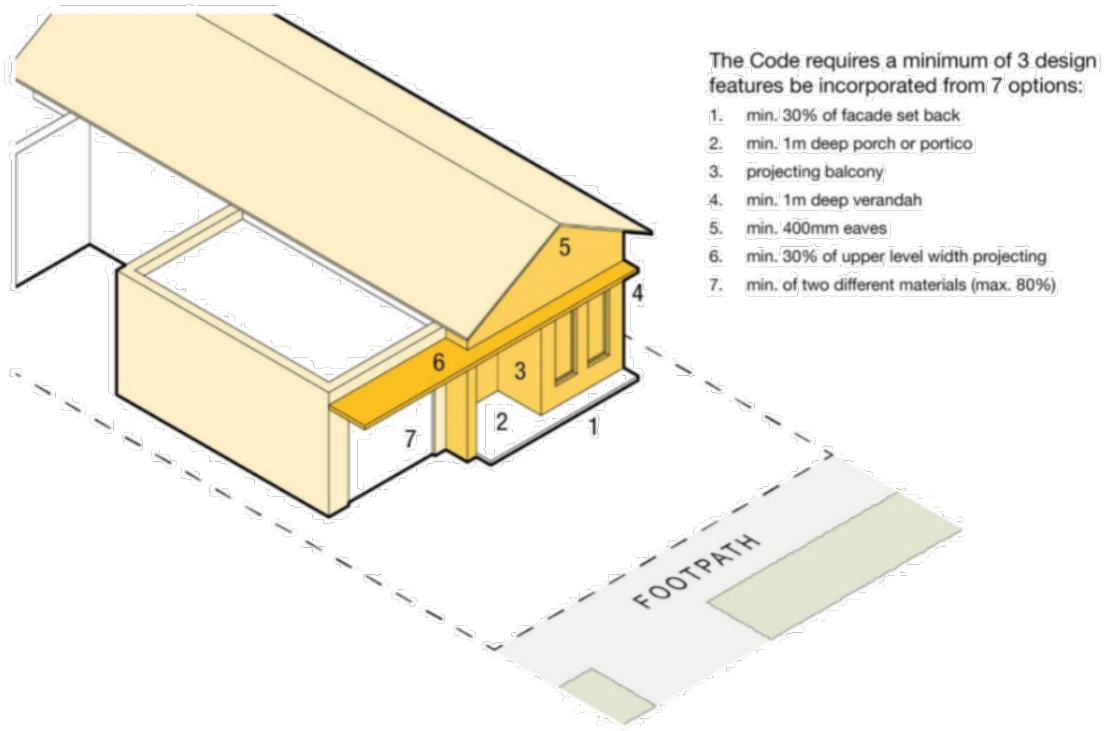
Design features

Design improvements were introduced through the new residential infill policy to improve the streetscape appearance of dwellings, including:

1. a minimum of three (3) design features (out of seven (7) design options) on front façades, including eaves, porches, balconies, different materials, stepping, etc., to improve visual interest and building articulation;
2. entry doors visible from the primary street boundary to create a sense of address;
3. a minimum $2m^2$ habitable window area facing the street to improve street appeal and increase passive surveillance; and
4. allocation of a dedicated area for bin storage behind the building's façade.

These policies can be found in the Design and Design in Urban Areas General Development Policies in the Code.



Whilst these guidelines go some way to encouraging more appropriate design outcomes for residential infill, in the Panel's view, they still leave room for variation. That is, the Panel considers there is opportunity to provide more specific guidance materials to support the provision of well-designed infill development.

Infill development does not necessarily need to be provided only through narrow, typically detached, often abutting housing. There are a broad range of infill development outcomes and designs that are available for exploration and further consideration in South Australia. Indeed, the Commission has initiated the 'Future Living' Code Amendment which seeks new forms of housing and housing diversity in established suburbs. If approved, this Code Amendment would go some way to diversifying the types of infill development that is being established.

Notwithstanding, the Panel considers that there would be benefit in guidance material being prepared outlining what alternative or innovative options for infill development may be suitable for our neighbourhoods.

In this regard, the Panel also notes the ability for the Code to be supported by *'advisory material in the form of planning or design manuals or guidelines*' under section 66(5) of the PDI Act.

If there were appetite for more specific design guidelines to be prepared in relation to infill development, there may be opportunity to have the same designated as advisory material for the purposes of section 66(5), thus giving it greater force.

Questions for consultation:

1. Do you think the existing design guidelines for infill development are sufficient? Why or why not?
2. Do you think there would be benefit in exploring alternative forms of infill development? If not, why not? If yes, what types of infill development do you think would be suitable in South Australia?

Strategic Planning

Commentary on infill policy often focuses on numerical provisions such as minimum allotment sizes, with the assumption that larger allotments lead to better development outcomes.

However, investigations were undertaken in advance of the Code's implementation which demonstrated the types of housing that could be supported on a range of allotment sizes.

This analysis noted that allotments **over 200m²** (of which all minimum allotment sizes identified in the General Neighbourhood Zone exceed) can comfortably accommodate a range of 1-storey, 2-bedroom dwellings and 2- storey, 3-bedroom dwellings with single garages. Indeed, in the Panel's experience, allotments far smaller than 200m^2 can accommodate the range of housing types identified in the analysis.

As the evidence shows that smaller allotments can deliver a range of housing types, it is important that greater attention is paid to where infill policies are spatially applied to make sure that the Code has the right policies in the right locations.

The Panel acknowledges that opportunities to undertake strategic planning activities (such as the development of growth strategies, structure plans and concept plans) have been limited during the transition to the new planning system.

The current forthcoming reviews of Regional Plans and the 30-Year Plan for Greater Adelaide present an opportunity to reinvigorate local strategic planning to bridge any gap between regional planning and the spatial application of the Code.

The Panel is seeking feedback on the best mechanisms for state and local government and the private sector to work together to align plans and ensure that Code policies are being applied in the right locations to achieve State Policies and regional strategic objectives.

Questions for consultation:

1. What are the best mechanisms for ensuring good strategic alignment between regional plans and how the policies of the Code are applied spatially?
2. What should the different roles and responsibilities of State and local government and the private sector be in undertaking strategic planning?

Planning System Implementation Review

Questions relating to Infill Policy

Design Guidelines

1. Do you think the existing design guidelines for infill development are sufficient? Why or why not?
2. Do you think there would be benefit in exploring alternative forms of infill development? If not, why not? If yes, what types of infill development do you think would be suitable in South Australia?

Strategic Planning

1. What are the best mechanisms for ensuring good strategic alignment between regional plans and how the policies of the Code are applied spatially?
2. What should the different roles and responsibilities of State and local government and the private sector be in undertaking strategic planning?

Planning System Implementation Review

Car Parking Policy

Background

During the Commission's investigations and consultation on the Code, car parking and garaging was identified as a particular area of concern, with submissions from community members and residents' associations commonly stating insufficient on-site car parking was an issue.

In preparing the car parking policy, and prior to the implementation of Phase Three of the Code, the Department commissioned a review of car parking rates by traffic engineers, who considered modern traffic and car parking survey demand data. This work included analysis of off-street car parking rates for all land uses and a review of access and car parking policy in relation to residential and infill development in the draft Code.

The draft Code consequently required that only one (1) car park needed to be provided for two-bedroom homes. Car ownership data (using the vehicle registration system and information from the Australian Bureau of Statistics) demonstrated that this would be sufficient, as 2016 statistics indicated that the highest proportion of households owned one (1) or no cars (42 per cent) and approximately 35 per cent of the population owned two (2) cars.

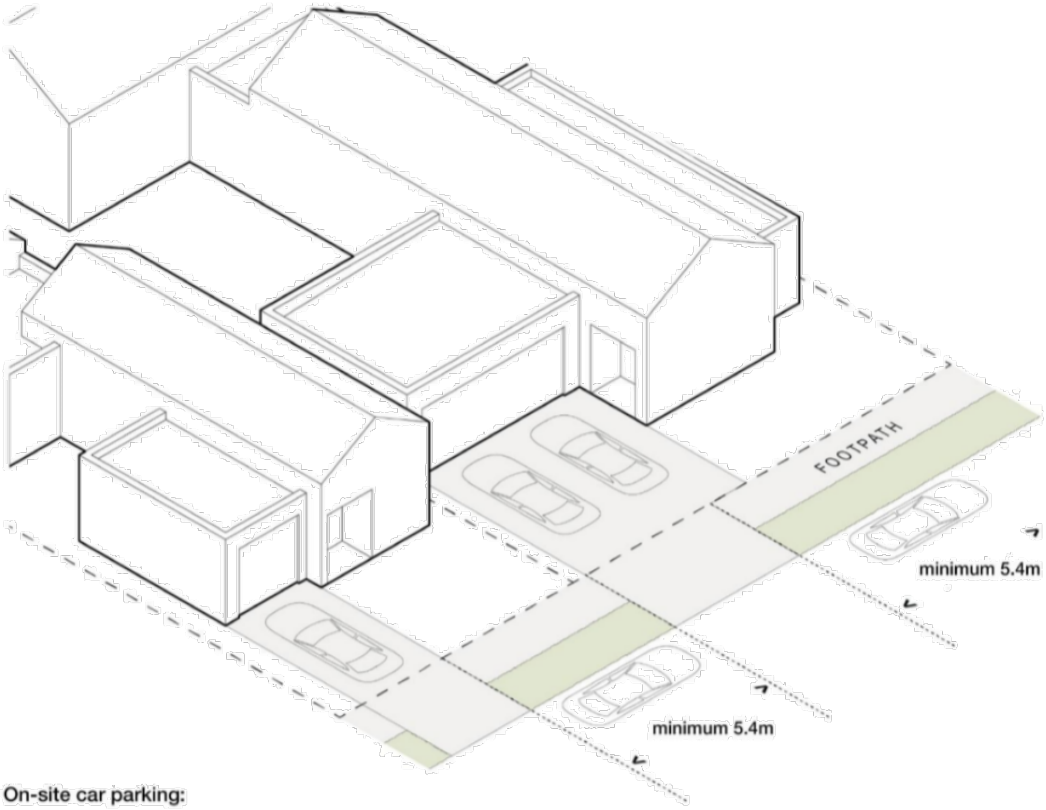
However, in response to feedback from the public and councils during consultation on Phase Three of the Code, the car parking rates were increased to provide at least two (2) car parks for two-bedroom infill housing, increased from one (1) car park originally proposed, and required at least one (1) of those car parks to be covered (e.g. carport or garage). These changes brought the car parking policy in line with the former Residential Code, which was the complying housing standard introduced into the *Development Regulations 2008* in 2009.

The Code as we now know it seeks to promote both the use and sufficiency of functional on-site car parking by introducing the following policies:

1. minimum garage dimensions (mandated in accordance with the Australian Standard), ensuring garages are large enough to park a car (the Australian Standard dimensions fit most 'large' cars like a Holden Commodore, but not 4x4 vehicles, such as a Ford Ranger, due to length);
2. retention of on-street parking, ensuring driveways are located far enough apart to park a car on the street; and
3. minimum on-site car parking rates, ensuring:

a. one (1) on-site car park for one-bedroom dwellings (row houses, townhouses, semi-detached dwellings in infill neighbourhood zones); and

b. at least two (2) on-site car parks for houses with two (2) or more bedrooms, one (1) which must be covered.



On-site car parking:
2 x spaces per 2+ bedroom dwellings
1 x space per 1 bedroom dwelling

On-street car parking:
1 x space per 3 new houses @ 5.4m length

Car parking rates can be found in Tables 1 and 2 of the Transport, Access and Parking General Development Policies in the Code.

Planning System Implementation Review

Car Parking Off-Set Schemes

Part 15, Division 2 of the PDI Act enables councils to establish off-set schemes and associated funds for particular purposes. This mechanism can be utilised to establish a car parking fund as referred to in Table 1 General Off-Street Car Parking Requirements and Table 2 – Off-Street Car Parking Requirements in Designated Areas of the Code.

Payments into a fund created for this purpose can be utilised to off-set shortfalls in car parking provided for a development, by enabling a council to construct public car parking facilities in lieu of provision by a developer.

In a practical sense, payment into a car parking fund may be seen as a less desirable option than providing on-site car parking in accordance with the Code, due to perceived flow-on effects related to the under-provision of on-site car parking, such as increased congestion, competition for on-street or communal parking spaces and/or reduced convenience and/or accessibility. Ordinarily, a developer will be asked to demonstrate why an on-site car parking shortfall is appropriate in the context of a development by way of a traffic and parking analysis that considers the provision of all publicly accessible car parking in the surrounding area.

The intended advantage of a car parking fund is that it assists funding the provision of centrally located car parking by councils, particularly in areas where individual sites are constrained and have not traditionally provided on-site car parking (e.g., historic character areas). For example, the multi-level car park at Commercial Lane in Gawler was part-funded through a car parking fund established under the *Development Act 1993* and provides centrally located car parking within the historic township.

Planning System Implementation Review

Discussion

The Panel understands and recognises that there is a perceived congestion issue in some parts of metropolitan Adelaide, and that the significant number of vehicles being seen on our local streets is occurring not only in areas of infill development growth, but also around public transport corridors through 'ad hoc' Park 'n' Rides.

In addition, the expectation that the on-street parking space outside of a dwelling is 'reserved' for the visitors or occupants of that dwelling is potentially adding to the perception of congestion, particularly in circumstances when that parking space is occupied.

Whilst there appears, at least anecdotally, to be a desire to increase the off-street car parking rates prescribed in the Code, the Panel does not consider that it is either reasonable or practical to increase the current requirement for two (2) off street car parks for homes of two (2) or more bedrooms. Indeed, it may be suggested that as a society, we may be heading in the other direction, and the need for provision of off-street vehicle parking may reduce over time.

In the Panel's view, although car parking is a legitimate issue for South Australians, there is not significant work to be done to the Code, but rather in the appropriate management of both on and off-street car parking and local road design. These matters largely fall to local government authorities to manage and enforce.

Notwithstanding, the Panel has considered what opportunities for investigation and/reform in the Code may be available to assist in alleviating the consternation surrounding car parking and seeks further feedback on the topics that follow.

Planning and Design Code Policy

The argument for embedding minimum car parking rates in the planning system is driven by the dominance of motor vehicles as a means of urban mobility in Adelaide. For example, the 2016 Census revealed that 79.9% of respondents travelled to work by car as the driver[10]. This was the highest in Australia.

This argument is further driven by the fact that many people use garages for storage and not vehicle parking, which has a consequent impact on local streets.

However, there is emerging thinking that the provision of car parking spaces enables the choice to drive, and that a modal shift will not occur while there is a generous provision of car parking space within both the public and private realm. This is, at its core, a cultural issue and demonstrates a need to progressively uncouple existing car parking demand from development.

Whilst the Panel recognises that modal shift is multifaceted and relies upon investment occurring in many areas of the State (public transport and infrastructure most

[10] Transport data from the 2021 Census is expected to be released in October. This may reveal whether changes in working patterns post-Covid have influenced travel patterns.

obviously), the provision of off-street car parking, together with the appropriate use of off-street car parking, is a relevant consideration.

In this regard, there is opportunity to explore:

1. in an urban context, a nuanced approach in relation to the spatial application of car parking rates that is dependent on proximity to the Central Business District (CBD), other employment centres and/or public transport corridors;
2. whether the Code should offer more generous car parking rate dispensation for a broader number of land uses based on proximity to public transport or employment centres and what those discounts should be; and/or
3. whether car parking rates should be reviewed to ensure that they meet an average expected demand, rather than peak demand, to minimise future over-provision.

In addition, the Code's requirement for at least one (1) car park to be covered when two (2) car parks are provided may not be a contemporary proposition in 2022. The Panel is investigating where this requirement was borne from (noting its existence in development control policies under the *Planning Act 1982* the *Development Act 1993*) but seeks feedback as to whether there would be general support to remove it.

This may provide opportunity for improved design outcomes on smaller allotments (if no garaging is required), whilst also retaining the flexibility for developers to provide a covered car park if they so choose.

Questions for consultation:

1. What are the specific car parking challenges that you are experiencing in your locality? Is this street specific and if so, can you please advise what street and suburb.
2. Should car parking rates be spatially applied based on proximity to the CBD, employment centres and/or public transport corridors? If not, why not? If yes, how do you think this could be effectively applied?
3. Should the Code offer greater car parking rate dispensation based on proximity to public transport or employment centres? If not, why not? If yes, what level of dispensation do you think is appropriate?
4. What are the implications of reviewing carparking rates against contemporary data (2021 Census and ABS data), with a focus on only meeting average expected demand rather than peak demand?
5. Is it still necessary for the Code to seek the provision of at least one (1) covered carpark when two (2) on-site car parks are required?

Planning System Implementation Review

Design Requirements

Design requirements such as setbacks and driveway layouts can influence the design of development in a way that constrains the space available for provision of off-street car parking. This can, in turn, impact the practicality and availability of on-street car parking.

There may be an opportunity to undertake a holistic review of the various design elements that influence the interaction between a property and the primary street to ensure that sufficient provision for off-street car parking exists, together with other intersecting elements of design, such as urban greening, façade, driveway layouts and so on. This could lead to the development of a fact sheet or design guideline that builds on and/or updates the existing Commission fact sheet *Raising the Bar on Residential Infill in the Planning and Design Code*. This may be appropriately included in any review of, or addition to, infill development guidelines, as discussed in an earlier Chapter of this Discussion Paper.

The design of off-street car parking also has the capacity to impact associated policy areas including urban heat, urban greening and/or stormwater run-off from impervious surfaces.

There is scope to investigate means by which the planning system could encourage an uptake of design solutions to support improved environmental performance such as permeable paving materials or creating more space for tree planting within car parking areas. Again, this is necessarily connected to other policy areas of the Panel's review, namely trees and infill development.

Question for consultation:

1. What are the implications of developing a design guideline or fact sheet related to off-street car parking?

Electric Vehicles

The State Government released South Australia's Electric Vehicle Action Plan in December 2020. Action 10 in the Electric Vehicle Action Plan outlines potential interactions with the planning and building regulatory system, including:

1. investigating opportunities to streamline approval processes for Electric Vehicle (EV) charging infrastructure;
2. considering emerging transport mobility technologies in future growth management strategies; and
3. considering improvements in energy management in buildings (building policy).

The installation of EV charging infrastructure is not development as defined in the PDI Act. This means there are no impediments to installation of such infrastructure presented by the planning and building regulatory system. In the Panel's view, consideration needs to be given to the appropriateness of EV charging infrastructure

remaining unregulated, noting that the lack of regulation may result in undesirable consequences in certain locations (i.e installation near to heritage buildings, amenity impacts etc).

There are also currently no dedicated policies within the Code that seek to guide the design of residential or commercial car parking arrangements in relation to EV charging infrastructure. EV charging stations are envisaged to occur in conjunction with highway service centres (DTS/DPF 1.1 of the Roadside Service Centre Subzone), which may assist to provide for more streamlined consideration of EV charging stations as a component of such development proposals.

The anticipated take-up of EVs, and any associated changes to the Australian Road Rules, may drive a need to review car parking rates in the context of the demand for dedicated EV car parking.

Such a review would need to delve into the potential impacts of the provision of dedicated parks for EV parking and charging to ensure an appropriate rate of car parking provision remains in the event that certain parks are reserved for the drivers of EVs, particularly in association with commercial land uses.

The Panel seeks community and stakeholder views on this topic, noting that whilst not a contentious issue now, it is likely to be relevant in the not-too-distant future.

Questions for consultation:

1. EV charging stations are not specifically identified as a form of development in the PDI Act. Should this change, or should the installation of EV charging stations remain unregulated, thereby allowing installation in any location?
2. If EV charging stations became a form a development, there are currently no dedicated policies within the Code that seek to guide the design of residential

or commercial car parking arrangements in relation to EV charging infrastructure. Should dedicated policies be developed to guide the design of EV charging infrastructure?

Car Parking Off-Set Schemes

Whilst the Panel understands that car parking funds previously had a place in the planning regime, it questions whether they are contemporary in modern society, noting the disproportionality between the fee to be paid into a fund and the cost of constructing a multi-level car park.

It may be desirable to consider whether the car parking fund is able to instead be used for active transport initiatives such as separated bike lanes, improved footpaths/shared paths, or other initiatives that may assist to reduce the demand for car parking.

Alternatively, or in addition, it could also be considered whether the car parking fund could be used by councils to fund the planting of additional street trees, thus aiding to offset the carbon emitted by the vehicles on our roads.

Questions for consultation:

1. What are the implications of car parking fund being used for projects other than centrally located car parking in Activity Centres (such as a retail precinct)?
2. What types of projects and/or initiatives would you support the car parking funds being used for, if not only for the establishment of centrally located car parking?

Commission Prepared Design Standards

The PDI Act makes provision for the Commission to prepare Design Standards for the public realm. The Commission's first set of Design Standards are currently being prepared in connection with driveway cross-overs, and the design of narrower driveways to allow for more on-street parking.

It follows that Design Standards could also be prepared to address matters such as street design and layout which would further seek to enable appropriate rates of on-street car parking to complement off-street car parking, while retaining high levels of amenity, preserving traffic flow and maximising pedestrian safety.

Consideration could be given to the nexus between public and private realm car parking provisions and seek to improve congestion via improvements to street design and layout rather than increased off-street parking rates.

Question for consultation:

1. Do you think there would be benefit from the Commission preparing local road Design Standards under the PDI Act?

Planning System Implementation Review

Questions relating to Car Parking Policy

Code Policy

1. What are the specific car parking challenges that you are experiencing in your locality? Is this street specific and if so, can you please advise what street and suburb.
2. Should car parking rates be spatially applied based on proximity to the CBD, employment centres and/or public transport corridors? If not, why not? If yes, how do you think this could be effectively applied?
3. Should the Code offer greater car parking rate dispensation based on proximity to public transport or employment centres? If not, why not? If yes, what level of dispensation do you think is appropriate?
4. What are the implications of reviewing carparking rates against contemporary data (2021 Census and ABS data), with a focus on only meeting average expected demand rather than peak demand?
5. Is it still necessary for the Code to seek the provision of at least one (1) covered carpark when two (2) on-site car parks are required?

Design Guidelines

6. What are the implications of developing a design guideline or fact sheet related to off-street car parking?

Electric Vehicles

7. EV charging stations are not specifically identified as a form of development in the PDI Act. Should this change, or should the installation of EV charging stations remain unregulated, thereby allowing installation in any location?
8. If EV charging stations became a form a development, there are currently no dedicated policies within the Code that seek to guide the design of residential or commercial car parking arrangements in relation to EV charging infrastructure. Should dedicated policies be developed to guide the design of EV charging infrastructure?

Car Parking Off-Set Schemes

9. What are the implications of car parking fund being used for projects other than centrally located car parking in Activity Centres (such as a retail precinct)?
10. What types of projects and/or initiatives would you support the car parking funds being used for, if not only for the establishment of centrally located car parking?

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Commission Prepared Design Standards

11. Do you think there would be benefit from the Commission preparing local road Design Standards?

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Summary of Questions Posed

Character and Heritage

1. In relation to prong two (2) pertaining to character area statements, in the current system, what is and is not working, and are there gaps and/or deficiencies?
2. Noting the Panel's recommendations to the Minister on prongs one (1) and two (2) of the Commission's proposal, are there additional approaches available for enhancing character areas?
3. What are your views on introducing a development assessment pathway to only allow for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved?
4. What difficulties do you think this assessment pathway may pose? How could those difficulties be overcome?

Trees

Native Vegetation

5. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?
6. Are there any other issues connecting native vegetation and planning policy?

Tree Canopy

7. What are the implications of master planned/greenfield development areas also being required to ensure at least one (1) tree is planted per new dwelling, in addition to the existing provision of public reserves/parks?
8. If this policy was introduced, what are your thoughts relating to the potential requirement to plant a tree to the rear of a dwelling site as an option?

Tree Protections

9. What are the implications of reducing the minimum circumference for regulated and significant tree protections?
10. What are the implications of introducing a height protection threshold, to assist in meeting canopy targets?
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12. What are the implications of introducing species-based tree protections?

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Distance from Development

13. Currently you can remove a protected tree (excluding Agonis flexuso (Willow Myrtle) or Eucalyptus (any tree of the genus) if it is within ten (10) metres of a dwelling or swimming pool. What are the implications of reducing this distance?
14. What are the implications of revising the circumstances when it would be permissible to permit a protected tree to be removed (i.e. not only when it is within the proximity of a major structure, and/or poses a threat to safety and/or infrastructure)?

Urban Tree Canopy Off Set Scheme

15. What are the implications of increasing the fee for payment into the Off-set scheme?
16. If the fee was increased, what are your thoughts about aligning the fee with the actual cost to a council of delivering (and maintaining) a tree, noting that this would result in differing costs in different locations?
17. What are the implications of increasing the off-set fees for the removal or regulated or significant trees?

Public Realm Tree Planting

18. Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?

Infill

Design Guidelines

19. Do you think the existing design guidelines for infill development are sufficient? Why or why not?
20. Do you think there would be benefit in exploring alternative forms of infill development? If not, why not? If yes, what types of infill development do you think would be suitable in South Australia?

Strategic Planning

21. What are the best mechanisms for ensuring good strategic alignment between regional plans and how the policies of the Code are applied spatially?
22. What should the different roles and responsibilities of State and local government and the private sector be in undertaking strategic planning?

Carparking

Code Policy

23. What are the specific car parking challenges that you are experiencing in your locality? Is this street specific and if so, can you please advise what street and suburb.
24. Should car parking rates be spatially applied based on proximity to the CBD, employment centres and/or public transport corridors? If not, why not? If yes, how do you think this could be effectively applied?
25. Should the Code offer greater car parking rate dispensation based on proximity to public transport or employment centres? If not, why not? If yes, what level of dispensation do you think is appropriate?
26. What are the implications of reviewing carparking rates against contemporary data (2021 Census and ABS data), with a focus on only meeting average expected demand rather than peak demand?
27. Is it still necessary for the Code to seek the provision of at least one (1) covered carpark when two (2) on-site car parks are required?

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Commission Prepared Design Standards

33. Do you think there would be benefit from the Commission preparing local road Design Standards?

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How can you get involved?

You can participate in this process and contribute to the Expert Panel's deliberations by providing a submission to the Panel:

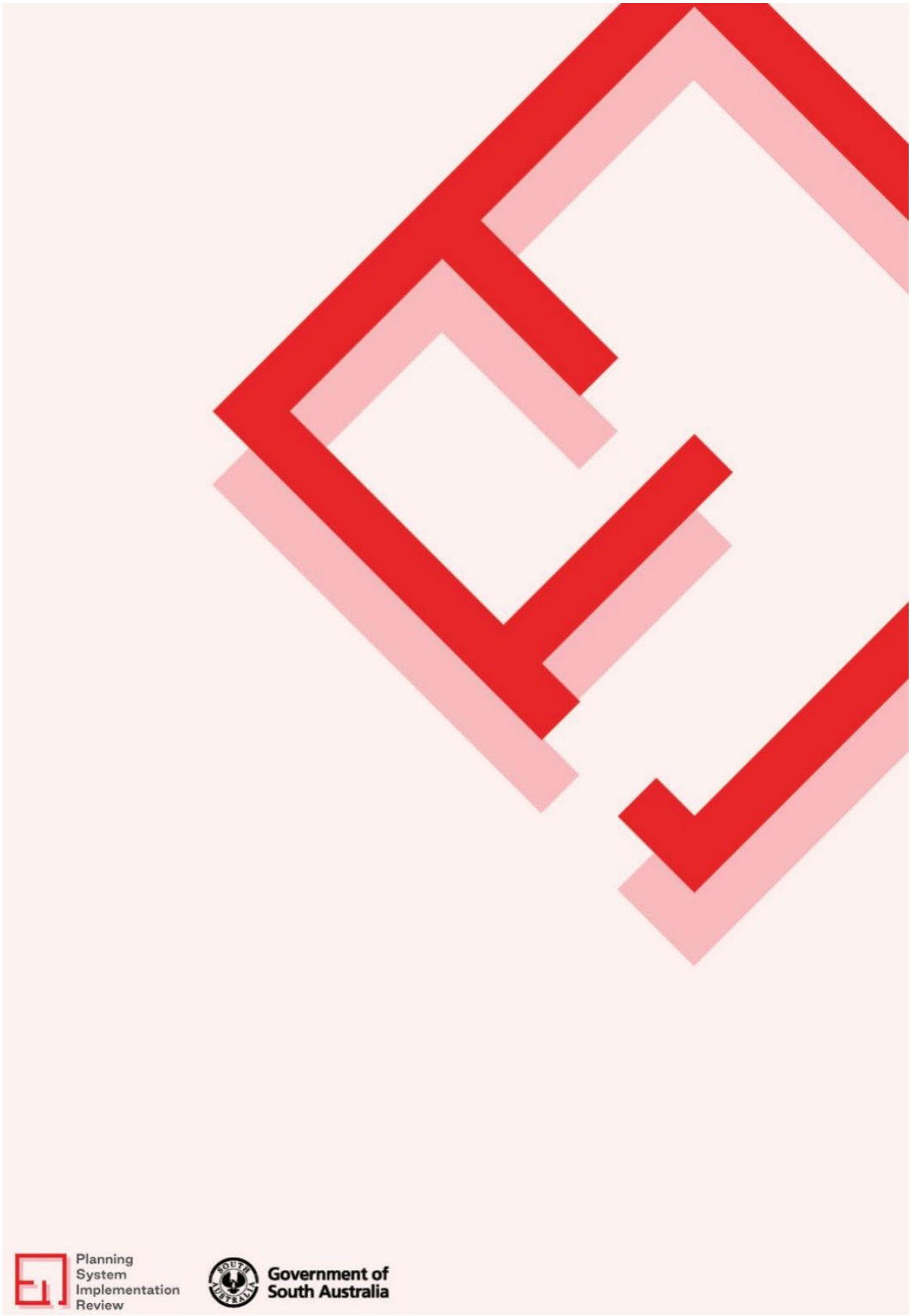
Via email: DTI.PlanningReview@sa.gov.au

Via post: Attention: Expert Panel, GPO Box 1815, Adelaide SA 5001

Via phone: 08 7133 3222

You can also complete a survey on the Expert Panel's YourSAy page: https://yoursay.sa.gov.au/planning_review

For more information about the Expert Panel and the engagement events that it is facilitating, please visit www.plan.sa.gov.au/planning_review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The Expert Panel would like your views on how **Tree Policy** is addressed in the Planning and Design Code.

Current policy on urban trees is focused on keeping and increasing tree canopy cover.

The 30-Year Plan for Greater Adelaide contains a target that "*urban green cover is increased by 20% in metropolitan Adelaide by 2045*".

It is proposed that council areas that currently have less than 30% tree canopy cover should try to increase their canopy by 20%. Council areas that currently have more than 30% tree canopy cover should keep the current level with no net loss until 2045. At present it seems unlikely that the 30 Year Plan target will be met.

Trees that are not in the Adelaide metropolitan area are generally subject to regulation via the *Native Vegetation Act 1991*.

Code Overlays

The Planning and Design Code (the Code) includes two (2) overlays – the Urban Tree Canopy Overlay and the Regulated and Significant Tree Overlay. The Urban Tree Canopy overlay provides policy for assessment of new dwellings to ensure that residential development preserves and enhances urban tree canopy. It applies to most of greater metropolitan Adelaide.

The Urban Tree Canopy overlay requires that a certain number of trees are planted when a new dwelling is constructed. This varies from the requirement to plant one (1) small tree (for sites 450m^2 or less) up to a requirement to plant either one (1) large or two (2) medium trees (for sites greater than 800m^2).

What is classified as a small, medium or large tree is set out in the Code based on the minimum height and minimum spread (of the canopy) required for a mature tree.

Discussion

Considering the relationship between trees and the SA planning system, the Panel considers that the **key issues** are:

1. **decline of urban trees** across metropolitan Adelaide leading to less tree canopy cover;
2. the real and perceived view that **urban infill policies** and development are contributing to the loss of trees i.e., tree removal, loss of private open space to plant; and
3. **exacerbation of loss of trees** with expected increases in temperature due to climate change – acknowledging that change is needed to reduce heat and provide greater cooling.

The Panel is primarily considering tree policy as it applies to private property. However, trees in public space should be considered under individual council tree planting strategies and its own tree canopy targets. The Panel understands that the management and value of street trees is important for the community.

Trees, their healthy establishment, and ongoing management, along with their resilience to climate change are also important.

State Planning Commission Open Space and Trees Project

The State Planning Commission (the Commission) is undertaking the Open Space and Trees Project.

To support its project, the Commission obtained an Arborists Report '*Open Space and Tree Project – Part 1A (Arborist Review)*' and a Research Report '*Urban Tree Protection in Australia: Review of Regulatory Matters*'. Both were made available to the public on 1 September 2022 together with the release of the '*Adelaide Home Garden Guide for New Homes*'.

The Panel has considered both documents and the recommendations they make, in determining what options for reform may be available in this policy area.

Tree Protections

Part 1 of the *Planning, Development and Infrastructure Act 2016* (PDI Act) provides the definition of ***development*** includes any tree damaging activity in relation to a regulated tree.

The *Planning, Development and Infrastructure (General) Regulations 2017* provide that for a tree to be deemed 'regulated', it must have a trunk circumference of at least two (2) metres. The Research Report recommends that the minimum trunk circumference is revised on the basis that the existing two (2) metre circumference is too generous. It also indicated that protecting taller trees and trees with larger crowns would ensure canopy is preserved to maximise

biodiversity, amenity, and public health benefits. The Research Report and Arborists Report identify opportunities to introduce additional protection mechanisms for specific species. This would promote biodiversity through the protection of rare or unusual species and protect against climate change.

The Panel is interested to hear about what the implications may be in amending or adding to the mechanisms available for tree protection in South Australia.

Tree Canopy

Noting the need for increased tree canopy coverage in South Australia, the Panel considers there is merit in requiring master planned/greenfield development areas to also ensure that at least one (1) tree is planted for each new dwelling (master planned/greenfield areas are currently exempt from the tree planting policy).

The Urban Tree Canopy Off-set Scheme

The Urban Tree Canopy Off-set Scheme was established under PDI Act to support the Urban Tree Canopy Overlay in the Code.

The Scheme allows payment into the Urban Tree Canopy Off-set Fund in lieu of planting and/or retaining trees where tree planting is not feasible.

Payments into the Off-set scheme are calculated as follows: Small ($300); Medium ($600); Large ($1200).

The Panel considers that the cost of paying into the Scheme instead of planting a tree is not high enough and does not reflect the actual costs to local government for planting and maintaining a replacement tree. There is scope to refine the fees to reflect this.

Distance from Development

The SA regulatory framework currently says that a tree that would be protected based on its trunk circumference may be removed if it is within ten (10) metres of an existing dwelling or existing in-ground swimming pool (with some species exemptions). The Research Report recommended reducing this distance, and the Panel seeks feedback about how this proposed change.

Public Realm Tree Planting

The Panel believes that there is opportunity to explore the funding options available to councils for public tree planting and maintenance, to encourage the planting of more substantial trees that will make a significant impact on the future urban tree canopy.

An option could be the Planning and Development Fund, which provides the means for open space and public realm investment across South Australia.

How You Can Provide Feedback

For more information on the Planning System Implementation Review, visit:

www.plan.sa.gov.au/planning_review

You can **email a submission** to the Panel at DTI.PlanningReview@sa.gov.au or **respond to the survey** on the Expert Panel's YourSAy.

Summary Papers are also available for the following topics being considered in this community engagement process:

- the PDI Act
- e-Planning and PlanSA
- Code – Character and Heritage
- Code – Carparking
- Code – Infill

For further information on the matters raised in this Summary Paper, please read the full version of the Planning and Design Code Discussion Paper.

Questions To Guide Your Feedback

Native Vegetation

1. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?
2. Are there any other issues connecting native vegetation and planning policy?

Tree Canopy

3. What are the implications of master planned/greenfield development areas also being required to ensure at least one (1) tree is planted per new dwelling, in addition to the existing provision of public reserves/parks?

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Discussion Paper –
Planning, Development and Infrastructure Act 2016 Reform Options
Expert Panel for the Implementation Review
October 2022
Planning System Implementation Review
Government of South Australia

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Message from the Chair

South Australia's planning system has undergone significant change in recent years. Firstly, with the implementation of the *Planning, Development and Infrastructure Act 2016* and *Planning, Development, and Infrastructure (General) Regulations 2017* and more recently with the introduction of the state-wide Planning and Design Code.

In response to concerns raised by local communities and industry groups, the Minister for Planning, the Hon. Nick Champion MP, has commissioned a review of South Australia's planning system and the implementation of recent reforms made to it.

I am honoured to have been appointed Presiding Member of the independent panel of experts that has been established to undertake this review. Importantly, each of the Panel members has significant experience with the South Australian planning system, having all lived and worked in South Australia for many years.

I'm delighted to be joined on the Panel by **Lisa Teburea**, independent consultant and former Executive Director of Public Affairs with the Local Government Association of South Australia, **Cate Hart**, President of the Planning Institute of Australia (SA) and Executive Director, Environment Heritage and Sustainability for Department of Environment and Water, and **Andrew McKeegan**, former Chief Development Officer and Deputy Chief Executive for the Department of Planning, Transport and Infrastructure.

The Panel has been tasked with reviewing key aspects of the planning system and identifying opportunities to ensure planning decisions encourage a more liveable, competitive, affordable, and sustainable long-term growth strategy for Greater Adelaide and the regions.

We are pleased to present these Discussion Papers which outline the key areas in the Act, Code, and e-Planning system that the Panel has identified warrant further examination. We encourage all South Australian's – whether industry groups, practitioners, community groups, local government or the general public - to consider these Papers, share their feedback and contribute to the review.

After all, South Australia's planning system affects all of us.

John Stimson

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Introduction

The South Australian planning reforms commenced in 2012 with the appointment of the former Expert Panel, which made a series of initial recommendations that shaped new legislation that we now know as the *Planning, Development and Infrastructure Act 2016* (the PDI Act).

For the past ten (10) years, South Australians have considered and contributed to planning policy, and have now lived with the provisions of the PDI Act and Planning and Design Code (the Code) for 18 months.

The Expert Panel for the Planning System Implementation Review was appointed by the Minister for Planning, the Hon. Nick Champion, to review the new system and to consider where there is scope for improvement.

The Panel has been given a Terms of Reference to review:

- the PDI Act;
- the Code and related instruments, as it relates to infill policy, trees, character, heritage and car parking;
- the e-Planning system, to ensure it is delivering an efficient and user-friendly process and platform; and
- the PlanSA website, to check usability and ease of community access to information.

Importantly, the Panel is not a decision-making body, but rather, a group of subject matter experts brought together to review, consider, consult, and make recommendations to the Minister as to what improvements to the new planning system could be. Those recommendations will, of course, be influenced by the feedback received from the community throughout this engagement process.

In preparing its Discussion Papers, the Panel has acknowledged the volume of submissions and representations that have been made by groups and individuals during previous engagement and review processes. Many of the issues that have been raised over the course of the past 10 years have already been thoroughly examined by various bodies, and the Panel considers that the fundamental elements of the PDI Act are sound.

However, this review is an opportunity to reconsider some of the details and the Panel is looking for new information, new feedback and experiences directly related to the implementation of the PDI Act and the Code, and how the community is interacting with the e-Planning system.

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In undertaking this review, the Panel will play a key part at a point in time. A time where the system is still young and arguably in its 'teething' phase, but equally a time that is ripe for considering what amendments – big or small – could make what is already a comprehensive planning regime, even better.

This Discussion Paper seeks to identify potential opportunities for improvement in the PDI Act. It will guide you, as the reader, through the matters the Panel has determined to include in its scope of review, the background to those matters and how those matters could be improved through legislative amendment. It will then ask questions for your consideration and response. Notwithstanding, the Panel is, of course, interested to hear about all ideas for reform that may benefit the South Australian community and encourages you to raise any matters that have not otherwise been canvassed in this Discussion Paper.

Finally, and for the avoidance of doubt, the Panel acknowledges that that there are matters that have been (or are currently) the subject of proceedings in the Environment, Resources and Development Court relevant to the PDI Act. The Panel recognises that the outcomes of those proceedings may require it to consider additional matters not otherwise addressed in this Discussion Paper and confirms that, where necessary, it will address those in its final report to the Minister.

The Panel acknowledges and appreciates the time and effort that will be put into preparing submissions for its consideration and looks forward to reviewing and considering all the feedback.

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Scope of *Planning, Development and Infrastructure Act 2016* Review

The Panel's Terms of Reference require it to review the PDI Act. However, the Minister did not pre-determine what matters should be within the scope of the Panel's review. This was left to the Panel's discretion.

On that basis, and to give focus and structure to the review, the Panel has resolved to identify the key areas for improvement that it would seek to address, being:

1. Public Notifications and Appeals;
2. Accredited Professionals;
3. Impact Assessed Development;
4. Infrastructure Schemes;
5. Local Heritage in the PDI Act;
6. Deemed Consents; and
7. Verification of development applications.

Whilst the Panel has chosen to focus on the above seven (7) areas for reform, that does not limit or otherwise exclude the community and stakeholders from raising matters that fall outside of this scope during this engagement process. The Panel is interested to hear about any ideas for reform that may benefit the South Australian community.

For completeness, it is also noted that there are some matters raised in the Panel's Discussion Papers on the Code and e-Planning that may result in consequential amendments to the PDI Act. However, those matters are appropriately raised and contained in the other Papers given that, where relevant, they wholly relate to the corresponding subject matters.

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Public Notification and Appeal Rights

Background

Under the PDI Act, the public notification and appeal rights of each development application are determined by the assessment pathway that the application follows. The assessment pathways are determined by the Code and Practice Direction 3 – Notification of Performance Assessed Development Applications 2019 then provides further guidance on how notification must be undertaken.

Planning Pathway	Notification	Third Party Appeal Rights
Exempt Development – development approval not required.	Not applicable.	Not applicable.
Accepted Development – only requires building consent and not planning consent.	Not applicable.	Not applicable.
Deemed to Satisfy Development – meets the prescriptive planning rules and planning consent must be issued.	No notification required.	No third-party appeal rights on the merits of the decision.
Performance Assessed Development – assessed on its merits against the Code.	The Code identifies when certain land uses are notified (most expected land uses in a zone are not notifiable). Where a development application is notified, owners/occupiers of adjacent land are notified, along with members of the public more broadly (allowing anyone to lodge a representation).	No third-party appeal rights on the merits of the decision.
Impact Assessed (Restricted) Development.	Owners/occupiers of adjacent land or of land that will be directly affected to a significant degree must be notified, along with members of the public more broadly (allowing anyone to lodge a representation).	Anyone who lodged a representation may appeal the merits of the decision.
Impact Assessed (Declared) Development.	Consultation must be undertaken on the Environmental Impact Statement.	No applicant or third-party appeal rights on the merits of the decision.

It should be noted that a person with sufficient interest may seek a judicial review of a planning decision in the Supreme Court of South Australia. Judicial review is the review of an administrative decision of a government agency to ensure it is properly made, and it applies to all government agencies (not just in relation to planning).

The current system provides for notification of development applications through the following:

- public register of all development applications in the State on the PlanSA portal, allowing members of the public to register for push notifications;
- all applications on public notification listed on the PlanSA portal;
- all public representations or submissions are lodged through the PlanSA portal;
- notified development applications require a sign on the land, which is linked to the PlanSA portal through a QR Code;
- notification period for performance assessed development has been increased to 15 business days, where the former category 2 and category 3 developments only allowed ten (10) business days; and
- anyone can make a submission on performance assessed development, whereas previously only neighbours could make a representation on category 2 development.

As the current pathways are set by the Code, a Code Amendment would be required to amend a pathway for a particular land use. The Code Amendment process requires community consultation in line with the PDI Act's Community Engagement Charter (the Charter), with impacted members of the public required to be notified and provided an opportunity to make a submission. The consultation which occurs through a Code

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Amendment is also subject to parliamentary scrutiny by the Environment, Resources and Development Committee of Parliament.

A key aim of the PDI Act when introduced was to highlight the importance of consulting on the planning rules upfront and then (once adopted) allowing landowners to exercise their private property rights in accordance with the rules. The current system envisages improved and increased consultation in setting and determining planning policy, with a reduced ability for third parties to then challenge decisions made against that policy once it has been set and determined. The Panel acknowledges previous feedback from some groups and individuals who consider that the system has not achieved this aim.

The Charter under the PDI Act, while not required to be complied with in relation to the notification of a development application, is required to be complied with in setting policy in the Code. In contrast to the notification of a development application, setting policy may affect the community more broadly, and so the Charter provides a mechanism whereby notification of a Code Amendment is able to be appropriately tailored for the circumstance.

The inaugural Charter was co-designed with more than 50 members of the public that were selected through an expression of interest process. In conjunction with these members of the public, the State Planning Commission (the Commission) then set the five (5) principles that form the basis of the Community Engagement Charter.

In subsequently setting the assessment pathways in the Code, one (1) of the principles applied by the Commission was that if an application meets all the prescriptive rules and the land use is envisaged, then the application should receive a streamlined and assured approval, without notification and third-party intervention, on the basis that a reasonable person would expect that form of development to occur.

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The consultation on Phase Three of the Planning and Design Code (Urban Areas) Code Amendment (the full introduction of the Code) led to a range of submissions, particularly from industry and interest groups, on the issue of notification of development applications and third-party appeal rights. These were summarised in the Commission's 'Engagement Report' as well as the higher level 'What We Have Heard' report'.

The Commission's Engagement Report noted that "*community submissions emphasised that public notification should be required where a development fails to meet the planning rules*". It is also noted, particularly regarding residential zone policies, that notification and appeal rights were a concern raised in submissions.

In relation to heritage and character, the 'What We Have Heard' report noted that many submissions across the stakeholder groups highlighted concerns about the loss of public notification and third-party appeal rights within all the heritage and character overlays, particularly in relation to demolition. As a result, notification triggers were improved because of consultation.

Conversely, this report made several observations regarding development industry feedback. While a detailed review of the public notification requirements was supported, there was also broad support for the reduction in third-party notification and its potential appeal risks.

In response to those submissions calling for increased notification and third-party appeal rights, the Commission's engagement report stated that:

> *Regarding requests to ensure additional forms of development are notified, the Commission continues to support the principle that development which is envisaged in the zone should not be subject to notification; except where either acceptable standards of built form or intensity are exceeded, and/or the development is likely to result in substantial impacts on the amenity of adjacent dwellings located on land in another zone.*

The Commission also noted that:

> *Notification of all non-residential development in a neighbourhood-type zone and township zones is not supported, as small-scale non-residential land uses are a legitimate and envisaged form of development in these zones.*

About appeal rights in general, the Commission noted in their engagement report that:

> *…the appeal rights for different categories of development are set out in the PDI Act. Amendment to appeal rights is beyond the scope of the Code and the Phase Three Amendment.*

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PDI Act Appeals Pathway

Under section 202 of the PDI Act, a person who has applied for a development authorisation where the relevant authority was an Assessment Manager may apply to the relevant council assessment panel (CAP) for a review of the Assessment Manager's decision. The CAP may affirm, vary, set aside and substitute the decision of the Assessment Manager, as it sees fit.

Whilst this is considered a cheaper and faster process than applying to the ERD Court for a review, it is noted that this is not a mandated pathway and that an aggrieved applicant may appeal directly to the ERD Court, bypassing the CAP review, if they so choose.

If an applicant would like to appeal or seek review of the decision of a CAP or regional assessment panel, their only option is to apply to the ERD Court under the PDI Act.

In relation to restricted development, an applicant may seek a review of a decision of the Commission's delegate to not proceed with assessment of the application with the Commission itself. If the Commission then determines to not proceed with the assessment of the application, the applicant has no right to seek a review of, or appeal, this decision. If the application proceeds to assessment, the applicant may appeal the merits of the final decision in the ERD Court.

Outside of a review to a CAP or a review of a decision of the Commission's delegate, South Australia does not currently have a pathway for review or appeal of a planning decision to a body that is not a court (such as a tribunal).

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Jurisdictional Comparison

The public notification requirements vary significantly subject to each jurisdiction's planning rules. Whilst these are consequently difficult to distil into a comparative table, the following is a summary of what sort of development applications may be subject to third-party appeal rights.

Jurisdiction	Third-Party Appeal Rights
South Australia	Third party appeal rights limited to Impact Assessed (Restricted) Development and only available to persons that lodged a representation on the application.
New South Wales	Appeal rights limited to uses such as major developments, where the development is high impact and possibly of state significance. A third-party objector can bring a merit-based appeal in the Land and Environmental Court against a decision to grant development consent only if the development is designated development (development listed as such in the regulations). Third parties have 28 days to lodge an appeal.
Western Australia	No third-party appeal rights exist under the *Planning and Development Act 2005*.
Queensland	Appeal rights limited to 'impact assessable' developments. The person making the third-party appeal must have lodged a 'properly made submission' with the local council within the public notification period for the development application. A submitter may only appeal against the part of the development approval relating to impact assessable development, or a variation approval under section 43 of the *Planning Act 2016*. The appeal can be against one (1) or more of the following: • granting of a development approval • a condition of, or lack of conditions for a development approval • the length of the current period
Victoria	Provision of third-party appeal rights cover most developments in Victoria, however, in several situations there are appeal right exemptions for permit applicants under planning schemes. For example, expected uses in a business zone. To appeal, the third party must have lodged an objection to an application within the advertising period. Anyone who may be affected (including on broad public interest issues) can make an objection. An objector who lodged an objection in writing must make an application for review (appeal) within 28 days of the decision to grant a permit.

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Tasmania	Broad appeal rights, but third parties can only object to a planning application if it is a 'discretionary' application, which must be advertised. To appeal, the third-party must have lodged a representation (objection) to an application within the 14-day advertising period. They must lodge their appeal within 14 days of receiving notice of the council decision.
Australian Capital Territory	Third-party appeals are generally available in relation to a decision to approve (or conditionally approve) a development application where it would cause material detriment or refuse a development application, as well as to revoke a development approval. Material detriment means the development would adversely affect the person's use or enjoyment of their land. There may be circumstances where third-party appeals cannot be made or where a development is exempt from third-party appeals, including: • applications that went through minor public notification; and • development in the city centre, a town centre, an industrial zone, Kingston Foreshore or the University of Canberra campus.

Alternative Appeal Pathways

In addition to demonstrating what third party appeal rights are available in alternate jurisdictions, the Panel thought it also important to highlight the alternative planning appeal pathways that are being utilised in Victoria, New Zealand and the United Kingdom.

Whilst the options offered by these three (3) jurisdictions vary, they demonstrate that there may be functional alternatives to a Court appeal that could be considered for implementation in South Australia.

While there may be some benefit in implementing a similar mechanism to the below (appeals through a tribunal) in South Australia, there are some challenges that come with doing so. The first is that any tribunal or government body would need to have the expertise to hear and consider such matters that are already heard by the ERD Court, which would come at a cost.

If any such option is considered further, thought would also need to be given as to how to ensure any third-party appeals heard through a tribunal are not used to delay development that should proceed (i.e. via further appeal through a Court or Government body), as well as the costs involved in the tribunal providing this service. For instance, as a review to a tribunal generally involves less upfront costs to an appellant, the tribunal's resourcing would need to come from elsewhere.

Victoria, Australia

The Victorian Civil and Administrative Tribunal (VCAT) has introduced two (2) processes to assist with efficiently managing appeals and reviews under its *Planning and Environment Act 1987*. Those two (2) processes are:

1. Short Cases List; and
2. Fast Track List.

Short Cases List

Where a planning dispute is not complex and is capable of being handled in a short period of time, an appellant may apply to have the case heard as a short case. The VCAT may also decide to hear a case as a short case.

The Short Cases List has been established to deal with applications with the following characteristics:

- there are limited parties;
- the application, the grounds of review or grounds of refusal suggest that the issues are limited in number and extent;
- the case is capable of being heard and determined within three (3) hours;
- a site inspection is unlikely to be required; and
- any Cultural Heritage Management Plan or other preliminary issues have been addressed.

Applications for review relating to VicSmart permit applications are automatically heard and determined in the VCAT Short Cases List. A VicSmart assessment process differs from the regular permit assessment process as there is no public notice or referrals of the application. Applications subject to the VicSmart assessment pathway are specified in each council's planning scheme.

To further expedite the appeal process, the *Victorian Civil and Administrative Tribunal Act 1998* also allows parties to agree to the VCAT determining a matter 'on the papers' without the need for a hearing. This option is only available if all parties agree or, if a party does not agree, the Tribunal is satisfied that the objection is not reasonable.

Fast Track List

From 1 July 2022, the VCAT also introduced the Fast Track List for primarily 'post permit' applications. The following applications under the *Planning and Environment Act 1987* will automatically fall in the Fast Track List:

- cancellation or amendment of a permit by a non-permit holder;
- refusal or failure to extend time for a permit;
- declarations;

- review of a refusal to extend time by which information must be given in a planning permit application;
- applications about a certificate of compliance;
- review of a decision of a specified body that something must be done to their satisfaction; and
- applications to amend or end a section 173 agreement (similar to a land management agreement).

Applications in the Fast Track List will be given an expedited hearing approximately **nine (9) weeks** after lodgement with the VCAT. If a practice day hearing or preliminary hearing is required, then the main hearing will be listed approximately 12 weeks from the date an application is lodged.

If parties want to amend their planning application or plan, the case will be removed from the Fast Track List and heard as a standard proceeding instead. The usual hearing timeframes will apply if heard as a standard case.

The VCAT aims to issue decisions for applications in the Fast Track List within **2–6 weeks** of the hearing depending on the complexity of the issue.

New Zealand

New Zealand has resource consents, which are an assessment of environmental impacts, and building consents, which are an assessment to ensure the proposed work is safe, durable and doesn't endanger the health and safety of anyone using the building. Under the *Resource Management Act 1991* (NZ), an applicant may have two (2) options if they are unhappy with the decision (or a part of the decision) in relation to a resource consent:

- they may object to the council about the decision (or part of the decision, such as the consent conditions); or
- they may appeal the decision to the Environment Court (there is no right of appeal for a boundary activity unless that boundary activity had a non-complying activity status).

A right of objection to the council is only available for certain decisions or requirements, including:

- the application was not publicly notified;
- the application was publicly or limited notified, but no submissions were received; or
- the application was publicly or limited notified and there were submissions, but they were later withdrawn.

The costs and timeframes for an objection appear to vary between councils, with fees generally being charged per hour, and timeframe dependent on the level of the planner considering the matter and whether it progresses to a hearing at the request of the applicant. For the avoidance of doubt, an objection will only progress to a hearing following the council assessment of the objection and a report being prepared on the same.

If the applicant is dissatisfied with the outcome, they may request that the objection progresses to a hearing; however, this is not a court process and remains part of the council objection process. An applicant may request that an independent Commissioner is appointed to determine the objection.

If an applicant remains unhappy with the outcome of their objection to the council, they may appeal the decision to the Environment Court. Notably, should the matter proceed to the Environment Court, there is a NZ$600 filing fee, NZ$350 scheduling fee and a NZ$350 fee for each half day following the first half day.

United Kingdom

In the United Kingdom, an applicant has a right of appeal against most local authority decisions on planning permission and other planning decisions to the Secretary of State (as opposed to in courts or tribunals). There are no third-party appeal rights in the United Kingdom, although 'interested parties' may comment on applicant appeals.

While the Secretary of State has the power to 'recover appeals', most appeals are heard and determined by Planning Inspectors (within the United Kingdom's Planning Inspectorate) on behalf of the Secretary of State.

A Planning Inspector will make a **new decision** in regard to both the granting of the permission and the imposition of conditions.

There are no upfront fees for an applicant to appeal a planning decision. Having said that, local planning authorities, appellants and interested parties who have taken part in the process, including statutory consultees, may apply for costs or have costs awarded against them. Any costs are generally therefore commensurate to the development size and the complexity of the appeal (and could range anywhere from £3,000 to £20,000). A Planning Inspector may, on their own initiative, make an award of costs, in full or in part.

While the time within which appeals are heard and finalised does depend on the complexity of the matters to be considered, generally they appear to be resolved anywhere between 21 and 43 weeks after commencement.

An appeal decision may only be challenged through the courts on certain statutory grounds.

Planning System Implementation Review

Discussion

The Panel recognises that rights of notification and appeal are matters of significant interest to the South Australian community, and that frustrations arise in circumstances where people feel that they were not adequately afforded a right to be heard.

However, this recognition is juxtaposed by the fact that the Panel is also supportive of, and wholly agrees with, the position vocalised by the Commission following the Phase Three engagement on the Code that:

> *development which is envisaged in the zone should not be subject to notification; except where either acceptable standards of built form or intensity are exceeded, and/or the development is likely to result in substantial impacts on the amenity of adjacent dwellings located on land in another zone.*

That is, dwellings ought to be able to be built with minimal interference in residential zones, commercial centres ought to be established in locations where that is envisaged and so on.

The natural difficulty that arises is that what is and is not acceptable can appear to be subjective, despite the provisions of the Code. Indeed, anecdotally, the Panel understands that community concern is being driven by a perceived expectation of notification and appeal rights, and a belief that they have been excluded from the development process if they are not afforded both. This consternation has been expressed in connection with the height of certain developments and developments proposed to be built on property boundaries.

However, as the PDI Act and the Code have only been operational for 18 months, it is difficult for the Panel to understand how broad reaching the perceived impacts of the framework are in this space and whether the provisions are having unintended consequences. Despite this, the Panel is cognisant of the rhetoric surrounding notification in the new planning framework and specifically, the fact that it was anticipated that there would be increased notification. As demonstrated by the statistics that follow later in this Chapter, this has not occurred, and the Panel is interested in exploring why.

To this end, the Panel requests that affected persons make submissions explaining the adverse effect the public notification and appeals process has had on them and that these submissions are supported by evidence to demonstrate the same.

Notwithstanding what may be brought to its attention throughout this engagement process, for the avoidance of doubt, the Panel has also considered the available data relating to public notifications and appeals, which is provided below.

Public Notification and Appeals

An analysis of development application data shows that under the *Development Act 1993* for the period 2018-19, there were **711** category 3 (development subject to third-

party appeal rights) development applications lodged across the State. In the period 2019-20, there were a further **708** category 3 development applications lodged across the State. For the same periods, there were **42** third-party appeals lodged with the ERD Court in 2018-19, and **27** in 2019-20.

Since the introduction of the PDI Act, the number of applications classified as restricted (and therefore subject to third-party appeal rights) has dropped significantly. For the period 2020-21 there were **20** restricted development applications lodged (noting the PDI Act was only in full operation across the State for three (3) months) and in 2021-22, a further **88** restricted applications were made. For the same periods, there were **3** third-party appeals lodged in 2020-21, and **25** in 2021-22.

With regards to applications subject to public notification, there has also been a decline in those numbers under the PDI Act. Under the *Development Act 1993* in the period 2018-19, there were **2,569** applications lodged that were subject to category 2 or 3 notification (which are both required to be publicly notified). That represented **10 per cent** of total development applications. For the period 2019-20, **2,541** (**10.4 per cent**) applications were publicly notified.

Under the PDI Act, the number of applications subject to notification (either performance assessed or restricted) has reduced. While for the period 2020-21 there were **383** applications subject to public notification, in 2021-22 (following full state-wide operation of the PDI Act) there were **2,332** applications publicly notified. This represents approximately **5.8 per cent** of the total applications lodged for 2021-22.

While increases to the number and type of applications subject to public notification is a matter that could be achieved through a Code amendment, providing third party appeal rights for such applications would require legislative changes to the PDI Act.

Alternative Appeals Pathway

The option to identify an alternative planning appeal and/or review pathway is an area that the Panel is interested in opening for further consideration and exploration during this community engagement.

As noted above, the CAP review available under the PDI Act is currently limited to decisions of Assessment Managers. However, there may be opportunity to consider whether this approach to review could be replicated and/or what other mechanisms are available for reviewing planning decisions outside of the ERD Court.

Whilst it may not be appropriate to invoke systems like those utilised in Victoria, New Zealand or the United Kingdom, the Panel is interested to hear whether there is support for further investigations to be undertaken in connection with an expedited appeals or review process, and any suggestions as to the form that that could possibly take.

Planning System Implementation Review

Questions

1. What type of applications are currently not notified that you think should be notified?
2. What type of applications are currently notified that you think should not be notified?
3. What, if any, difficulties have you experienced as a consequence of the notification requirements in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.
4. What, if any, difficulties have you experienced as a consequence of the pathways for appeal in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.
5. Is an alternative planning review mechanism required? If so, what might that mechanism be (i.e. merit or process driven) and what principles should be considered in establishing that process (i.e. cost)?

Planning System Implementation Review

Accredited Professionals

Background

Under sections 93 and 97 of the PDI Act, an accredited professional may act as a relevant authority in cases that are prescribed by the regulations.

The *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019* establish a number of classes of accreditation, with the *Planning, Development and Infrastructure (General) Regulations 2017* (the PDI Regulations) then prescribing the functions of each class of accreditation.

These levels and functions are reproduced below:

Level	Planning	Building
1	• Assess 'deemed-to-satisfy' developments • Includes the assessment of one or more minor variations to the deemed-to-satisfy criteria • Assess 'performance-assessed' developments not assigned to Assessment Panels • Assess and approve land division consent, including community titles and strata titles	• Assess against the Building Rules and provide building consent, with no limitations • Undertake building inspections on behalf of a council • Assess planning consent in relation to deemed-to-satisfy development of a class determined by the Minister (other than where there is a variation)
2	• Assess 'performance-assessed' development applications that are publicly notified	• Assess against the Building Rules and provide building consent, limited to buildings that are no more than three (3) storeys in height or have a floor area of no more than 2,000m^2 • Undertake building inspections (for buildings they are accredited to assess) on behalf of council • Includes Building Level 3 and Building Level 4 accreditation
3	• Assess 'deemed-to-satisfy' developments • Includes the assessment of one (1) or more minor variations to the deemed-to-satisfy criteria	• Assess against the Building Rules and provide building consent, limited to Class 1 and Class 10 buildings that are no more than two (2) storeys in height or have a floor area of no more than 500m^2 • Undertake building inspections (for buildings they are accredited to assess) on behalf of council

4	• Assess 'deemed-to-satisfy' developments • Excludes the assessment of one (1) or more minor variations to the deemed-to-satisfy criteria	• Carry out inspections as provided for under the practice direction on inspection policies
Surveyor	• Assess 'deemed-to-satisfy' land divisions (planning consent only)	Not Applicable

The former Minister for Planning determined that an Accredited Professional – Building Level 1 (AP – BL1) could act as a relevant authority for the purposes of giving planning consent in relation to deemed-to-satisfy development of the following classes of development (other than where there are variations):

- the construction or alteration of, or addition to, an outbuilding, in which human activity is secondary; or
- the construction or alteration of, or addition to, a carport or verandah; or
- the alteration of, or addition to, an existing detached or semi-detached dwelling or a detached or semi-detached dwelling to be erected in accordance with a development authorisation which has been granted; or
- the construction of a new dwelling; or
- remedial or additional construction required for the purpose of achieving compliance with an earlier development authorisation relating to a new dwelling; or
- if planning consent has been granted for a deemed-to-satisfy development for the construction of a new dwelling, a proposed division of land providing for that development.

The ability for building certifiers to issue planning consent in limited circumstances was carried over from the *Development Act 1993*. Only building certifiers (and not planners) were formally recognised under the *Development Act 1993* with a statutory role to approve "Residential Code" forms of development (including issuing both planning and building consents). These statutory functions, including both planning and building functions, were largely transitioned into the PDI Act and the Code.

Planning System Implementation Review

Jurisdictional Comparison

The following is a summary of who is able to issue the equivalent of planning and building consents in interstate jurisdictions:

Jurisdiction	Planning	Building
South Australia	A relevant authority pursuant to section 82 of the PDI Act. Subject to the type of development being considered this could be accredited professionals, assessment managers, Council Assessment Panels (or a Regional Assessment Panel if constituted by the Minister) or the State Planning Commission.	The council for the area in which the proposed development is to be undertaken or an accredited professional.
New South Wales	Only local councils are responsible for issuing development consent (the equivalent of SA's planning consent).	Construction Certificate may be issued by council or by a registered certifier after development consent has been issued.
Western Australia	Planning approval (the equivalent of planning consent) is issued by the relevant local council.	Council is responsible for issuing building permit. An applicant may have documentation certified by a building surveyor before lodging with council, in which case there is only a 10-business day turnaround.
Queensland	Only local councils are responsible for assessment against a local instrument.	Private building certifiers may undertake assessment against the building rules.
Victoria	Only local councils are responsible for issuing planning permits.	Building permit is issued by a private or municipal building surveyor.
Tasmania	The planning authority responsible for administering the relevant planning scheme is responsible for granting planning permits.	A licensed building surveyor is able to assess building work against the National Construction Code after a planning permit has been issued.

As identified in the above table, whilst other jurisdictions also permit building professionals to issue building consents, South Australia is unique in that it allows accredited professionals to issue planning consents.

Planning System Implementation Review

Discussion

Now that the Accredited Professionals Scheme (the Scheme) is fully operational, there is opportunity to review the ability for building professionals to issue planning consents, particularly given the PDI Act and the Scheme formally recognise private planning professionals.

In the Panel's view, only allowing building certifiers to issue building consents and planning professionals to issue planning consents would align with the intent of the Scheme. That is, persons need to be accredited in a planning or building field to issue planning or building consents as relevant, and in line with their professional skills and qualifications.

Data from the Development Application Processing (DAP) system suggests that 24 of the 57 AP – BL1 have assessed **2,368** applications for planning consent, with 4 of these AP – BL1 having been audited by the Department for Trade and Investment's (the Department) Audit and Investigations team.

The Audit and Investigations team have advised the extent of errors identified during periodic audits of AP – BL1 includes the following:

- incorrect categorisation of the development e.g. processed as Accepted Development or Exempt Development when it exceeded the criteria for that category;
- failure to ensure required documentation was obtained to support HomeBuilder application assessment;
- failure to obtain all required information set out in the PDI Regulations Schedule 8 – Plans;
- failure to apply Practice Direction 12 mandatory conditions on the Decision Notification Form (DNF); and
- processing Deemed to Satisfy (DTS) where the criteria had not been demonstrated or inclusion of minor variations (AP-BL1's are not permitted to approve DTS with minor variations).

The Audit and Investigations team have noted that in their audits of planning accredited professionals, all applications were categorised correctly. However, there is still failure to obtain all required information under the PDI Regulations and a failure to apply mandatory conditions in Practice Direction 12.

Planning System Implementation Review

Questions

1. Is there an expectation that only planning certifiers assess applications for planning consent and only building certifiers assess applications for building consent?
2. What would be the implications of only planning certifiers issuing planning consent?
3. Would there be any adverse effects to Building Accredited Professionals if they were no longer permitted to assess applications for planning consent?

Planning System Implementation Review

Impact Assessed Development

Background

Under the *Development Act 1993,* a separate development assessment and decision-making framework was established for major developments, and it is now retained in a modified form under the PDI Act.

The pathway provides for the proper and orderly assessment of applications considered of such complexity or scale to warrant State Government oversight.

Under the PDI Act, the Impact Assessed pathway primarily involves:

- the Minister declaring a development or project to be assessed as an Impact Assessed project (or it being predetermined by the Code or the PDI Regulations as being Impact Assessed);
- the Commission determines the level of detail required in relation to an Environmental Impact Statement (EIS);
- the preparation of an EIS in accordance with Practice Direction 4 – Restricted and Impact Assessed Development by either the applicant or the Minister;
- consultation on the EIS;
- the Commission preparing an Assessment Report containing an assessment of the development, along with comments received during consultation; and
- the Minister considering the Assessment Report and making a decision on the application.

By comparison, under the *Development Act 1993*, an application considered by the Minister to be of major environmental, economic, or social importance could be declared by the Minister as such, and then subject to a whole-of-Government assessment and decision-making process.

Under the *Development Act 1993*, the process largely involved:

- following declaration by the Minister, the then Development Assessment Commission would set the Guidelines (issues to be addressed), and level of assessment (either a Development Report, Public Environmental Report or EIS), based on scale and duration of expected impacts;
- the document subsequently provided by the proponent would then be placed on council, agency, and public consultation, with the proponent then required to reply to any submission received with the lodgement of a Response Document;

- an Assessment Report was then prepared by the Minster, evaluating all the material received, including a recommendation formed as to whether the application ought to be approved or not, and if approved, under what conditions; and
- the Assessment Report and associated material was then the subject of a submission to Cabinet by the Minister, with the Governor being the decision maker based on advice of Executive Council.

It is noted that the Expert Panel on Planning Reform, chaired by Brian Hayes KC, which was the precursor to the initial introduction of the *Planning, Development and Infrastructure Bill 2015* provided the following alternative range of recommendations:

16.1 Provide for major projects of regional significance to be assessed by a regional assessment panel using the performance-based assessment pathway.

16.2 Convert the existing major project declaration power into a 'call-in' power, with tighter criteria primarily based on the need for fair and appropriate assessment.

16.3 The Minister should only exercise this 'call-in' power following advice from the planning commission based on the commission's assessment against the statutory criteria.

16.4 Require either ministerial-regional concurrence or a full Cabinet decision with approval by the Governor for each major project.

16.5 Reinstate judicial review rights for major projects and associated Crown development and infrastructure approvals.

16.6 Ensure alignment of environmental impact assessment processes with federal laws, with graduated steps for lower impact proposals and more streamlined paperwork.

16.7 Bring mining approvals into the planning system as part of the major projects process, providing a single integrated approval for mine and associated infrastructure development.

Planning System Implementation Review

Jurisdictional Comparison

The following table provides a summary of how equivalent applications are dealt with in other state-based jurisdictions:

Jurisdiction	Decision Maker
South Australia	The Minister for Planning decides the application following consideration of an Assessment Report prepared by the State Planning Commission.
New South Wales	Independent Planning Commission (State significant development) or Minister for Planning equivalent (where Commission is not the designated consent authority).
Western Australia	Local Government authority or Western Australian Planning Commission (in accordance with the relevant planning scheme). During the COVID-19 recovery period, applications may be made to and determined by the Commission for a significant development.
Queensland	The Minister for Planning equivalent has the power to 'call in' an application, and then may make decisions in relation to the application.
Victoria	The Minister for Planning equivalent may 'call in' an application for a permit if there is a major issue of policy and may make decisions as if the Minister were the responsible authority.
Tasmania	The Development Assessment Panel makes decisions in relation to major projects. The Minister makes the declaration that a project is eligible to be declared a major project under this Act.
	A project may be declared to be a major infrastructure project or a project of State significance by order of the Governor on recommendation of the Minister for Planning. In relation to major infrastructure, the Governor's order may declare the decision maker, whether it be the relevant local council, the Tasmanian Planning Commission or combined planning authority comprising many councils. The Governor is the decision maker for projects of State significance.

It is difficult to make direct comparisons to other jurisdictions, particularly in relation to the Planning Commissions in New South Wales and Western Australia, which operate quite differently to the Commission in South Australia.

In Tasmania, while the Governor is the decision maker under the *State Policies and Projects Act 1993*, they do so by issuing an order on the recommendation of the Minister for Planning. If that recommendation is in accordance with the report of the Tasmanian Planning Commission, the order takes effect straightaway, but if the recommendation is different to the advice of the Tasmanian Planning Commission, approval from both houses of Parliament is required.

Planning System Implementation Review

Discussion

The current assessment process under the PDI Act streamlines the end point of the assessment of a development declared as impact assessed development, as there is no need for a Cabinet Submission to be prepared and progressed.

While other government agencies are consulted in the preparation of the Assessment Report, other Ministers may not be formally advised of the development application or have an opportunity to influence the final decision made on an application under the PDI Act. Matters considered in an impact assessed development can have a significant impact on a range of ministerial portfolios, including environmental and infrastructure portfolios.

Under the former system, a major development application would have been required to go through Cabinet before the Governor would have then determined the application. While this process added additional time to the processing and assessment of a major development application, it ensured all Ministers were aware of the development application through the Cabinet approval process. This process also provided a whole-of-Government determination on the major project, rather than the decision-making responsibilities resting solely with the Minister for Planning.

In addition, a Select Committee of Parliament inquired into the Kangaroo Island port application. One (1) of the recommendations of the Committee concerned the Minister for Planning being the final decision maker for impact assessed (declared) development.

The Committee recommended "*that the House refer consideration of legislative amendment in respect of major developments under section 115 of the Planning, Development and Infrastructure Act 2016 to the Environment, Resources and Development Committee for inquiry and reporting*".

The Committee's recommendation has not yet been facilitated. However, noting the significant public interest in ensuring and maintaining transparency and accountability in public decision making, the Panel deemed it prudent to consider whether there was scope and/or community desire for Impact Assessed (Declared) decision making to be returned to a whole of Government process.

Questions

1. What are the implications of the determination of an Impact Assessed (Declared) Development being subject to a whole-of-Government process?

Planning System Implementation Review

Infrastructure Schemes

Background

The PDI Act prescribes two (2) types of infrastructure schemes:

- Basic infrastructure schemes – used for the provision of basic infrastructure that will support, service or promote significant development within a designated growth area.
- General infrastructure schemes – used for the provision of essential infrastructure to facilitate significant development or urban renewal.

The provisions regarding general infrastructure schemes have not yet commenced and before they are commenced, the Commission must conduct an inquiry into schemes in relation to the provision of essential infrastructure under Part 13 of the PDI Act, and a report on the outcome of the inquiry must be laid before both Houses of Parliament.

Under the PDI Act, the process to initiate and implement an infrastructure scheme is summarised as follows:

- Proponent (landowner, council etc) identifies a need for infrastructure and scopes a proposal;
- Minister considers proposal and decides whether to initiate a scheme;
- Proponent prepares a draft outline of the scheme;
- Chief Executive of the Department then appoints a Scheme Coordinator, who prepares the detailed scheme;
- Minister then determines whether to progress with a scheme, with the Governor having to approve any required funding arrangement if required; and
- Scheme Coordinator manages the delivery of the scheme.

Infrastructure schemes are intended to supplement existing arrangements for planning and delivery of infrastructure to support development, such as planning conditions, deeds, and bonding arrangements.

Infrastructure schemes are intended to help facilitate clarity around infrastructure projects by providing planning practitioners, developers, councils, infrastructure providers and landowners with a legislative mechanism and suite of financial tools to assess their infrastructure requirements and delivery options.

Planning System Implementation Review

Jurisdictional Comparison

The following table provides a summary of how other states manage infrastructure schemes or similar:

Jurisdiction	Delivery of Infrastructure in Interstate Jurisdictions
South Australia	The PDI Act prescribes two (2) types of infrastructure schemes: • Basic infrastructure schemes – used for the provision of basic infrastructure that will support, service or promote significant development within a designated growth area. • General infrastructure schemes – used for the provision of essential infrastructure to facilitate significant development or urban renewal.
New South Wales	The *Environmental Planning and Assessment Act 1979* provides for: • Local infrastructure contributions; and • Special infrastructure contributions. Local infrastructure contributions, also known as developer contributions, are charged by councils when new development occurs. They help fund infrastructure like parks, community facilities, local roads, footpaths, stormwater drainage and traffic management. Special infrastructure contributions support growing communities by funding a range of infrastructure including State and regional roads, public transport infrastructure, pedestrian and cycling paths, health facilities, emergency services, schools, and open space improvements. A special infrastructure contribution is paid by the developer in special contributions areas and only on new development, such as residential subdivisions and industrial estates.
Western Australia	A local government must prepare a development contribution plan for each area identified in a local planning scheme as a development contribution area. A development contribution plan must set out the infrastructure items to be funded through the plan, the method of determining the contribution of each owner of land and the timing for the delivery of the infrastructure.
Queensland	Chapter 4 of the *Planning Act 2016* provides for infrastructure agreements. An infrastructure agreement may be between public sector entities, or a public sector entity and another entity. The responsibilities under the infrastructure agreement attach to the premises and bind the owner of the premises and the owner's successors in title.

Planning System Implementation Review

Victoria	Part 3AB of the *Planning and Environment Act 1987* allows for infrastructure contributions for new and growing communities. An infrastructure contribution may consist of either or both a monetary component and a land component. An approved infrastructure contributions plan may form part of a precinct structure plan or strategic plan that is incorporated into an approved planning scheme. The Minister may also give a direction to planning authorities in relation to the preparation and content of infrastructure contributions plans.
Tasmania	A planning authority may enter into an agreement with owners (or potential owners) of land in relation to the provision for a payment or other contribution for infrastructure. The agreement may require payment to be made in stages or require works or other development to be undertaken by the owner on behalf of the planning authority.

The legislative provisions surrounding infrastructure schemes under the PDI Act are far more detailed and complex than the legislative provisions in most other jurisdictions. Specifically, the provisions in most other states essentially legislate what can already be achieved through contract law (such as infrastructure deeds), whereas in South Australia landowners may be required to make a contribution towards the delivery of infrastructure (other than prescribed infrastructure, such as education, public transport, emergency services etc).

Discussion

During 2017 and 2018, a pilot program was initiated to test the infrastructure schemes model in a live industry setting. This involved three (3) pilot projects for infrastructure to support developments at Mount Barker, Bowden and Kilburn, with an Outcomes Report being produced.

The key findings of the pilot program were:

- the early stages of infrastructure planning should involve a thorough process to match the infrastructure requirements and complexity with the best tool available for delivery (which may or may not involve an infrastructure scheme);
- a clear business case and a review of funding models at the beginning of the scoping stage is essential. Getting the right technical and professional advice is crucial at the initiation stage to assist with the identification of infrastructure requirements and funding arrangements;
- establishing the governance of a project is also vital, and the pilot projects demonstrated how important it is to have key stakeholders working together;
- funding arrangements for infrastructure schemes was considered an issue as proponents may be required to pay for upfront 'reasonable capital costs' prior to reimbursement through the imposition of charges, or the receipt of contributions;
- there is a need to appoint the Scheme Coordinator at the commencement of the Scheme, and also to fund the Scheme Coordinator, who plays a critical role in bringing together all the stakeholders to move a project forward; and
- the timing of governments forward estimates and certainty beyond the estimates is an issue for funding state infrastructure.

Since the completion of the pilot projects, no infrastructure schemes have been initiated under the PDI Act.

In the Panel's view, this is likely a consequence of the complexity of infrastructure schemes. In the absence of reviewing the existing framework, infrastructure schemes in their current form may be deemed too difficult to work with, thus resulting in them not being effectively utilised.

Accordingly, there remains a need for an effective means to plan and deliver infrastructure over the longer term, to support growth and development.

Planning System Implementation Review

Questions

1. What do you see as barriers in establishing an infrastructure scheme under the PDI Act?
2. What improvements would you like to see to the infrastructure scheme provisions in the PDI Act?
3. Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?

Planning System Implementation Review

Local Heritage in the *Planning, Development and Infrastructure Act 2016*

Background

Under the *Development Act 1993*, local heritage places were designated in Development Plans. Section 67 of the PDI Act provides that the Code may designate a place as a place of local heritage value, subject to it meeting specified criteria and subject to consultation with the relevant landowner. The current provisions in the PDI Act were carried over from the *Development Act 1993,* with the addition of sections 67(4) and 67(5).

Sections 67(4) and 67(5) prescribe that an area cannot be designated in the Code as an area constituting a heritage, character or preservation zone or subzone unless the amendment to the Code has been approved by **51 per cent** of relevant owners of allotments within the relevant area (based on one (1) owner per allotment being counted under a scheme prescribed by the PDI Regulations). These provisions, however, have not yet commenced.

As the *Planning, Development and Infrastructure Bill 2015* was moving through the Legislative Council, Hon Dennis Hood MLC (Family First Party at the time and now a member of the Liberal Party) moved an amendment to introduce what are now subsections (4) and (5) of section 67 of the PDI Act.

The reason for moving the amendment was to ensure that a minority of those affected by the listing could not be able to overrule the majority (i.e., if only 40 per cent of people agree to the listing, they should not be given preference over the 60 per cent of people who are against the listing).

At the time, the Hon Kyam Maher MLC, indicated that the Government's view was that:

> *…zoning decisions should not only be determined by those who enjoy the local property franchise and who are accorded voting rights in the system. It should also be based on* ***sound and logical policy objectives****.*
>
> *Heritage matters in particular* ***should not be reduced to a question of percentages****, but should include and take into account heritage expertise and applying the right criteria.*
>
> (our emphasis)

The Hon Mark Parnell MLC noted that those affected should be able to approach their local member of Parliament if they are unhappy with a proposed zoning change or heritage listing, and the matter can then be resolved through a debate in Parliament.

He suggested that individual property owners exercising a direct right of veto over a zoning decision may disenfranchise people who live in the area but not own property, as well as disenfranchise people who live around the area but not in the zone.

Without providing reasons, the Hon David Ridgway MLC, indicated during the debate on the proposed amendment that the opposition would be supportive of the changes. As such, the amendment was carried, and the provisions were inserted into the *Planning, Development and Infrastructure Bill 2015.*

The Legislative Council then considered this matter a second time, with the Hon Kyam Maher MLC moving an amendment to delete the inserted subclauses. The Hon Dennis Hood MLC, in opposing the amendment, added that aging properties are unable to be demolished and/or renovated because of their heritage listing. He indicated that the imposition of heritage listing has resulted in the devaluation of properties that are unable to be altered. The Opposition, however, continued to support the original amendment and the deletion of the clauses was negatived by the Legislative Council.

It should be noted that during the debate on these provisions, the Government at the time did signal its intent to conduct a more comprehensive review of the legislation governing local heritage.

Image: Gawler Civic Centre, MPH Architects, photo by Dan Trimboli

Planning System Implementation Review

Jurisdictional Comparison

The below table is a summary of how other states manage local heritage, noting that in most states each council has its own set of planning rules.

Jurisdiction	Local Heritage Listing Process
South Australia	Section 67 of the PDI Act provides that the Code may designate a place as a place of local heritage value, subject to it meeting specified criteria and subject to consultation with the relevant landowner.
New South Wales	Heritage items that are important for the community in a local government area are listed in the relevant council's local environmental plan.
Western Australia	A local government may, by resolution, designate that an area is a heritage area in a local planning scheme after having: • given notice of the proposed designation to each affected landowner; and • advertised the proposed designation in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.
Queensland	Under the *Queensland Heritage Act 1992*, a local government must identify places in its local government area that are of cultural heritage significance for the area in its planning scheme or in a local heritage register. Before entering a place into the local heritage register, a local government must give the owner of the place notice of its proposal and consider any submissions it receives.
Victoria	Local heritage places are identified through a heritage study, as well as through consultation with the community, and are incorporated into the relevant local planning scheme.

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Discussion

For the avoidance of doubt, the Panel confirms that this Discussion Paper is only dealing with character and heritage matters to the extent that they are relevant to the PDI Act.

These matters are explored in greater detail in the Panel's Discussion Paper on the Code.

Location for Local Heritage

The listing of heritage places is arguably a matter that sits best with heritage experts (as opposed to planning professionals who are ultimately responsible for maintaining the Code). In addition to this, decisions in relation to the demolition (in part or in full) of a local heritage listed place is also a matter that would be best dealt with by a heritage expert.

As such, the Panel seeks feedback on whether there is support for, and agreement with, the notion that the local heritage listing process and any subsequent decisions made in relation to a local heritage place would be more appropriately dealt with by heritage experts.

In the Panel's view, there is value in incorporating the local heritage provisions into the Heritage Places Act to provide legislative separation between heritage listing and planning matters.

Local Heritage Re-Zoning

As they currently stand, sections 67(4) and 67(5) of the PDI Act are unlikely to operate effectively should they commence.

In the Panel's view, it is extremely unlikely that 51 per cent of relevant owners will agree to list their own allotment as a place of local heritage value, as it would result in tighter planning policy applying to their property. This would reduce a relevant owner's ability to develop or alter their property should they seek to do so in the future.

However, it is also relevant to consider that the application of heritage policy is not, and should not, be a popularity contest. The primary purpose of these policies is to protect and retain heritage places for future generations, and to preserve parts of South Australia's memory. The Panel does not consider that it is appropriate for property owners to be able to effectively veto the State Government or a council from determining that an area ought to be captured as a place of local heritage value when there is sufficient justification to do so.

To this end, the Panel considers that there is value in removing these provisions from the PDI Act.

In addition to this, the Panel notes that the State Government made an election commitment to:

Legislate to require that proposed demolitions of State Heritage sites be subject to full public consultation and a public report from the SA Heritage Council.

While it is understood the implementation of this election commitment is still being worked through, there could be an opportunity to combine this body of work with any legislative amendments that arise from the Panel's final recommendations to the Minister.

Questions

1. What would be the implications of having the heritage process managed by heritage experts through the Heritage Places Act (rather than planners under the PDI Act)?
2. What would be the implications of sections 67(4) and 67(5) of the PDI Act being commenced?

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Deemed Consents

Background

If a relevant authority does not decide an application within the time prescribed in respect of the provision of planning consent, the applicant may, before the application is decided, give the relevant authority a deemed consent notice that states that planning consent should be granted. This applies for all deemed-to-satisfy, performance assessed and restricted development, as there are timeframes prescribed for the assessment of planning consent.

On the day that the relevant authority receives the deemed consent notice, the relevant authority is taken to have granted the planning consent. The relevant authority may, within ten (10) business days after receiving the deemed consent notice, grant the planning consent itself or grant the planning consent subject to conditions.

If the relevant authority considers that planning consent should have been refused, they may apply to the ERD Court for an order quashing the consent. An application to the ERD Court must be made within one (1) month after the deemed planning consent is taken to have been granted unless the Court, in its discretion, allows an extension of time.

If a relevant authority does not decide an application within the time prescribed in respect of the provision of a development authorisation other than planning consent, the applicant may, after giving the relevant authority 14 days' notice in accordance with the PDI Regulations, apply to the Court for an order requiring the relevant authority to make its determination within a time fixed by the Court

Under the *Development Act 1993*, if a relevant authority did not decide an application within the time prescribed, the applicant could, after giving 14 days' notice in writing to the relevant authority, apply to the Court for an order requiring the relevant authority to make its determination within a time fixed by the Court. If a notice was given and the relevant authority did not make a determination on the application within 14 days after the notice was received, it was taken that the relevant authority had refused the application.

South Australia's Expert Panel on Planning Reform noted in its Report that industry and practitioners expressed concerns about assessment periods and suggested the introduction of measures such as mandatory timeframes and deemed approvals if timeframes are not met.

As the *Planning, Development and Infrastructure Bill 2015* (PDI Bill) was moving through the Legislative Council, Hon Mark Parnell MLC moved an amendment to remove the deemed consent provisions as he believed the Government was

attempting to hold a stick to relevant authorities to make them comply with the prescribed timeframes.

The Hon Kyam Maher MLC opposed the amendment on behalf of the Government. He noted the concept of deemed consent:

> *…is strongly supported by industry with multiple reports as to the problem with the current approach which requires applicants to go to court if a relevant authority fails to determine an application within the statutory time frame. Such provisions operate well in Queensland and Tasmanian planning systems and, indeed, in other areas of law—including South Australia's fisheries law, for example.*
>
> *…*
>
> *The amendment proposed by the Hon. Mark Parnell would maintain the requirement that it is the applicant who, through no fault of their own, must then apply for the court order requiring the relevant authority to make its determination within a time fixed by the court. This situation has proven to be unworkable and unjust. Relevant authorities must be accountable for adhering to prescribed time frames within which decisions must be made. The government believes the concept of 'deemed consent' is a very important part of these planning reforms, and of the proposed planning system.*

The Hon David Ridgway MLC subsequently indicated that the opposition would not support the amendment moved by Hon Mark Parnell MLC. He further indicated the concept of deemed consent was something the opposition had been attracted to for some time and they were pleased the Government had included as part of the reforms. The Legislative Council did not support the proposed amendment to remove the deemed consent provision from the PDI Bill, and the provision was retained.

Planning System Implementation Review

Jurisdictional Comparison

A comparison on what happens in interstate jurisdictions when an approval is not issued within the prescribed timeframe is as follows:

Jurisdiction	Deemed Consent Comparison
South Australia	If a relevant authority does not decide an application within the time prescribed in respect of the provision of planning consent, the applicant may, before the application is decided, give the relevant authority a deemed consent notice that states that planning consent should be granted. This applies for all deemed-to-satisfy, performance assessed and restricted development, as there are timeframes prescribed for the assessment of planning consent.
New South Wales	A consent authority that has not determined an application for development consent within the prescribed period is taken to have determined the application by refusing development consent.
Western Australia	If the responsible authority has not determined an application within the decision period, the applicant may give written notice of default to the responsible authority. Where a notice of default is given, the applicant may apply to the State Administrative Tribunal for a review as if the responsible authority had refused to approve the application.
Queensland	The process is similar to South Australia's - for applications that are code assessed and where the assessment manager has not decided the application within the period allowed under the development assessment rules, the applicant may give a deemed approval notice to the assessment manager.
Victoria	An applicant for a permit may apply to the Victorian Civil and Administrative Tribunal for review of the failure of the responsible authority to grant the permit within the prescribed time.
Tasmania	The failure of a planning authority to determine an application for a permit before the expiration of the period is deemed to constitute a decision to grant a permit on conditions to be determined by the Appeal Tribunal. The applicant may apply to the Appeal Tribunal for an order determining the conditions on which the permit is granted.

Discussion

The Panel understands that the deemed consent provisions increase the pressure on relevant authorities to undertake their assessment within the prescribed timeframe.

An analysis of data since the inception of the PDI Act (and the ability for deemed consent) shows that up until 28 July 2022, there have been **31 deemed consent notices issued**.

In that period there have been approximately **70,000 applications** for planning consent, and of those, **5,105** consents were issued out of time (i.e. a deemed consent could have been issued). The notices have been issued across **18 councils** and all bar one (1) council have had either one (1) or two (2) notices issued.

It is evident from these figures that deemed consent notices are very rarely required, and the Panel considers that this indicates that the provisions are having the desired effect. That is, applications are being processed in a timely manner and are not being unnecessarily delayed.

Notwithstanding, possible alternatives to the deemed consent provisions may include:

- Deemed approval – Planning and Land Use Services is aware of instances where an applicant has received both planning and building consent for an application and the council has either delayed or refused to issue the final development approval. Such cases often involve the council refusing to accept the planning consent issued by a private accredited professional. Consideration could be given to amending the PDI Act to allow an applicant, after a prescribed period, to apply for a **deemed approval**.
- Final development approval issued by an accredited professional – legislatively it is possible for a regulation to be made to provide that an accredited professional can issue the final development approval.
- A further alternative is to maintain the ability for deemed consent but review the current assessment timeframes. The latest analysis of development assessment timeframes from May 2022 shows the following:

DEVELOPMENT TYPE	Average approval time taken	Statutory timeframe required
Deemed to Satisfy developments	2.25 business days	5 business days
Accepted developments*	9 business days	25 business days
Performance Assessed developments without notification	12.8 business days	20 business days
Performance Assessed developments with notification	49.8 business days	70 business days
Restricted developments (includes public notification)	69.8 business days	95 business days

**Building consent and development approval only, planning consent not required.*

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Questions

1. Do you feel the deemed consent provisions under the PDI Act are effective?
2. Are you supportive of any of the proposed alternative options to deemed consent provided in this Discussion Paper? If not, why not? If yes, which alternative (s) do you consider would be most effective?

Planning System Implementation Review

Verification of Development Applications

Background

Under regulation 31 of the PDI Regulations, on the receipt of an application under section 119 of the PDI Act, a relevant authority must do the following:

- determine the nature of the development;
- if the application is for planning consent – identify the elements for assessment and the category (or categories) of development; and
- determine whether the relevant authority is the correct entity to assess the application.

If the relevant authority is the correct entity to assess the application, they must confirm the appropriate documentation has been lodged, confirm the prescribed fees and provide appropriate notice to the applicant via the PlanSA Portal.

If the relevant authority is not the correct entity to assess the application, the application must be referred to the correct entity to assess the application and notice of this must be provided to the applicant via the PlanSA Portal.

A relevant authority must verify an application within five (5) business days of receiving the application. Once a relevant authority has verified an application, they are considered engaged for the purposes of the PDI Act and the assessment timeframe will commence (if all the fees have been paid).

The Panel is aware that at the time of drafting the verification provisions, there were discussions on whether there should be a penalty for failure to verify within the prescribed timeframe. There were, however, difficulties determining an appropriate and commensurate penalty.

In any event, the PDI Act requires that applications be assessed expeditiously, as well as obliges a person or body performing, exercising or discharging a function, power or duty under the PDI Act to exercise professional care and diligence, and to comply with any code of conduct that applies to the person or body.

All relevant authorities are accredited as accredited professionals under the PDI Act and therefore, must comply with the Accredited Professionals Scheme Code of Conduct (the Code of Conduct). The Code of Conduct requires an accredited professional to ensure that all legislative requirements are met when they are making decisions and taking action and a failure to comply with the Code of Conduct is a breach of the PDI Act.

As there were no private planning certifiers under the *Development Act 1993*, the 'verification' process was less complicated as applications were primarily lodged with

council for assessment against the planning rules. Having said that, in the *Development Act 1993,* the relevant authority was still required to determine the nature of the development and in relation to development identified as residential code development, had to confirm whether the development was in fact residential code development within five (5) business days.

Jurisdictional Comparison

As examined under the Role of Accredited Professionals jurisdictional comparison, most other States require applications to be lodged directly with the local council to obtain the equivalent of planning consent.

Verification is therefore a process that is unique to South Australia (in terms of it being a prescribed process).

Discussion

An examination of the available data demonstrated that a total of **37,734** planning consents were verified in the 2021/22 financial year, with **84 per cent** of verifications undertaken within the statutory timeframe of five (5) business days. This is a year-on-year improvement, as in the 2020/21 financial year, only **78 per cent** of verifications for all applications were undertaken within the statutory timeframe.

The data therefore indicates that **16 per cent** of verifications are occurring outside of the appropriate timeframe, and the Panel would like to hear further information from those relevant authorities that are struggling to achieve verification within five (5) days.

The Panel understands, at least anecdotally, that this may be a consequence of resourcing issues and that the threat of a deemed consent notice results in verification delay. That is, relevant authorities are using the verification period to commence development assessment, thus gaining additional assessment days, and reducing the threat of a deemed consent notice being issued.

The Panel (again anecdotally) understands that this delay is often achieved by relevant authorities issuing requests for information (pursuant to Schedule 8 of the PDI Regulations) during the verification process. To this end, the Panel queries whether there would be merit in amending Schedule 8 as it pertains to verification requirements.

There is also currently no prescribed penalty for a relevant authority who takes longer than five (5) business days to verify an application. If an application is not verified, it means that the assessment timeframe does not commence, and an application can sit idle.

An option to encourage relevant authorities to verify documents more expeditiously is to publish data on the PlanSA Portal reflecting the current practices of relevant authorities. This data could indicate the number of applications verified within the prescribed timeframe by a relevant authority or alternatively, a ranking of relevant authorities by time taken to verify applications.

While the penalty may be too severe, if a relevant authority takes longer than the prescribed timeframe to verify an application, the additional time taken to verify the application could be deducted from the assessment timeframe. However, an amendment of this nature would necessitate an amendment to the PDI Act.

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Questions

1. What are the primary reasons for the delay in verification of an application?
2. Should there be consequences on a relevant authority if it fails to verify an application within the prescribed timeframe?
3. Is there a particular type or class of application that seems to always take longer than the prescribed timeframe to verify?
4. What would or could assist in ensuring that verification occurs within the prescribed timeframe?
5. Would there be advantages in amending the scope of Schedule 8 of the PDI Regulations?

Planning System Implementation Review

Summary of Questions

Public Notifications and Appeals

1. What type of applications are currently not notified that you think should be notified?
2. What type of applications are currently notified that you think should not be notified?
3. What, if any, difficulties have you experienced as a consequence of the notification requirements in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.
4. What, if any, difficulties have you experienced as a consequence of the pathways for appeal in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.
5. Is an alternative planning review mechanism required? If so, what might that mechanism be (i.e. merit or process driven) and what principles should be considered in establishing that process (i.e. cost)?

Accredited Professionals

6. Is there an expectation that only planning certifiers assess applications for planning consent and only building certifiers assess applications for building consent?
7. What would be the implications of only planning certifiers issuing planning consent?
8. Would there be any adverse effects to Building Accredited Professionals if they were no longer permitted to assess applications for planning consent?

Impact Assessed Development

9. What are the implications of the determination of an Impact Assessed (Declared) Development being subject to a whole-of-Government process?

Infrastructure Schemes

10. What do you see as barriers in establishing an infrastructure scheme under the PDI Act?
11. What improvements would you like to see to the infrastructure scheme provisions in the PDI Act?
12. Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?

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Local Heritage in the PDI Act

13. What would be the implications of having the heritage process managed by heritage experts through the Heritage Places Act (rather than planners under the PDI Act)?
14. What would be the implications of sections 67(4) and 67(5) of the PDI Act being commenced?

Deemed Consents

15. Do you feel the deemed consent provisions under the PDI Act are effective?
16. Are you supportive of any of the proposed alternative options to deemed consent provided in this Discussion Paper? If not, why not? If yes, which alternative (s) do you consider would be most effective?

Verification of development applications

17. What are the primary reasons for the delay in verification of an application?
18. Should there be consequences on a relevant authority if it fails to verify an application within the prescribed timeframe?
19. Is there a particular type or class of application that seems to always take longer than the prescribed timeframe to verify?
20. What would or could assist in ensuring that verification occurs within the prescribed timeframe?
21. Would there be advantages in amending the scope of Schedule 8 of the PDI Regulations?

Planning System Implementation Review

How can you get involved?

You can participate in this process and contribute to the Expert Panel's deliberations by providing a submission to the Panel:

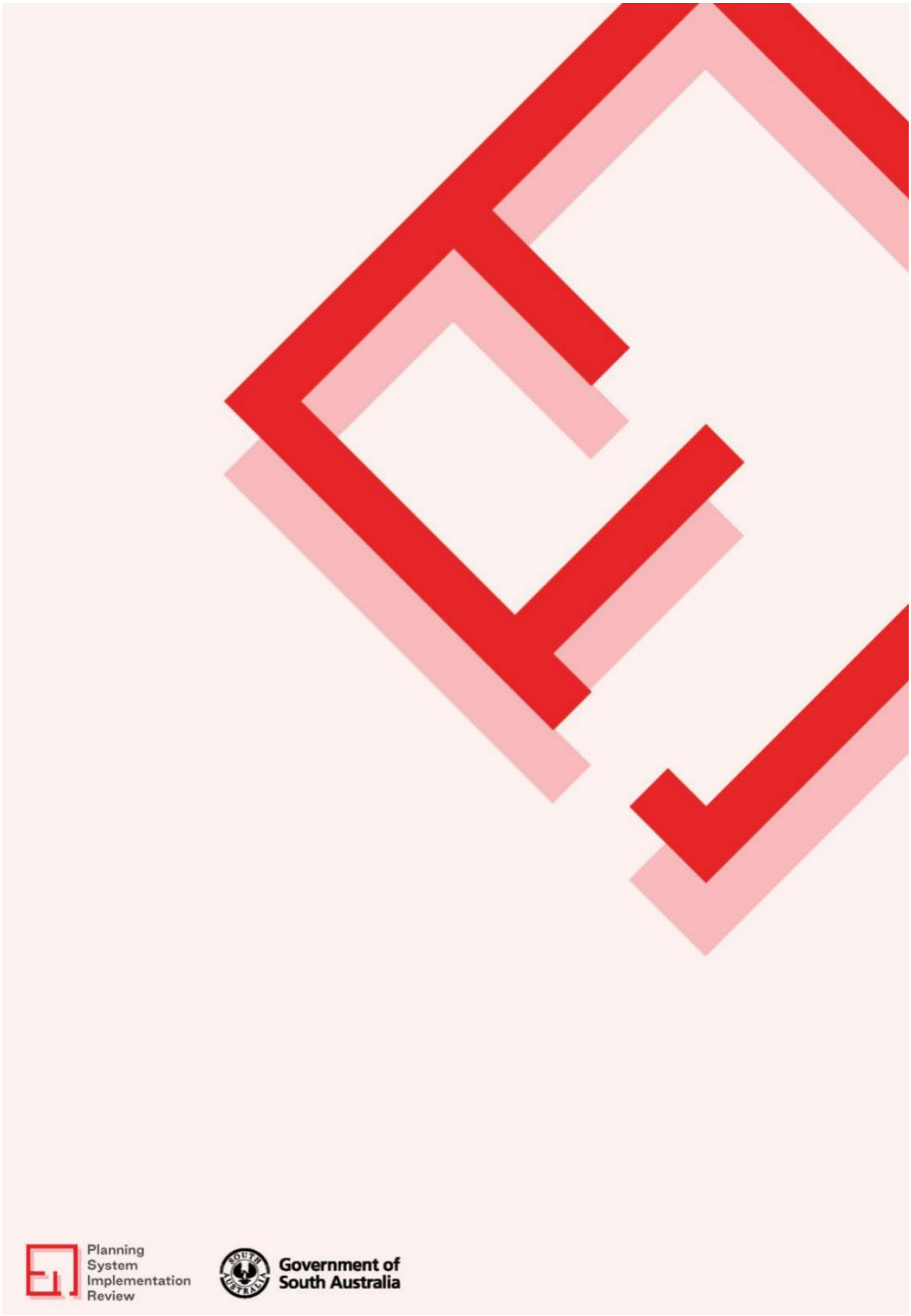
Via email: DTI.PlanningReview@sa.gov.au

Via post: Attention: Expert Panel, GPO Box 1815, Adelaide SA 5001

Via phone: 08 7133 3222

You can also complete a survey on the Expert Panel's YourSAy page: https://yoursay.sa.gov.au/planning_review

For more information about the Expert Panel and the engagement events that it is facilitating, please visit www.plan.sa.gov.au/planning_review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Discussion Paper – Planning and Design Code Reform Options

Expert Panel for the Implementation Review

October 2022

Planning System Implementation Review

Government of South Australia


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Planning System Implementation Review

Message from the Chair

South Australia's planning system has undergone significant change in recent years. Firstly, with the implementation of the *Planning, Development and Infrastructure Act 2016* and *Planning, Development, and Infrastructure (General) Regulations 2017* and more recently with the introduction of the state-wide Planning and Design Code.

In response to concerns raised by local communities and industry groups, the Minister for Planning, the Hon. Nick Champion MP, has commissioned a review of South Australia's planning system and the implementation of recent reforms made to it.

I am honoured to have been appointed Presiding Member of the independent panel of experts that has been established to undertake this review. Importantly, each of the Panel members has significant experience with the South Australian planning system, having all lived and worked in South Australia for many years.

I'm delighted to be joined on the Panel by **Lisa Teburea**, independent consultant and former Executive Director of Public Affairs with the Local Government Association of South Australia, **Cate Hart**, President of the Planning Institute of Australia (SA) and Executive Director, Environment Heritage and Sustainability for Department of Environment and Water, and **Andrew McKeegan**, former Chief Development Officer and Deputy Chief Executive for the Department of Planning, Transport and Infrastructure.

The Panel has been tasked with reviewing key aspects of the planning system and identifying opportunities to ensure planning decisions encourage a more liveable, competitive, affordable, and sustainable long-term growth strategy for Greater Adelaide and the regions.

We are pleased to present these Discussion Papers which outline the key areas in the Act, Code and e-Planning system that the Panel has identified warrant further examination. We encourage all South Australian's – whether industry groups, practitioners, community groups, local government, or the general public - to consider these Papers, share their feedback and contribute to the review.

After all, South Australia's planning system affects all of us.

John Stimson

Introduction

The South Australian planning reforms commenced in 2012 with the appointment of the former Expert Panel, which made a series of initial recommendations that shaped new legislation that we now know as the *Planning, Development and Infrastructure Act 2016* (the PDI Act).

For the past ten (10) years, South Australians have considered and contributed to planning policy, and have now lived with the provisions of the PDI Act and Planning and Design Code (the Code) for 18 months.

The Expert Panel for the Planning System Implementation Review was appointed by the Minister for Planning, the Hon. Nick Champion, to review the new system and to consider where there is scope for improvement.

The Panel has been given a Terms of Reference to review:

- the PDI Act;
- the Code and related instruments, as it relates to infill policy, trees, character, heritage and car parking;
- the e-Planning system, to ensure it is delivering an efficient and user-friendly process and platform; and
- the PlanSA website, to check usability and ease of community access to information.

Importantly, the Panel is not a decision-making body, but rather, a group of subject matter experts brought together to review, consider, consult, and make recommendations to the Minister as to what improvements to the new planning system could be. Those recommendations will, of course, be influenced by the feedback received from the community throughout this engagement process.

In preparing its Discussion Papers, the Panel has acknowledged the volume of submissions and representations that have been made by groups and individuals during previous engagement and review processes. Many of the issues that have been raised over the course of the past ten (10) years have already been thoroughly examined by various bodies, and the Panel considers that the fundamental elements of the PDI Act are sound.

However, this review is an opportunity to reconsider some of the details and the Panel is looking for new information, new feedback and experiences directly related to the implementation of the PDI Act and the Code, and how the community is interacting with the e-planning system.

In undertaking this review, the Panel will play a key part at a point in time. A time where the system is still young and arguably in its 'teething' phase, but equally a time that is ripe for considering what amendments – big or small – could make what is already a comprehensive planning regime, even better.

This Discussion Paper seeks to identify the known opportunities for improvement identified in the Code through addressing character and heritage, trees, infill and carparking policy.

It will guide you, as the reader, through how the Code addressed the feedback received during Phase Three of the implementation, what the current policy position is and identify areas of known frustration. It will then ask questions for your consideration and response. Notwithstanding, the Panel is, of course, interested to hear about all ideas for reform that may benefit the South Australian community and encourages you to raise any matters that have not otherwise been canvassed in this Discussion Paper.

Finally, and for the avoidance of doubt, the Panel acknowledges that that there are matters that have been (or are currently) the subject of proceedings in the Environment, Resources and Development Court relevant to the Code. The Panel recognises that the outcomes of those proceedings may require it to consider additional matters not otherwise addressed in this Discussion Paper and confirms that, where necessary, it will address those in its final report to the Minister.

The Panel acknowledges and appreciates the time and effort that will be put into preparing submissions for its consideration and looks forward to reviewing and considering all the feedback.

Implementation of the Planning and Design Code

To understand what reform options may be available for the Panel's recommendation, it is appropriate to consider the matters that were raised and/or addressed when the Code was initially consulted upon, in advance of its implementation.

The Panel has no intention to re-prosecute issues that were appropriately dealt with by the State Planning Commission (the Commission) in arriving at the iteration of the Code that was ultimately introduced. However, it also recognises that there are matters that were unable to be managed in the initial implementation because of not yet having a 'lived' understanding of how those provisions would operate practically.

The Code has now been operational for a period of 18 months and whilst there is still limited data arising from several aspects of its operation (including but not limited to the effect of infill housing and tree policy, discussed later in this Paper), consideration can now be given to the lived experience of the Code provisions and where there is opportunity for further refinement and/or improvement. For the avoidance of doubt, the Panel notes that there is limited operational data available not because the e-Planning system is unable to obtain the data, but because insufficient time has passed for matters to move through the lifecycle of planning approval to completion.

The following table summarises the key issues raised by stakeholders in the Phase Three consultation on the Code and how the final iteration of the Code responded to the feedback. This data was collated and summarised by the Commission in its 'What We Heard' Report.

Note: Where possible, the table has been divided into the relevant policy matters being considered by the Panel, as reflected in this Discussion Paper. However, it is noted that there are matters that necessarily overlap (particularly as they apply to infill) and which may be relevant in multiple policy categories.

Phase 3 Code – Feedback and Policy Response

Stakeholder	Key Issue or Feedback	Policy Response
Character and Heritage Policy Matters		
Localised Policy		
Councils, Community	More localised policy should be included in the Code to assist in protecting areas of heritage and character.	Introduction of Historic Area Statements and Character Area Statements to better reference the valued attributes of a particular area, and which could add additional details in relation to matters such as roof form and pitch, wall height, fencing types and the siting, design and scale of carports, garages, outbuildings and vehicle access points.

Stakeholder	Key Issue or Feedback	Policy Response
Various	The Code should provide a zone that reflected areas with stronger built form characteristics, as was contained in previous Development Plan policy.	Introduction of the Established Neighbourhood Zone. This zone includes Technical Numeric Variations (TNVs) for matters such as site areas, site frontages, side setbacks, site coverage and height, which provide room for local variation in policy.
Demolition Controls		
Various	• Stronger demolition controls should be provided in historic areas • Public notification should be required for proposals involving demolition of a property in a historic area	• Enhanced demolition controls applied to areas subject to the new Historic Area Overlay • Demolition tests within the Historic Area Overlay revised to replace the 'economic test' with one of 'reasonableness'.
Representative Buildings (formerly Contributory Items)		
Councils, Community	Contributory Items should be re-introduced into the Code	Contributory Items were transitioned into the final version of the Code as 'Representative Buildings', and are referenced in the Historic Area Statements and Character Area Statements and are mapped in the SA Planning and Property Atlas (SAPPA)
Tree Policy Matters		
Tree Planting		
Various	• Observations that the Urban Tree Canopy Overlay does not go far enough to increase urban tree canopy. Suggestions that minimum tree requirements be increased to reflect higher tree canopy targets and policy regarding the retention of mature trees be strengthened • Concerns that paying a fee in lieu of planting new trees was not appropriate (i.e. the Urban Tree Canopy Offset scheme), and that the fee would be too low and should be increased. Additional suggestions that the scheme should only apply where the cost of footings is unreasonable.	• Amend the Urban Tree Canopy Overlay to add a note referring to an Off-set Scheme established under section 197 of the PDI Act. • Further investigations were undertaken in relation to tree canopy cover which demonstrated that in the most common infill development scenario (which represents 75% of new houses), house footings are not affected by the Code's mandatory tree planting policy.

Stakeholder	Key Issue or Feedback	Policy Response
	• Requests for tree species and setbacks between buildings and trees to be stipulated in the overlay • Concern that the requirement to plant a tree will increase footing costs	
Infill Policy Matters		
Localised policy		
Councils, community, Planning Institute of Australia (PIA)	More localised policy needed to reflect neighbourhood characteristics and development plan policies (e.g. site areas, building heights, setbacks)	• Expand the suite of neighbourhood zones to provide more nuanced policy for areas with: o an established character (new Established Neighbourhood Zone) o waterfront areas (new Waterfront Neighbourhood Zone) o undulating land (new Hills Neighbourhood Zone) o residential parts of townships (new Township Neighbourhood Zone). • Provide for additional variations to populate policy in certain zones (including minimum site area/frontage in the Housing Diversity Neighbourhood Zone, building height in the Urban Renewal Neighbourhood Zone).
Minimum site dimensions, density		
Councils, community	Increase in minimum site areas in the General Neighbourhood Zone, particularly for row dwellings.	Amend the General Neighbourhood Zone (DTS/DPF 2.1) to increase the minimum site area for row/terrace dwellings from 200m2 to 250m^2.
Development industry	Seek higher densities in the Established Neighbourhood Zone, smaller site areas for retirement villages, larger sites where interface outcomes can be addressed (i.e. 'catalyst' sites).	**No policy change**: where supported accommodation, retirement living and student accommodation are envisaged forms of development in the zone and are performance-assessed, density higher than the minimum prescribed in a DTS criteria can be considered on merit. It was appreciated that amalgamated/ large development sites can often address interface issues in a more suitable manner than small-scale infill. However, such dispensation would be appropriately

Stakeholder	Key Issue or Feedback	Policy Response
		considered in a performance assessment, taking into account the site context and how interface is handled in the particular circumstance.
	Soft landscaping	
Development industry	• The requirement for soft landscaping is too great an area, particularly for small/narrow sites, and should only apply to the front yard area. • Minimum pervious percentages should be reduced to align with POS requirements. • The policy should not apply in Housing Diversity, Urban Corridor or Urban Renewal Neighbourhood zones.	• Amend soft landscaping policy to: ○ increase the minimum proportion of soft landscaping forward of the building line to 30% ○ increase the minimum dimension of landscaping from 0.5 to 0.7m ○ include an additional category of dwelling Site Area (less than 150m2) with a 10% landscaping requirement • Create new administrative definition of soft landscaping to clarify that it does not include artificial lawn.
Councils	• More policy is needed in the Code to address urban heat effects. • The requirement to provide 15-25% soft landscape areas and a minimum of one (1) tree per dwelling is positive and strongly supported but should apply to all development regardless of type or scale. • An additional category of soft landscaping is needed to address very small allotments.	
Community	• Concerns about the impacts on urban heat, biodiversity and pollution resulting from Plastic lawns instead of porous paving, gravel or vegetation • Smaller sites should be required to have a higher proportion of soft landscaping • Policy to stipulate where greenspace should be located for maximum microclimate benefit • Permeable paving not be a predominant feature of soft landscaped areas.	

Stakeholder	Key Issue or Feedback	Policy Response
Councils	Request that soft landscaping policy should apply to ancillary structures such as outbuildings, verandahs and carports	Apply minimum soft landscaping criteria for ancillary buildings in neighbourhood zones (ancillary accommodation, outbuildings, verandah, carport) or maintain the current percentage of soft landscaping where it is already less than the criteria.
Rainwater tanks, stormwater management/Water Sensitive Urban Design (WSUD)		
Various	• Increase stormwater detention capacity (and reduce retention capacity) • Focus on controlling output rather than water re-use • Amend the criteria requiring 80% roof capture area to 50% for row dwellings and semi-detached buildings to help decrease risk of water damage to property due to complex design issues builders' face when facilitating an 80% capture • Concerns regarding the suitability of criteria to control stormwater pollutants and run-off quantities • Request for a portion of 2000L retention tanks <200m2 to be used for detention (1000L for detention and 1000L for retention) • Request for the water tank connections be made to all toilets (not just one toilet) • The installation of the rainwater tank and connection to approved uses should be mandated prior to occupying new houses	Amend the Stormwater Management Overlay to: • Require 60% of the roof area to be connected to tanks (not 80%) for detached (non-battle axe), semi-detached and row dwellings. • Require half (1000L) of the 2000L rainwater tanks for lots <200m^2 to be used for detention • Amend the stormwater management policies in the Design in Urban Areas, Design and Land Division General Development Policies to remove the Deemed-to-Satisfy/ Designated Performance Feature criteria regarding pollutant percentages and run-off quantities.
Private Open Space		
Councils, community	The total area of Private Open Space (POS) required for detached, semi-detached, row, group and residential flat dwellings was set too low at 24m^2.	Increase POS policy requirements in line with existing Residential Code (Res Code) parameters, wherein a minimum POS requirement of 60m^2 will apply for sites above 300m^2.
Setbacks		

Stakeholder	Key Issue or Feedback	Policy Response
Community, local government and planning practitioners	Concerns around the setbacks from side and rear boundaries, including: • Rear setback to match what is currently prescribed in the complying criteria of the Res Code • The front setback criteria in the Res Code (being the average of adjoining minus one metre) to form the DTS criteria in the neighbourhood zones • Use the average of adjoining policy to determine the front setbacks in neighbourhood zones • Transition existing upper level side setbacks from development plans into the Established Neighbourhood Zone.	• Amend the rear setback Deemed-to-Satisfy/Designated Performance Feature (DTS/DPF) to add a new category for sites >300m^2 for a rear setback of 4m for ground level and 6m for upper level in the following zones: ○ General Neighbourhood Zone ○ Suburban Neighbourhood Zone ○ Neighbourhood Zone ○ Waterfront Neighbourhood Zone. • Amend the side boundary setback Technical and Numerical Variation (TNV) in the Established Neighbourhood Zone and Township Neighbourhood Zone to transition upper level setbacks as well as ground levels (as per Development Plan parameters). • Amend the primary street setback policy to allow for the primary street setback to reflect the average of the adjoining buildings minus one metre in the General Neighbourhood Zone and Suburban Neighbourhood Zone.
Waste storage		
Councils, community	Waste storage criteria to apply to all dwellings and to include consideration of gradient for path of travel between waste bin storage and the street (<1:10).	Amend 'Waste storage' policy to: • Decrease the area from 3m^2 to 2m^2 and prescribe a minimum dimension of 0.9m. • Clarify the requirement for a continuous unobstructed path of travel doesn't include moveable objects like gates and roller doors
Development industry	The requirement for waste bin storage mandates additional area that may or may not be used by homeowners. Further, the 3m^2 area for waste and unobstructed path to the street would not be achievable for narrow sites and will require additional POS.	
External appearance		
Councils	Improve façade design policy by increasing the number of techniques required to achieve Deemed-to-Satisfy (DTS) and remove the mix of materials as a technique	Amend policies on front elevations and passive surveillance' to:

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Stakeholder	Key Issue or Feedback	Policy Response
Development industry	• A minimum room width of 2.7m could have impact on internal design and overall built width will have a negative impact on narrow blocks. • The requirement for the entry door to the front elevation to address the street is too prescriptive and will preclude different design options. • The requirement for 3 minimum design features to the front elevation from 4 possible alternatives for single-storey dwellings is too restrictive and it is possible that streetscapes will become repetitive. Suggest additional option for at least two materials/colours on the front facade. • Additional design criteria should be provided for front and side/rear façades, especially façades which present to public spaces such as secondary streets.	• clarify that 2m^2 window area relates to the total aggregate area of all windows on front facade • allow a dwelling's entry door to be 'visible' from the street rather than facing the street. Amend policy on 'external appearance' to: • add new criteria to external appearance policy to allow a minimum of two different colours/materials incorporated on the front façade to satisfy 1 of the 3 required treatment options. • require dwelling façades facing a secondary street frontage to satisfy 2 treatment options. • Remove policy requiring recessing of the secondary street façade as articulation of secondary street frontages will be achieved through the other 'External appearance' policy.
Car Parking Policy Matters		
Car parking		
Councils, community	• Require at least one (1) on-site car park to be covered (i.e. carport or garage) • Concerns that provisions for off-street parking is too low.	• Increase on-site car parks from one (1) to two (2) spaces for 2-bedroom detached, semi-detached and row dwellings (except where rear loaded) • Require one (1) car parking space to be covered.
Garage dimensions		
Development industry	The proposed minimum internal garage widths of 3.2m (single garage) and 6.0m (double garage) and length 6.0m would exceed many builder's designs and Australian Standards.	Amend 'Car parking, access and manoeuvrability' policies to align minimum car parking and garage dimensions with current Australian Standards for carparks and enclosed garages.
Councils, community	Request to increase minimum internal garage dimensions to ensure	

Stakeholder	Key Issue or Feedback	Policy Response
	convenient parking and provide more room for internal storage	

Character and Heritage

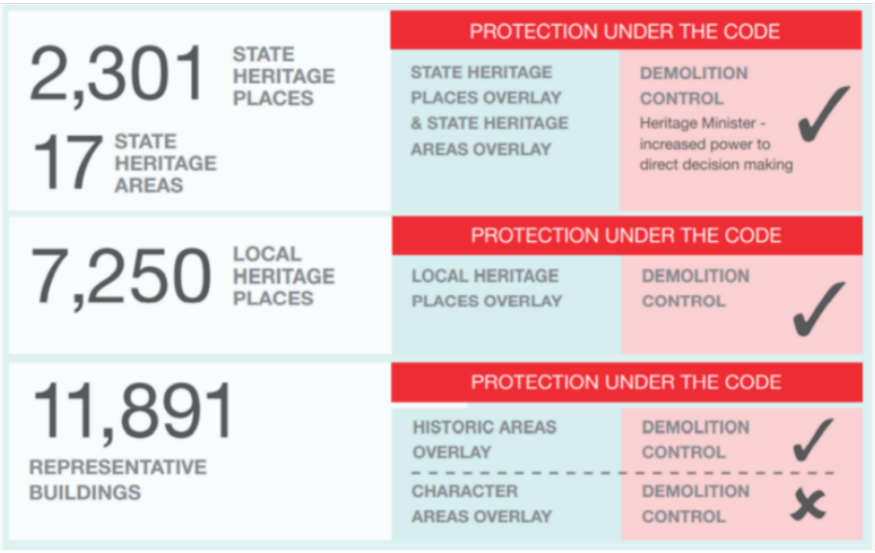
Background

Heritage in South Australia is protected by heritage specific legislation, primarily:

1. State Heritage – *Heritage Places Act 1993*; and
2. Local Heritage – PDI Act.

As such, heritage is a joint responsibility of the Minister for Planning and the Minister for Climate, Environment and Water.

This legislative framework provides protection to approximately **2,300** State Heritage Places, **17** State Heritage Areas and approximately **7,250** Local Heritage Places.



The number of heritage listings varies across local government areas, particularly in relation to Local Heritage. At present, 29 councils do not have Local Heritage Places and one (1) Council (Roxby Downs) has no heritage listings (neither State nor Local Heritage).

In addition, whilst not legislatively protected, 25 of 68 councils have Representative Buildings identified in the Code, totalling approximately **11,831** buildings. Of these, **11,752** are located within the Historic Area Overlay and have the benefit of demolition control; whilst **79** are located in the Character Area Overlay with no demolition control.

The cumulation of the above provisions results in the Code affording the following local government areas with a high percentage of heritage and character protection (excluding roads and open space):

- City of Unley – 72.89%
- City of Prospect – 77.39%
- City of Norwood, Payneham and St Peters – 49.47%
- Town of Walkerville – 41.9%

It is relevant to note that the Expert Panel on Planning Reform recommended in its 2014 report 'Our Ideas for Reform' that heritage laws ought to be '*consolidated into one integrated statute*'[1] rather than continue to sit across both planning and heritage legislative instruments.

In addition, it was also noted that local heritage is increasingly being confused with character issues and that '*character is not heritage*[2]'. It sought to distinguish the two (2) terms, and to outline a new heritage framework that would '*value the state's past, while also catering for future needs*'[3].

The Code has delivered a new policy approach to protect heritage and character by:

1. transitioning existing contributory items from Development Plans as 'Representative Buildings';
2. creating a new Heritage Adjacency Overlay to provide distinction between heritage places and areas surrounding such places;
3. creating a new Character Area Overlay and Historic Area Overlay to sit over zones which apply to areas of established heritage and character value;
4. accurately mapping all places of significance within the planning system (State Heritage, Local Heritage and Representative Buildings) in a way that is more transparent and accessible;
5. consistently applying demolition controls to State Heritage Places, State Heritage Areas, Local Heritage Places and Historic Areas (which include the majority of Representative Buildings) in a way that is equitable and fair;
6. elevating the role of State Heritage Guidelines, Statements of Significance for State Heritage Areas (such as Hahndorf and Colonel Light Gardens) and State Heritage Places in the planning system by including a link in the Code to these documents directly under Desired Outcome 1 of the State Heritage Area Overlay and Desired Outcome 1 of the State Heritage Place Overlay, respectively; and
7. including local policy that reflects the important elements of an area through the use of Historic Area and Character Area Statements (i.e. era, built form, architectural styles, street patterns etc) that underpin the Overlays. Depending on the applicable zone, Technical and Numeric Variations (TNV) are also used to

[1] South Australia's Expert Panel - Our Ideas for Reform (dit.sa.gov.au), 66.
[2] Ibid, page 63.
[3] Ibid, page 67.

address matters such as building heights and site areas within zones and provide room for local variation in policy e.g., allows for differences in building heights and minimum site areas from one area to another.

Importantly, prior to the implementation of the Code, the Commission engaged the Chair of the Expert Panel on Planning Reform, Mr Brian Hayes KC, to review the proposed heritage and character policy construct. Mr Hayes KC determined that the abovementioned approach was appropriate to address the matters raised in the previous Expert Panel's 2014 report.

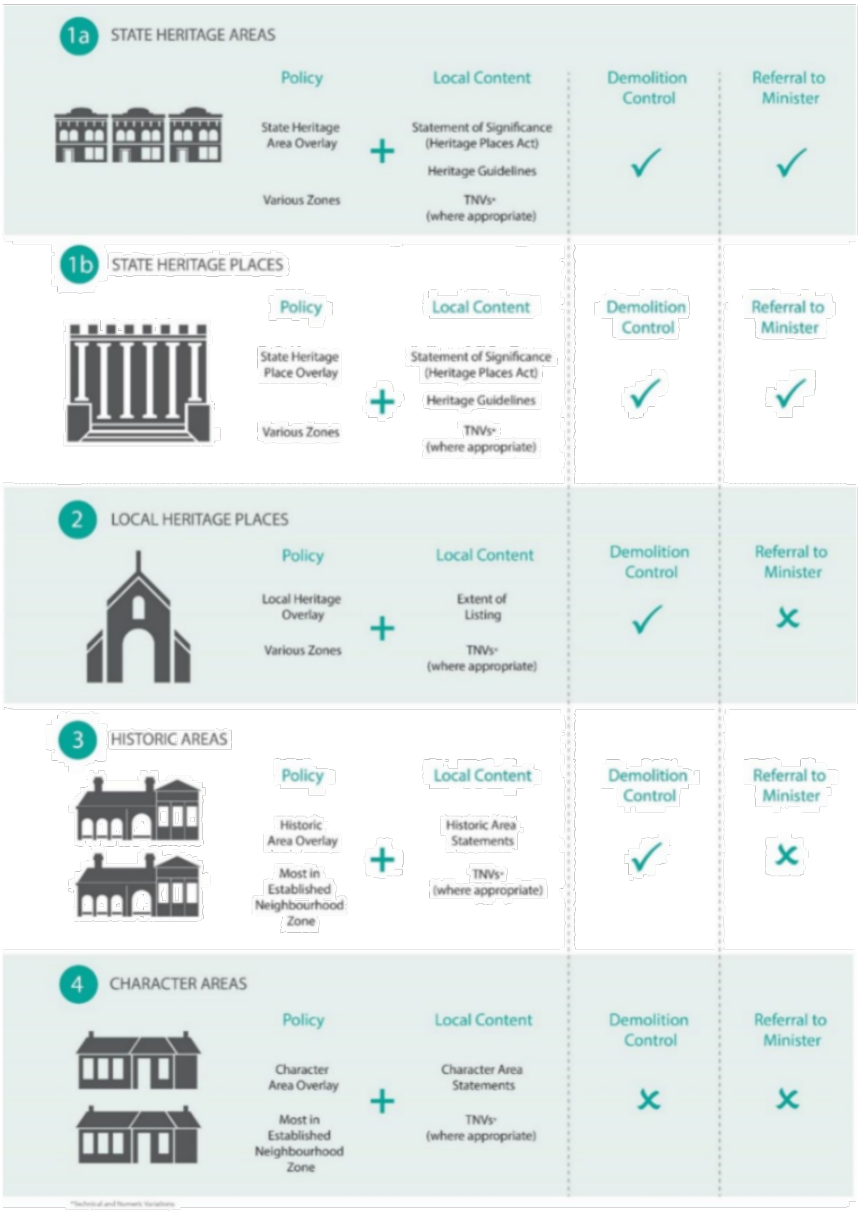
A summary of the key policy changes introduced through the Code are set out in the Commission's brochure, 'Protecting Heritage and Character in the Planning and Design Code' (October 2022).

Relevantly, it is also acknowledged that the Miscellaneous Technical Enhancement Code Amendment (which is currently out for public consultation) proposes to move the identification of Representative Buildings from the reference layers of SAPPA and add them to the spatial mapping layer of the Historic Area and Character Area Overlays, as relevant. It is considered that this approach will ensure Representative Buildings become more visible within the Code, creating more certainty for property owners and relevant authorities without elevating their status.

Planning System Implementation Review

Character and Heritage Overlays

The following graphic identifies the relevant Overlays found in the Code which relate directly to matters of character and heritage, and what each of those Overlays provides by way of application and protection.



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The above graphic does not reference the Heritage Adjacency Overlay. However, for the avoidance of doubt, it is noted that that Overlay does not provide demolition control but does include a referral to the Minister responsible for the administration of the Heritage Places Act where development is proposed that may materially affect a State Heritage Place. The Minister is requested to provide expert assessment and direction on the potential impacts of development adjacent State Heritage Places.

State Heritage Standards

Linked to the State Heritage Area Overlay are Heritage South Australia's Heritage Standards, which provide principles and acceptable minimum standards for development proposals and form the basis of Heritage South Australia's decisions on proposed development referrals.

Heritage Standards are being progressively developed for all State Heritage Areas, in consultation with landowners and key stakeholders, replacing the current State Heritage Area guidelines for development.

At the present time, the only Heritage Standard that has been completed is for the Colonel Light Gardens State Heritage Area. The Panel understands that Heritage South Australia have commenced preparing Heritage Standards for Hahndorf, with other State Heritage Areas to follow.

In the meantime, Heritage South Australia will continue to use the existing Guidelines for Development for other State Heritage Areas as the basis for heritage assessments and decisions for any referred development proposals, until such time as new Heritage Standards are developed.

Design Guidelines

Also sitting beside the Code are three (3) advisory documents which assist with contextually responsive development in both heritage and character areas.

The first is the Historic Area Overlay Design Advisory Guidelines which provide guidance to applicants and designers on key design considerations to help achieve an appropriate contextually responsive design.

The guidelines identify a range of common design attributes that may be relevant when responding to Desired Outcome 1 in the Historic Area Overlay. The guidelines are not intended to be a 'check list' to the design or assessment process, but rather support the Desired and Performance Outcomes of the Code. They are not additional policy.

The second advisory document, the Character Area Overlay Design Advisory Guidelines, fulfil a similar role to the guidelines above, but are applicable to development in areas subject to the Character Area Overlay.

Both of these advisory guidelines are supported by Style Identification Advisory Guidelines. By providing examples of common styles of development (for example Victorian villas, Tudor revival, Federation cottages or Austerity houses) this guideline

can be used to assist applicants and designers to identify places that display the historic themes and characteristics expressed by the Historic Area Statements and Character Area Statements. It is these places that the design of new development (or additions or alterations) should contextually respond to. In some areas, these places have been identified as Representative Buildings.

The Panel also understands that a Local Design Review Scheme has recently been established under the PDI Act. While no councils are yet to establish a Local Design Review Panel (LDRP) for their area, a LDRP could assist in good decision making at the development application stage. Such an approach may also assist in up-skilling assessment staff in considering the design merit of a development application in a historic or character area.

Discussion

Matters of character and heritage are some of the most emotive and tumultuous to arise in connection with the planning framework.

Indeed, since the full implementation of the Code in March 2021, the Panel is aware that there has been significant public attention on these aspects, with an overarching implication that the new planning system 'waters down' previous heritage protections and therefore makes it easier to undertake infill development in areas of notable character and heritage.

However, in the Panel's view, the framework under the new planning regime has, in fact, strengthened character and heritage protection. This is through the introduction of the numerous mechanisms identified earlier in this Chapter, including but not limited to the creation of Character Area and Heritage Area Overlays and consistently applying demolition controls to State Heritage Places, State Heritage Areas, Local Heritage Places and Historic Areas.

It is also important to recall (and as will be repeated in numerous locations throughout this Discussion Paper) that the full effect of the Code's provisions may not have yet been witnessed in our suburbs. This is because the Code has only been operational for 18 months.

Consequently, several properties demolished and/or constructed in character and heritage areas since the implementation of the Code have resulted from approvals granted under the former *Development Act 1993*. That is, despite the Code being operational for 18 months, given the delays in the construction industry occasioned by the pandemic, we may still be witnessing demolitions and/or constructions that were not subject to the provisions of the Code.

Notwithstanding the above, specific matters that have been identified in the media and to the Department for Trade and Investment (the Department) directly include (but are not necessarily limited to):

- Representative Buildings not being clearly identified in the Code, and a need to identify additional Representative Buildings;
- the broad and non-specific nature of the Historic Area and Character Area Statements;
- the need for improvements to better guide built form outcomes within historic and character areas, and allow provision for greater local policy content; and
- the need for more local government and community contribution to decision making regarding development in character and heritage areas (including the demolition of buildings).

These matters indicate that there appears to be a lack of recognition and/or awareness of the period of time it takes to see the 'on ground' impacts of systemic change, particularly the scale of the PDI Act and Code.

State Planning Commission Proposal

Noting the significant public interest in character and heritage matters, the Commission has been working on a reform package for the consideration of the Minister for Planning (the Minister).

The Commission provided its proposed 'three (3) pronged' approach to character and heritage reform to the Minister in August 2022. The three (3) prongs of the Commission's proposal are:

1. **Elevate Character Areas to Historic Areas**

   Support and facilitate councils to undertake Code Amendments to elevate existing Character Areas to Historic Areas (where appropriate criteria or justification exists).

   This option will allow demolition controls to apply across a broader area of the State, while still maintaining the integrity and consistency of the Code. Councils would be required to consult with their communities on any proposed Code Amendments to elevate character areas to historic areas.

   To facilitate this body of work, the Commission plans to request Planning Land Use Services (PLUS) to prepare updated guidance materials to provide support to councils in undertaking this process. It is thought that those guidance materials will include detailed information requirements regarding the preparation of heritage surveys, as well as procedural requirements for undertaking Code Amendments.

2. **Character Area Statement Updates**

   Support and facilitate councils to review and update their Character Area Statements (and Historic Area Statements) to address identified gaps or deficiencies. This might include updating themes of importance, incorporating additional design elements, and including illustrations where appropriate.

   These enhanced Statements will provide a stronger focus on design which is bespoke to local character and heritage areas and will provide better tools for assessment of character and heritage values.

   To facilitate this body of work, the Commission plans to request that PLUS work with councils to better understand the current situation (that is, what is working, what is not working, and identify any gaps and deficiencies). PLUS will subsequently prepare guidance material to assist in the addition of policy content within the Statements for councils that want to pursue changes.

3. **Tougher demolition controls in Character Areas**

   Introduce a development assessment pathway that only allows for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved.

   This change is aimed at ensuring that existing buildings in Character or Historic Areas are only demolished when the replacement building is in keeping with the character or historic value of the area.

Following receipt of the three (3) pronged approach and noting that the Panel's Terms of Reference require it to consider character and heritage in the Code, the Minister referred the Commission's proposal to the Panel for its consideration. In doing so, the Minister also asked that the Panel provide its advice and early recommendations for those aspects of the Commission's proposal that it was willing to endorse. This is consistent with, and permitted by, the Panel's Terms of Reference.

The Panel has considered the Commission's proposal and determined to **provide its support** to 'prongs' one (1) and two (2). The Panel has advised the Minister of the same.

The Panel resolved to provide early support for these two (2) prongs of the proposal on the basis that they represent sensible improvements to the character and heritage framework in South Australia, and both can occur with limited intervention from the State. Indeed, the power already exists for councils to undertake the body of work envisioned by these reform proposals.

Despite this, the Panel recognises that the preparation of guidance materials by PLUS will substantially assist in empowering the local government sector to take responsibility for the transition to enhanced heritage protections at a local level.

Separately, the Panel also notes that the advancement of these two (2) prongs does go some ways toward addressing the concerns that have been raised in the media and with the Department, particularly those around local policy and seeking additional guidance in character and heritage statements

Notwithstanding, noting that prong three (3) is the most significant of the reforms proposed, the Panel determined that it was not willing to provide its early support for the reform in the absence of conducting public consultation on the same.

Whilst effecting such a change would only be able to be facilitated through both legislative change and a Code Amendment which would, itself, be subject to public consultation, the Panel considers that it is appropriate to ascertain the appetite to incorporate demolition controls of the nature proposed in advance of a Code Amendment being prepared.

The Panel now seeks community and stakeholder feedback in relation to this proposal and whether there is community and stakeholder support for requiring a replacement building to be approved in advance of demolition approval being granted.

Questions for Character and Heritage Policy

1. In relation to prong two (2) pertaining to character area statements, in the current system, what is and is not working, and are there gaps and/or deficiencies?
2. Noting the Panel's recommendations to the Minister on prongs one (1) and two (2) of the Commission's proposal, are there additional approaches available for enhancing character areas?
3. What are your views on introducing a development assessment pathway to only allow for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved?
4. What difficulties do you think this assessment pathway may pose? How could those difficulties be overcome?

Tree Policy

Background

The current policy position on urban trees is focused on the retention and increase of tree canopy cover.

The 30-Year Plan for Greater Adelaide (2017 update) contains a target that "*urban green cover is increased by 20% in metropolitan Adelaide by 2045*", noting that councils currently have varying amounts of tree canopy cover.

It is proposed that council areas that currently have less than 30% tree canopy cover should seek to increase their canopy by 20% by 2045. Council areas that currently have more than 30% tree canopy cover should maintain the current level of cover, ensuring no net loss over the years to 2045.

These current policy targets were based on a reported average 27.28% tree canopy cover across the local government areas, as captured in research undertaken in the national benchmarking report to the Institute of Sustainable Futures of the University of Sydney in 2014, where an indicative rating of canopy cover was provided as the original baseline data.

Since the release of the *30-Year Plan for Greater Adelaide* (2017 update) and the *2017 Update Report Card 2020-2021* progress has been made in data capture and analysis. Tree canopy cover was further measured across 18 metropolitan councils in 2018/19 using Light Detection and Ranging (LiDAR) data, providing a more accurate method of measuring tree canopy. This change in method means that it is not possible to measure progress against the original baseline data in the Plan.

New LiDAR data capture across metropolitan Adelaide is progressing this year (2022) and this will present an opportunity for a first like-for-like comparison of tree canopy change against those 18 councils and tree canopy data captured in 2018/19. It is anticipated that the analysis of tree canopy data will be available in the first half of 2023.

Tree Protections

Part 1 of the PDI Act provides the definition of ***development*** as including any tree damaging activity in relation to a regulated tree.

Pursuant to regulation 3F(1)(a) of the PDI Regulations, a ***regulated tree*** is:

> *A tree within a designated regulated tree overlay that has a trunk with a circumference of 2 m or more or, in the case of trees that have multiple trunks, that have trunks with a total circumference of 2 m or more and an average circumference of 625 mm or more, measured at a point 1 m above natural ground level.*

The PDI Regulations also provide that for a ***significant tree*** is:

> *A tree with a trunk with a circumference of 3 m or more or, in the case of a tree with multiple trunks, has trunks with a total circumference of 3 m or more and an average circumference of 625 mm or more, measured at a point 1 m above natural ground level.*

Trees and/or stands of trees are also able to be declared as significant pursuant to Section 68 of the PDI Act based on whether a tree:

1. makes a significant contribution to character or visual amenity in the local area; or
2. is indigenous to the local area, it is a rare or endangered species taking into account any criteria prescribed by the regulations, or it forms part of a remanent area of native vegetation; or
3. is an important habitat for native fauna taking into account any criteria prescribed by the regulations; or
4. satisfies any criteria prescribed by the regulations.

Trees declared as significant for the purposes of section 68 of the PDI Act are listed in Part 10 of the Code. Four (4) councils currently have listings in the Code – City of Adelaide, City of Unley, City of Burnside, and City of Prospect.

Code Overlays

The Code includes two (2) overlays that contain policy relevant to urban trees – the Urban Tree Canopy Overlay and the Regulated and Significant Tree Overlay.

The Urban Tree Canopy overlay provides policy for assessment of new dwellings within the overlay and seeks to ensure that residential development preserves and enhances urban tree canopy through the planting of new trees and retention of existing mature trees where practicable.

Conditions relating to the policies contained in the Urban Tree Canopy Overlay are prescribed in Practice Direction 12.

The Urban Tree Canopy Overlay seeks tree planting in accordance with the following:

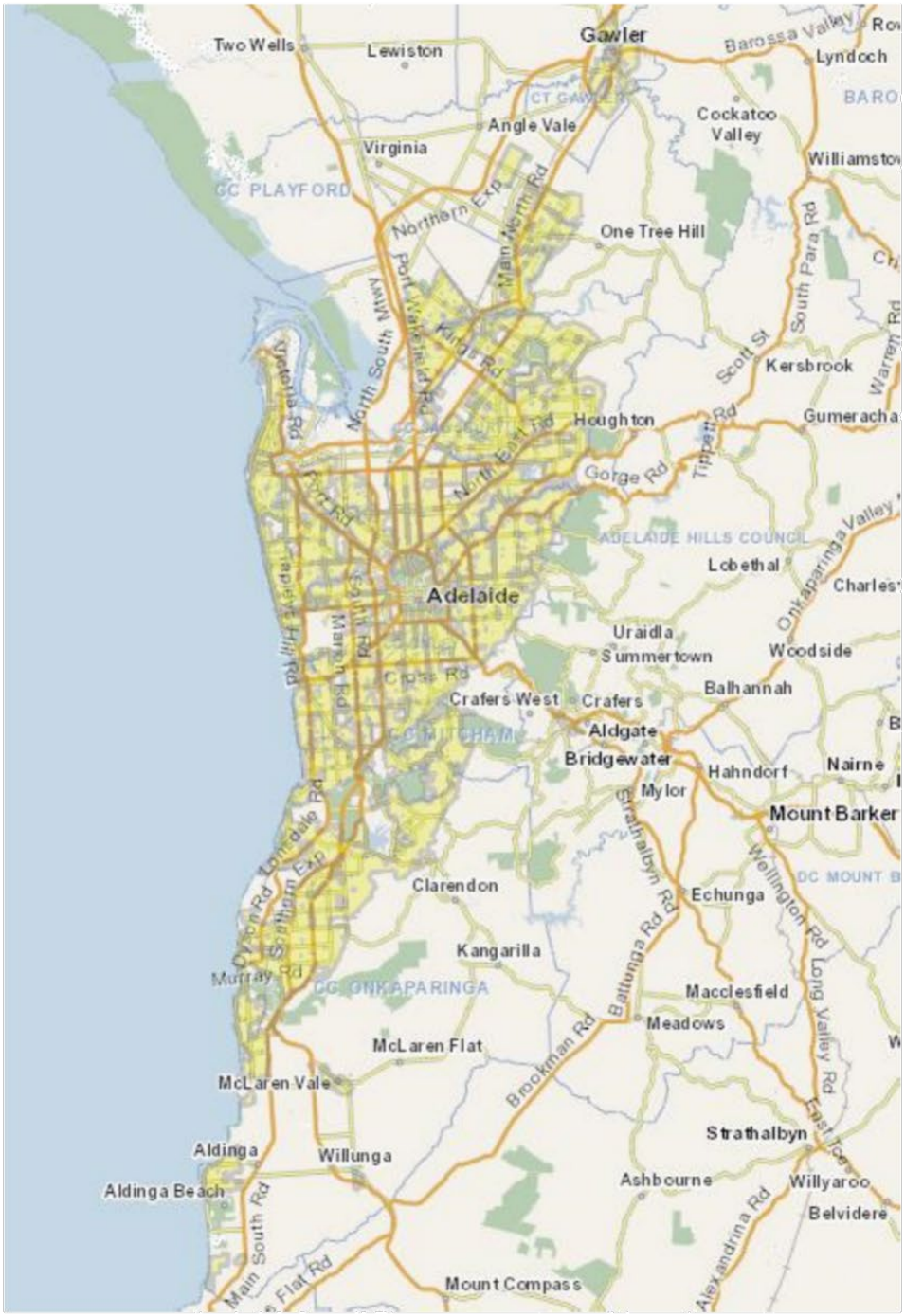
Site size per dwelling (m^2)	Tree size* and number required per dwelling
<450	1 small tree
450-800	1 medium tree or 2 small trees
>800	1 large tree or 2 medium trees or 4 small trees

For the purposes of the above requirements, tree size is prescribed in the Code as:

Tree size	Mature height (minimum)	Mature spread (minimum)	Soil area around tree within development site (minimum)
Small	4 m	2 m	10 m^2 and minimum dimension of 1.5m
Medium	6 m	4 m	30 m^2 and minimum dimension of 2m
Large	12 m	8 m	60 m^2 and minimum dimension of 4m

Planning System Implementation Review

The Urban Tree Canopy Overlay applies to the areas highlighted in yellow on the following map:



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The Regulated and Significant Tree Overlay provides policies against which a proposal for tree damaging activity in respect of a regulated or significant tree can be assessed on its merits. It also serves to delineate the area that the regulated tree controls in the PDI Act apply – see highlighted area on the following map:

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Trees not in metropolitan Adelaide

Trees that are not in the Adelaide metropolitan area are generally subject to regulation via the *Native Vegetation Act 1991* (Native Vegetation Act).

In terms of Code policy, there is policy that provides a framework for assessing the impact of development on native vegetation (the Native Vegetation and Significant Native Vegetation Overlays).

Tree canopy and stormwater

In formulating the draft policy improvements, feedback from the community and industry highlighted tree canopy, stormwater management and rainwater tanks as areas of particular concern.

In response, the Commission contracted engineering consultants to produce two (2) Options Analysis reports, addressing the costs and benefits of stormwater management and tree canopy cover.

This evidence-based research informed the Code's policy, resulting in new criteria:

1. mandatory tree planting policy in urban infill areas to ensure at least one (1) tree is planted per new dwelling (or option for payment into an offset fund where tree planting is not feasible on-site due to reactive soils or allotment size);
2. minimum soft landscaping of 10 per cent to 25 per cent over the whole site, with 30 per cent of front yards landscaped; and
3. retention and/or detention rainwater tanks required to be plumbed to at least one (1) toilet and water outlet. The combined use of retention (reuse) and detention (hold and release) tanks provide greater benefits to homeowners and the wider community.

It is noted that these criteria for tree planting and rainwater tanks for individual dwellings do not apply to master planned/greenfield development areas (e.g., Mount Barker, Aldinga, Gawler East).

In these master planned areas, the Code's policies seek the provision of public reserves/parks, street tree planting and stormwater management systems at the master planning and land division stage, ensuring that tree canopy and water sensitive urban design solutions are integrated at the neighbourhood level, rather than retrofitting site-specific measures into infill houses.

The Urban Tree Canopy Off-set Scheme

The Urban Tree Canopy Off-set Scheme (the Scheme) is an off-set contribution scheme established under Section 197 of the PDI Act and which has been established to support the Urban Tree Canopy Overlay in the Code.

The Scheme allows payment into the Urban Tree Canopy Off-set Fund (the Off-set Fund) in lieu of planting and/or retaining the required trees on site in designated areas where tree planting is not feasible.

While the Urban Tree Canopy Overlay affects most residential areas in metropolitan Adelaide, the Scheme only operates in selected zones or areas where tree planting is less feasible, being:

1. Housing Diversity Neighbourhood Zone;
2. Urban Renewal Neighbourhood Zone;
3. City Living Zone; and
4. any site with a 'Designated Soil Type' as described in the Scheme.

Payment in lieu of providing the tree or trees is only available in the abovementioned areas, as tree planting may not be as feasible due to soil type (specified in accordance with Australian Standard AS2870, highly reactive sites) or due to limited building setbacks.

A review of available data indicates that 193 applications for residential development were approved within the above zones between the commencement of full operation of the Code (19 March 2021) and 30 June 2022. Of these approvals, ten (10) (i.e. approx. 5% of eligible applications) have elected to pay into the Off-set Scheme.

> **Note:** At this stage it is not possible to quantify how many development proposals within the Urban Tree Canopy Overlay may be eligible for the Off-set Scheme due to a 'Designated Soil Type'.

The funds paid into the Off-set Scheme are to be used for the planting, establishment and maintenance of trees within reserves or public land anywhere within a designated local government area. It can also be used to purchase land within a designated local government area for the preservation or establishment of trees in areas with lower urban tree canopy levels or demonstrated loss of tree canopy.

Payments into the Off-set scheme are calculated as follows:

Tree Size	Rate ($ per tree)
Small - minimum mature height of 4 metres and minimum mature spread of 2 metres	$300
Medium - minimum mature height of 6 metres and minimum mature spread of 4 metres	$600
Large- minimum mature height of 12 metres and minimum mature spread of 8 metres	$1,200

In addition to the above, section 127(4) to (8) of the PDI Act provides that where a development approval authorises the killing, destruction, or removal of a regulated or significant tree, an applicant can elect to plant replacement trees or pay a fee into a relevant fund (being either the relevant urban trees fund or, if no fund has been established, the Planning and Development Fund). Conditions relating to these requirements are prescribed in Practice Direction 12.

The *Planning, Development and Infrastructure (Fees) Notice 2022* prescribes that the relevant fee for each replacement tree prescribed in Section 127 (6) that is not planted is **$156.00**.

State Planning Commission Open Space and Trees Project

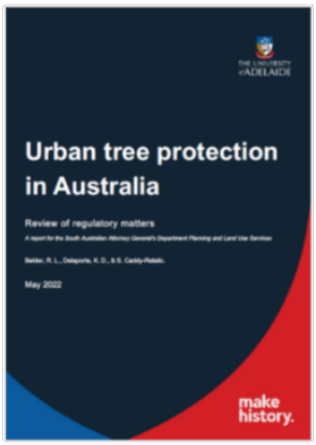
The Commission has commenced the Open Space and Trees Project (the Project) which includes a review of exempt tree species in relation to regulated and significant trees, a review of regulatory matters in relation to trees, as well as additional investigations including reporting on the Scheme and infill development.

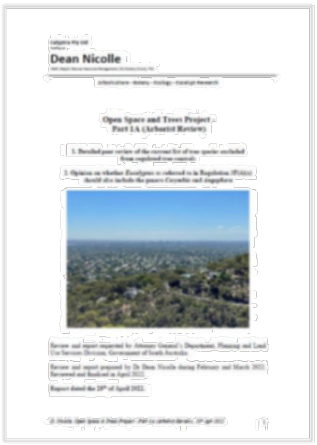
The scope of the Project includes:

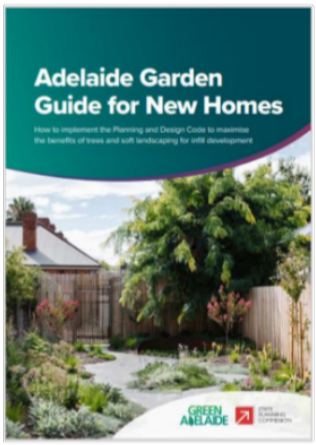
- 1 - Review of regulated tree species and off-set contributions
  - 1A—A review of the types of trees exempt from regulated tree controls
  - 1B—Research work to quantify appropriate offset contribution from the removal of regulated and significant trees (in lieu of planting replacement trees)
- 2—Review of regulated tree legislation (informed by Parts 1A and 1B)
- 3- Review of urban greening and the impact of infill development
  - 3A—Review of the Urban Tree Canopy Off-set Scheme
  - 3B—Review of infill policy in the context of urban tree policy
  - 3C—Review of tree canopy targets in *The 30-Year Plan for Greater Adelaide* (2017 Update).

In the course of undertaking Part 1 and Part 2 of the Project, the Commission obtained two (2) reports; the first being an Arborists Report titled '*Open Space and Tree Project – Part 1A (Arborist Review)*' and the second a Research Report titled '*Urban Tree Protection in Australia: Review of Regulatory Matters*'. Both reports were made available to the public on 1 September 2022 together with the release of the '*Adelaide Home Garden Guide for New Homes*'.

The '*Adelaide Home Garden Guide for New Homes*' represents collaborative efforts by the Department of Environment and Water (DEW) and PLUS in providing landscaping guidance and assistance in interpreting current landscaping policies in the Code.







The Arborist's Report contains a detailed peer review of the current list of tree species excluded from regulated tree controls and makes recommendations to contemporise the same.

The Research Report was commissioned to provide data and analysis of South Australia's tree protections, as compared to other Australian states and territories, including the size of trees protected and the various exemptions which currently apply. The Research Report identified that whilst:

> *metropolitan Adelaide does not have the weakest tree protections in the country…South Australia's laws [are] markedly less stringent than local governments in New South Wales, Victoria and Western Australia*[4].

It also noted that *"the vast majority of local governments in Australian capital cities have laws designed to protect urban trees more effectively than South Australia's laws"*[5].

In summary, further analysis and consideration of the Reports has found that:

1. exempt tree species list as per regulation 3F of the PDI Regulations is not contemporary and should be updated;
2. circumferences for a tree to be considered regulated or significant in the PDI Regulations are too generous and should be reviewed;
3. exemptions with respect to certain tree species located within ten (10) metres of a dwelling or swimming pool are too broad, and should be considered in light of the approach in other jurisdictions; and

[4] Belder, R.L, Delaporte, K.D, & S. Caddy-Retalic, *Urban Tree Protection in Australia: Review of Regulatory Matters* (University of Adelaide, 2022),2.
[5] Ibid.

4. current offset fees for the removal of regulated or significant trees are inadequate and should be reviewed.

The Arborists Report and Research Report will inform further work into potential regulatory matters on regulated and significant trees.

Parts 3A and 3B of the Commission's Project, which relate to a review of the Urban Tree Canopy Off-set Scheme and a review of infill policy in the context of urban tree policy, as well as Part 3C relating to reviewing tree canopy targets in *The 30-Year Plan for Greater Adelaide* (2017 Update), will be informed by the outcomes of the Expert Panel's review.

Government Initiatives

The State Government is currently developing an Urban Greening Strategy for metropolitan Adelaide (looking at urban trees as well as urban greening) to achieve protection and enhancement of habitat, biodiversity, promotion of green infrastructure and the protection of waterways, systems that improve amenity, urban environments, and wellbeing.

PLUS and Green Adelaide are collaborating on this project and there are obvious synergies in dealing with tree protection and urban canopy enhancements and delivery of an Urban Greening Strategy.

Jurisdictional Comparison

The Research Report prepared for the Commission and referred to the Panel provides a detailed jurisdictional comparison of tree laws in Australia. In doing so, the Research Report considered the tree protections provided by a sample size of 101 interstate local government councils against a sample size of 23 South Australian councils, to facilitate a comparison with those protections afforded in South Australia.

Of the 101 interstate councils considered, the Research Report found that:

- 51.5% (52 councils) provided a tree register or list as a form of tree protection;
- 65.3% (66 councils) provided dimension-based tree protections;
- 15.8% (16 councils) provided species-based tree protections;
- 52.5% (53 councils) provided location-based tree protections;
- 5% (5 councils) provided environmental based tree protections; and
- 6.9% (7 councils) provided additional protections deemed as 'other'.

South Australia does not currently provide species, location, or environmental based tree protections. However, South Australia does provide exemptions for certain trees based on their species or location, from the definition of Regulated or Significant tree (as described above).

To further distil these figures, with respect to dimension-based tree protections:

- 51% provided tree protection based on the **overall height** of a tree, with the average minimum height protected across the sample size being **6.32 metres tall** (it is noted that majority of the councils reviewed had a minimum height requirement of 6 metres of less, but the average was skewed by outlier councils with significantly higher minimum heights);
- 50% provided tree protection based on **trunk circumference**, with the average minimum circumference protected across the sample size being **53 centimetres**; and
- 21% provided tree protection based on the spread of the crown of the tree, with the average minimum crown spread afforded protection being **3.5 metres**.

By comparison, South Australia does not currently provide tree protections based on height or crown spread, and the minimum trunk circumference to qualify for protection is 2 metres (regulated trees).

Regarding the ability to remove protected trees in certain circumstances, the Research Report found that of the 101 councils considered:

- 16.8% permitted removal to maintain clearance of a building or dwelling;
- 3% permitted removal to maintain clearance of a garage or outbuilding;

- 1% permitted removal to maintain clearance of a carport;
- 2% permitted removal to maintain clearance of a swimming pool;
- 2% permitted removal to maintain clearance of a driveway;
- 1% permitted removal to maintain clearance of dam wall;
- 7.9% permitted removal to maintain clearance of a property line; and
- 3% permitted removal in other circumstances.

It was also recognised that in the circumstances where removal was permitted, majority of councils required a tree to be within three (3) metres of a building and even closer to other structures.

In South Australia, the PDI Act allows removal of protected trees within ten (10) metres of an existing dwelling or an existing in-ground swimming pool other than *Agonis flexuosa* (Willow Myrtle) or Eucalyptus (any tree of the genus).

Discussion

The conversation around trees is diverse. It gives rise to discussions around urban heating and cooling, biodiversity, and climate change, as well as conversations pertaining to safety, cost of development and obstacles to development.

This is because trees provide more than just amenity in our urban environments. They affect the liveability of our city through the provision of urban cooling and urban biodiversity, and add to the rich history of the State, being that many trees are culturally significant to certain communities, including Indigenous communities.

It is a complex and multifaceted policy area which is demonstrated by the significant body of work that is being undertaken by multiple agencies and stakeholder interest groups.

In its considerations to date, the Panel has received and reviewed a number of reports that have been commissioned on trees. Most notably, all these reports share the notion that South Australian tree canopy is in decline and that it needs to improve.

The Panel wholly agrees that South Australia's tree canopy needs to improve and recognises that we are unlikely to meet the tree canopy targets set out in the 30 Year Plan. However, achieving the tree canopy target is not just a planning issue and will rely on actions and improvements from the non-planning sector.

Despite this, from a planning perspective, the Panel again notes that the policy requirements set out in the Code are too early in their implementation to enable a comprehensive assessment to be undertaken as to their effectiveness. Trees take years to establish, and it will only be through LiDAR data capture and analysis, and systems monitoring on the uptake of the Urban Tree Canopy Off-set Scheme that an understanding of improvements in canopy coverage will be known.

To this end, and as noted in the background of this Chapter, the advanced LiDAR data capture that is slated for release in 2023 will act as a 'first step' to identifying whether South Australia's tree canopy is improving and whether as a State, we are heading in the right direction.

Considering the interactions between trees and the South Australian planning system, what has been published by others in relation to trees and the work undertaken by the Commission to date, it appears to the Panel that the **key issues** are:

1. **decline of urban trees** across metropolitan Adelaide leading to a decline in overall urban tree canopy cover;
2. real and perceived view that **urban infill policies** and resultant development is contributing to the loss of trees i.e. tree removal, loss of private open space on which to plant trees and impacts on tree roots and health due to proximity to structures; and

3. exacerbation of this loss of trees (canopy) with **anticipated increases in temperature due to climate change** – acknowledging that mitigation is needed to reduce heat hazard and provide for greater urban cooling.

In addition, trees in the public realm should be considered, particularly in the context of individual council tree planting strategies and own tree canopy targets. The Panel understands that the management and asset value of street trees (sometimes the lack thereof) is a point of consideration for the community. Whilst the Panel has identified that there is opportunity for further work to be undertaken specifically in relation to street trees and has posed relevant questions in the discussion that follows, for the avoidance of doubt, the Panel is primarily focused on trees in the private realm, in the context of the Code (and the PDI Act).

The Panel is also aware of distinguishing differences between inner city councils and larger, middle to outer councils, in relation to the availability of land on which to plant replacement trees as part of the Urban Tree Canopy Offset Scheme or future tree planting targets.

Trees, their healthy establishment, and ongoing management, along with their resilience to climate change (be they located on public or private land) are also key considerations. Related measures in achieving sustainable landscaping as part of new developments and Water Sensitive Urban Design (WSUD) across the State, may be considered as part of forthcoming policy and/or regulatory improvements around trees and canopy cover (and is intrinsically related to infill policy).

In light of the above, the Panel now seeks community and stakeholder feedback pertaining to a range of improvements that may be available for implementation, to aid in South Australia's efforts to increase its urban tree canopy.

Native Vegetation

Prior to the commencement of the Code and the establishment of an effective referral trigger to the Native Vegetation Council, there was limited consideration given to native vegetation in the planning and development process. This often resulted in impacts on vegetation being considered very late in the planning process, and often after Development Approval had been granted. This resulted in the loss of opportunities available to avoid or minimise impacts on native vegetation.

The lack of legislative alignment and coordination between the former planning regime and the Native Vegetation Act led to inconsistent decision making, confusion and uncertainty for applicants, duplication in process and often delays in finalising decisions. It also often resulted in increased impacts on native vegetation that likely could have been avoided if considered earlier in the process.

The introduction of the Native Vegetation Overlay and the State Significant Native Vegetation Areas Overlay in the Code has been successful in addressing many of

these issues, and the Panel acknowledges that the relationship between planning policy and native vegetation has improved under the new planning regime.

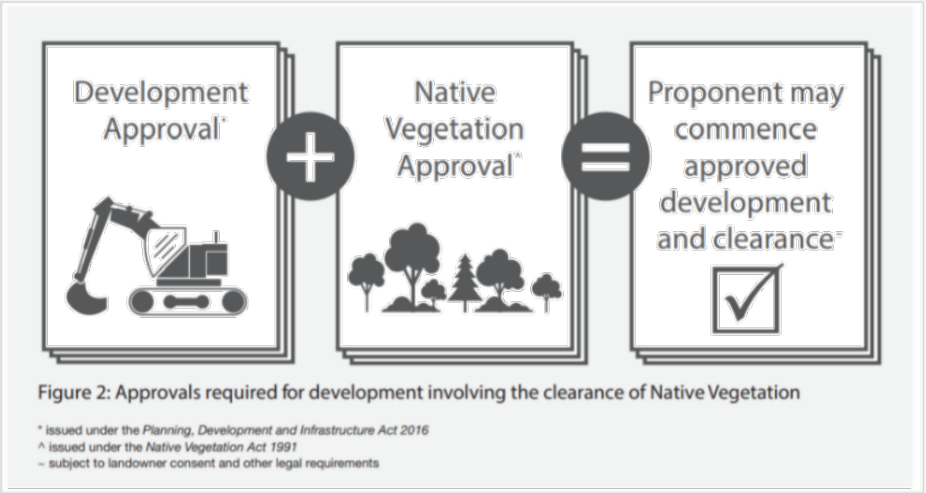


Figure 2: Approvals required for development involving the clearance of Native Vegetation

* issued under the *Planning, Development and Infrastructure Act 2016*
^ issued under the *Native Vegetation Act 1991*
~ subject to landowner consent and other legal requirements

However, the Panel also recognises that further improvements could be made to the interaction between the two (2) systems as, although improved, they remain quite separate and are not complimentary. An example of this may be the ability for applicants to access information about whether native vegetation is present on their land, and if so, how they can avoid impacting the same.

In addition, it is this lack of connectivity that can cause confusion and result in the clearance of protected trees. For example, pursuant to section 27(1)(b) of the Native Vegetation Act and Schedule 1, clause 14 of the *Native Vegetation Regulations 2017*, native vegetation may be cleared within five (5) metres of a fence line in certain circumstances. This may be erroneously understood to include the removal of a regulated tree in the absence of an approval under the PDI Act. However, this is not the case, and the requirement to obtain approval under the PDI Act for tree-damaging activity in relation to a regulated tree applies irrespective of whether the activity may be permitted under the Native Vegetation Act.

Whilst the interaction between planning policy and native vegetation is not strictly a Code matter, the Panel acknowledges the important contribution native vegetation makes to our tree canopy. In circumstances where the retention and increase of tree canopy is a key priority, it follows that consideration ought to be given to the issues being experienced in the interface between the planning system and native vegetation, and how those may be overcome.

Questions for consultation:

1. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?

2. Are there any other issues connecting native vegetation and planning policy?

Tree Canopy

As identified in the background section of this Chapter, with the implementation of the Code, it was determined that the tree planting policies would not apply to master planned/greenfield developments. The rationale was that sufficient trees would be planted throughout the development through open space, parks, road reserves etc and it was therefore unnecessary to also require a tree (or trees) to be planted on individual dwelling sites.

However, noting the increased requirement for tree canopy coverage in South Australia, the Panel has considered whether there is merit in requiring master planned/greenfield development areas to also ensure that at least one (1) tree is planted on the site of each new dwelling.

It has also considered whether there would be further merit it requiring such a tree to be planted in the rear of a dwelling site to increase the potential for it to grow large enough to provide passive shade to neighbouring allotments.

Questions for consultation:

1. What are the implications of master planned/greenfield development areas also being required to ensure at least one (1) tree is planted per new dwelling, in addition to the existing provision of public reserves/parks?
2. If this policy was introduced, what are your thoughts relating to the potential requirement to plant a tree to the rear of a dwelling site as an option?

Tree Protections

The Panel recognises that there are numerous ways to protect trees through our regulatory system, each with their own costs and benefits. These mechanisms are highlighted in the Research Report obtained for the Commission, as discussed earlier in this Discussion Paper.

However, due to the implications of amending and/or extending the current framework, the Panel considers that it is both appropriate and necessary to seek community and stakeholder input as to what tree protection mechanisms should operate in South Australia.

As it stands, Regulation 3F(1) of the PDI Regulations provides that in order for a tree to be deemed 'regulated', it must have a trunk circumference of at least two (2) metres. The Research Report states that the minimum trunk circumference used to 'trigger' regulated and significant tree protections is too generous and recommends it be revised.

It appears that this is because, by comparison to other jurisdictions (as identified earlier in this Chapter), South Australia requires the highest minimum trunk circumference in the Nation before legislative tree protection is triggered.

In addition, the Research Report identifies that South Australia is behind other jurisdictions in that it does not currently afford tree protections based on the height or crown spread of a tree. It is indicated that protecting taller trees and trees with larger crowns would ensure canopy structure is preserved, and would maximise biodiversity, amenity and public health benefits associated with the urban forest[6].

The Panel also notes that both the Research Report and the Arborists Report identify the opportunity to introduce additional tree protection mechanisms specifically relating to tree species. It is thought that this would promote biodiversity in the urban forest through the protection of rare or unusual species[7] and would also go some ways in preparing for the predicted increased stress caused to urban trees because of climate change.

Notwithstanding the findings in the Research Report, for the avoidance of doubt, the Panel does not intend to make any specific recommendations as to what the revised minimum tree circumference should be (or if it should be amended), or what any minimum height or minimum canopy spread protections ought to be introduced (if it is inclined to recommend any of the same).

This is because the Panel acknowledges the need for significant economic analysis to be undertaken before such figures could be arrived at. The economic analysis would need to identify what the broader implications of amending and/or introducing the regulations would be, and not only how that would impact development outcomes and land supply, but equally whether there is sufficient professional capability in South Australia to manage increased regulation (i.e., trained arborists to undertake tree analysis and reporting).

Question for consultation:

1. What are the implications of reducing the minimum circumference for regulated and significant tree protections?
2. What are the implications of introducing a height protection threshold, to assist in meeting canopy targets?
3. What are the implications of introducing a crown spread protection, to assist in meeting canopy targets?
4. What are the implications of introducing species-based tree protections?

Distance from Development

The South Australian regulatory framework currently provides that a tree that would otherwise be protected based on its trunk circumference may be removed if it is within ten (10) metres of an existing dwelling or an existing in-ground swimming pool

[6] Ibid, 59.
[7] Ibid, 60.

(regulation 3F(4)(a) of the PDI Regulations). This exemption does not apply to *Agonis flexuosa* (Willow Myrtle) or Eucalyptus (any tree of the genus).

As is identified in the Research Report, the existing ten (10) metre proximity "*is likely to effectively remove protections for many urban trees in Adelaide, given ongoing urban infill*"[8].

Accordingly, having considered the analogous opportunities permitted for removal in other Australian jurisdictions, the Panel considers that this provision is too generous, and that consideration needs to be given to reducing the same.

The Panel also considers there is scope for reducing, or otherwise further refining, the circumstances that are deemed suitable triggers for removing a protected tree based on its proximity. This could potentially include a requirement for the tree to be posing a significant threat to safety or infrastructure but could also be refined to only permit removal to occur if the tree is within a certain distance to a substantial building or infrastructure (this is an approach taken by some councils in other jurisdictions).

As with the tree protections discussed earlier in this Chapter, the Panel is unlikely to make specific numeric recommendations for revision of these regulations in the absence of further economic analysis. However, it deems it appropriate and necessary to obtain community and stakeholder views on the potential revision of this aspect of the tree protection framework.

Question for consultation:

1. Currently you can remove a protected tree (excluding *Agonis flexuosa* (Willow Myrtle) or Eucalyptus (any tree of the genus) if it is within ten (10) metres of a dwelling or swimming pool. What are the implications of reducing this distance?
2. What are the implications of revising the circumstances when it would be permissible to permit a protected tree to be removed (i.e. not only when it is within the proximity of a major structure, and/or poses a threat to safety and/or infrastructure)?

The Urban Tree Canopy Off-set Scheme

The Panel understands that the Commission intends to look at the Urban Tree Canopy Off-set Scheme as part of Part 3 of its Project. However, the Panel also recognises that the Scheme has the capacity to be an integral part of the tree policy framework under the Code.

Whilst it has only been used a small number of times since the implementation of the Code, there is potential for this to increase as development (and particularly infill development) increases.

[8] Ibid.

However, in the Panel's view, the cost associated with electing not to plant a tree and instead paying into the Scheme is not high enough and does not reflect the actual costs borne by local government in having to plant and maintain replacement trees elsewhere. The Panel believes there is scope to refine the fees associated with the Scheme to better reflect this.

In addition, the Panel agrees with the recommendations arising from the reports prepared for the Commission that the current offset fees for the removal of regulated or significant trees are inadequate and should be reviewed.

The off-set fees are charged in circumstances where a replacement tree is not planted. However, the overall cost to amenity, history, biodiversity and the urban heat effect is not, and cannot be, appropriately compensated with $156.00, nor can a council plant a replacement tree for this fee.

Questions for consultation

1. What are the implications of increasing the fee for payment into the Off-set scheme?
2. If the fee was increased, what are your thoughts about aligning the fee with the actual cost to a council of delivering (and maintaining) a tree, noting that this would result in differing costs in different locations?
3. What are the implications of increasing the off-set fees for the removal or regulated or significant trees?

Public Realm Tree Planting

Whilst the work of the Panel is primarily focused on private realm tree canopy, it would be remiss of it not to identify that there are significant complications arising from:

- street trees being removed (lawfully or otherwise) and not replaced;
- street trees dying;
- land costs and availability of land to plant trees for inner city councils; and
- the fact that in circumstances where street trees are planted and cared for, they are often not of a sufficient size or species to grow into a tree that will provide significant future canopy cover.

To this end, the Panel believes that there is opportunity to explore the funding options available to councils for public realm tree planting and maintenance, as a manner to encourage the planting of more substantial trees that will make a significant impact on the future urban tree canopy.

The Planning and Development Fund (the Fund) operates in accordance with Part 15, Division 1 of the PDI Act and provides the means for open space and public realm investment across South Australia.

Money paid into the Fund is derived from monetary payments made in lieu of meeting the open space requirements for development involving the division of land into 20 or fewer allotments and for strata and community titles. The Fund is expended in line with section 195 of the PDI Act and enables the Government to adopt a state-wide approach to strategically implement open space and public realm projects in an objective manner.

To achieve this, the Fund provides grant funding opportunities for local government through the Open Space Grant Program (the Grant Program). The Grant Program is application based and assists councils to provide quality open space in their areas (which can necessarily include green space).

In addition, together with the Pocket Park election commitment by the Government to help green suburbs, the Panel is aware that other Government initiatives have, in recent years, supported planting and greening of our neighbourhoods. An example of this is the Greener Neighbourhoods Grant Program operated by DEW (through Green Adelaide), which provides grant funding to eligible councils to keep suburban streets and open space green and cool.

Questions for consultation:

1. Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?

Questions for Tree Policy

Native Vegetation

1. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?
2. Are there any other issues connecting native vegetation and planning policy?

Tree Canopy

1. What are the implications of master planned/greenfield development areas also being required to ensure at least one (1) tree is planted per new dwelling, in addition to the existing provision of public reserves/parks?
2. If this policy was introduced, what are your thoughts relating to the potential requirement to plant a tree to the rear of a dwelling site as an option?

Tree Protections

3. What are the implications of reducing the minimum circumference for regulated and significant tree protections?
4. What are the implications of introducing a height protection threshold, to assist in meeting canopy targets?
5. What are the implications of introducing a crown spread protection, to assist in meeting canopy targets?
6. What are the implications of introducing species-based tree protections?

Distance from Development

7. Currently you can remove a protected tree (excluding *Agonis flexuosa* (Willow Myrtle) or Eucalyptus (any tree of the genus) if it is within ten (10) metres of a dwelling or swimming pool. What are the implications of reducing this distance?
8. What are the implications of revising the circumstances when it would be permissible to permit a protected tree to be removed (i.e. not only when it is within the proximity of a major structure, and/or poses a threat to safety and/or infrastructure)?

Urban Tree Canopy Off Set Scheme

9. What are the implications of increasing the fee for payment into the Off-set scheme?
10. If the fee was increased, what are your thoughts about aligning the fee with the actual cost to a council of delivering (and maintaining) a tree, noting that this would result in differing costs in different locations?

11. What are the implications of increasing the off-set fees for the removal or regulated or significant trees?

Public Realm Tree Planting

12. Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?

Infill Policy

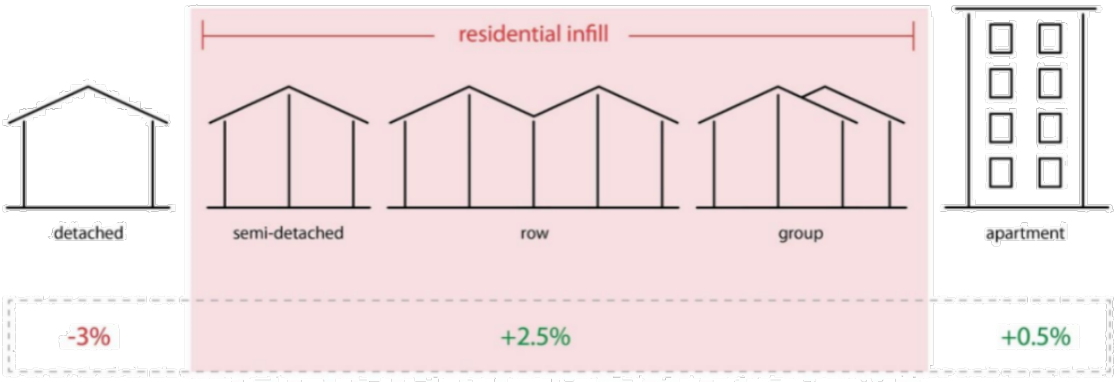
Background

The *30 Year Plan for Greater Adelaide* (2017 Update) encourages the reduction of our urban footprint and the provision of more housing diversity close to public transport options.

Target 1 – Containing our urban footprint and protecting our resources – seeks for **85 per cent** of all new housing in metropolitan Adelaide to be built in established urban areas by 2045. To achieve these targets, minor infill has become increasingly important to the overall settlement pattern of metropolitan Adelaide.

Indeed, minor infill was identified as the **single greatest provider** of new housing in Greater Adelaide in the then Department of Transport and Infrastructure's summary of minor infill activity in Greater Adelaide 2012-2018 report. This report found that minor infill development contributed to 39 per cent of the region's net dwelling increase in this time period, as compared with major/other infill (32 per cent) and broadhectare (29 per cent) sites.

Further, the 2019 'A Missing Middle Case Study' by Dr Damien Madigan (commissioned to inform the Code) observed that in areas experiencing high minor infill development activity, an opportunity exists to place a strong focus on providing diverse housing options that are universally designed, affordable, support 'ageing in place' and reflect the changing needs of our community.



2006-2016 percentage change of residential infill in SA

It follows that it was not only important, but imperative, that the new planning regime reflected the increased presence of infill development in our neighbourhoods.

The residential infill policy was consequently identified as a policy construct of the Code, with the intention of enhancing the State's liveability and prosperity in furtherance of the objects of the PDI Act.

Implementation of Infill Policy

As part of the implementation of the Code in March 2021, the Commission recommended improvements to the policies which guide residential infill in urban areas.

A 'People and Neighbourhoods' Discussion Paper was released in the course of the consultation process to explore the proposed Code policy framework that will best support the future development of homes and neighbourhoods.

Following this consultation, the Code delivered a suite of new policies to increase the design quality of infill development in residential urban areas, including:

1. increasing tree planting, urban green cover and space for gardens;
2. more effective management of stormwater associated with residential infill developments;
3. ensuring adequate on-site parking and reducing the loss of on-street parking; and
4. increasing street amenity by incorporating design features to enhance building façades.

A summary of the key policy changes introduced through the Code is set out in the Commission's brochure, 'Raising the Bar on Residential Infill Development'.

Infill policy encompasses and entwines the key areas of the Code policy that the Panel has been tasked with reviewing, and is reflected in the following areas of the Code:

- Overlays:
  - Stormwater Management Overlay and
  - Urban Tree Canopy Overlay;
- General Development Policies
  - Design in Urban Areas; and
  - Transport, Access and Parking.

Minimum site dimensions/density

The suite of zones where residential infill development is typically envisaged includes:

1. Established Neighbourhood Zone;
2. General Neighbourhood Zone;
3. Hills Neighbourhood Zone;

4. Housing Diversity Neighbourhood Zone;
5. Suburban Neighbourhood Zone;
6. Waterfront Neighbourhood Zone; and
7. Urban Renewal Neighbourhood Zone.

The policies guiding minimum site areas/densities in the Established Neighbourhood Zone, Hills Neighbourhood Zone, Housing Diversity Neighbourhood Zone, Suburban Neighbourhood Zone and Waterfront Neighbourhood Zone each have reference to any relevant Technical and Numeric Variation (TNV), providing for local variations to guide the appropriate densities.

The General Neighbourhood Zone and Urban Renewal Neighbourhood Zone have minimum site dimensions / densities set within the Site Dimensions and Land Division Policy in the zone as follows:

General Neighbourhood Zone		
Dwelling Type	**Minimum site/allotment area per dwelling**	**Minimum site/allotment frontage**
Detached dwelling (not in a terrace arrangement)	300m^2 (exclusive of any battle-axe allotment 'handle')	9m where not on a battle-axe site 5m where on a battle-axe site
Semi-detached dwelling	300m^2	9m
Row dwelling (or detached dwelling in a terrace arrangement)	250m^2	7m (averaged)
Group dwelling	300m^2 (average, including common areas)	15m (total)
Dwelling within a residential flat building	300m^2 (average, including common areas)	15m (total)
Urban Renewal Neighbourhood Zone		
Allotments/sites for residential purposes achieve a net density of up to 70 dwellings per hectare.		

Planning System Implementation Review

Development with a net residential density over 70 dwellings per hectare on sites with a minimum area of 1200m^2 and minimum frontage width of 35m.

A fixed density policy was considered appropriate in these zones to provide a consistent set of policies for standard residential areas within Greater Adelaide.

The General Neighbourhood Zone seeks to provide greater standardisation of minimum frontage and site area requirements to deliver a steady supply of well-designed and diverse infill housing compatible with existing suburban streets and suburbs.

Importantly, in response to various requests to increase/decrease minimum site dimensions, the General Neighbourhood Zone sets minimum site areas and frontages that are designed to be in harmony with typical allotment patterns and are wide and big enough to comfortably accommodate a range of housing options.

Investigations demonstrated that:

1. sites **over 200m²** can comfortably accommodate a range of 1-storey, 2-bedroom dwellings and 2- storey, 3-bedroom dwellings with single garages;
2. sites **over 300m²** can comfortably accommodate a range of 1-storey, 3-bedroom dwellings and 2- storey, 4+ bedroom dwellings;
3. sites with a **frontage of 9m** can comfortably accommodate a 1-storey dwelling with single garage and a street-facing room and 2-storey dwellings with double garages; and
4. terrace housing/row dwellings can be developed on sites as **narrow as 4.8m**, however at 7m these can be more sensitively integrated into existing areas by providing adequate separation from neighbours and retaining on-street parking and landscaped street frontages.

Discussion

The Panel recognises that since implementation of the Phase Three (Urban Areas) Code Amendment in March 2021, issues associated with infill development such as car parking and trees/landscaping have continued to arise as key concerns of the South Australian community. Indeed, this is one (1) of the reasons that the Panel has been established and further, why it has been tasked with considering the broader impacts of carparking and trees, as well as those associated with infill development.

It is noted, however, that houses approved under the Code are only now becoming evident throughout our suburbs, as the building consent, development approval and construction process following planning consent generally takes up to one (1) year.

This is evidenced in the fact that there have only been 79 Deemed to Satisfy (DTS) infill applications assessed and approved against the new provisions (but not necessarily construction completed) since the implementation of the Code in metropolitan Adelaide (between March 2021 and October 2022). Each of these applications is identified in red on the map below. It is relevant to note that this number is lower than it could have been because:

1. the Code was deferred to allow for the HomeBuilder Scheme dwellings (approximately 12,000 homes[9]) to be assessed under the former system; and
2. of delays in the residential construction sector due to COVID-19.

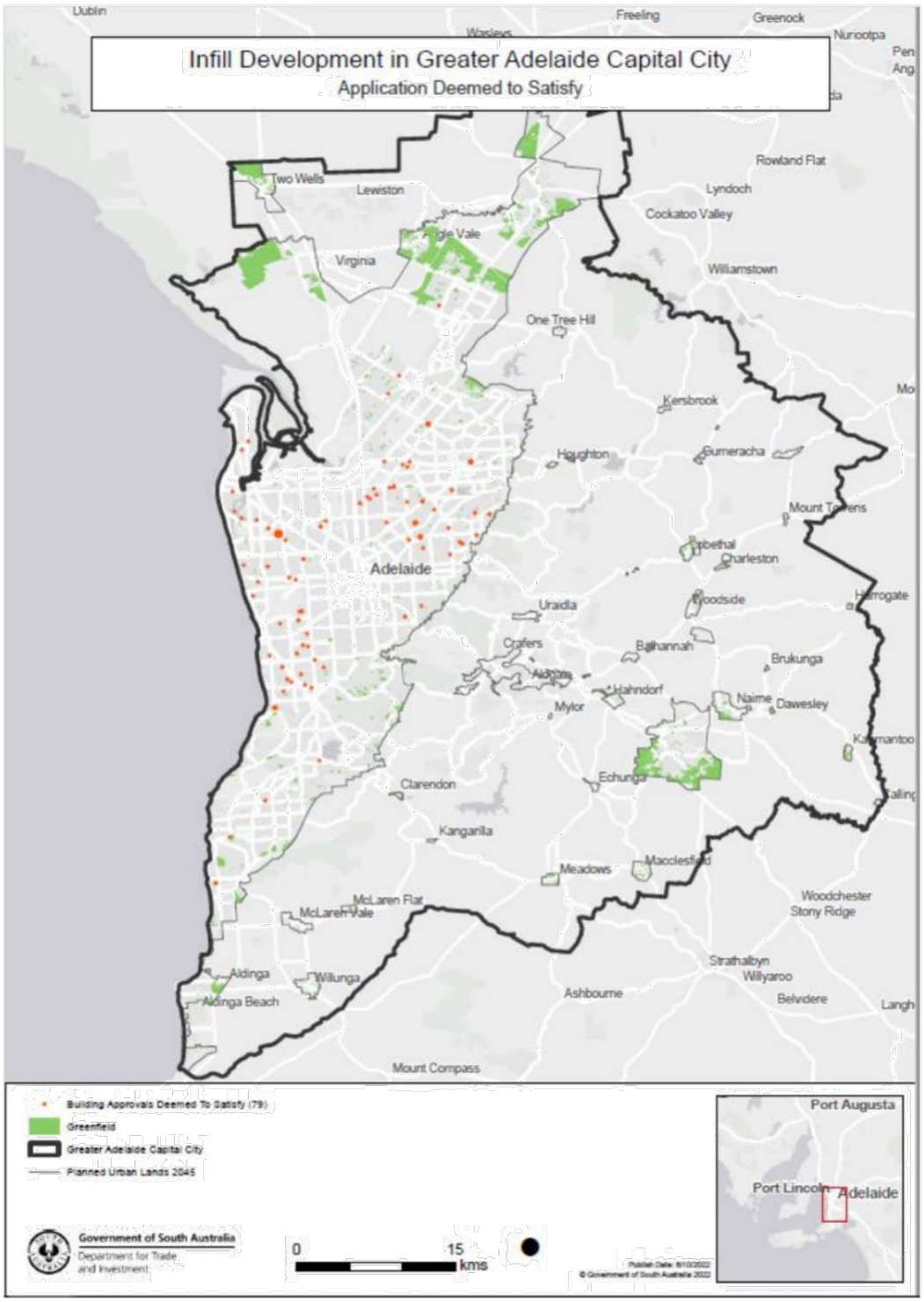
Accordingly, it is difficult to analyse the success of residential infill policies in our neighbourhoods at this early stage. As with the Code's tree policy, it will be necessary for further time to pass before substantive data is available evidencing how effectively the infill policies are working.

Notwithstanding, for the purposes of obtaining an early indication of how the policy is performing, the Panel has requested that additional data analysis be undertaken on the development applications that have received approval to ascertain what percentage of those applications comply with the infill criteria. The Panel intends to report on these findings in its final report to the Minister.

Despite this, the Panel understands that there may remain opportunities for improvement in the infill policies and explores those ideas below.

[9] This dataset is approximate as it relied, in-part, on councils identifying if an application was lodged under the HomeBuilder Scheme, which not all councils did.

Planning System Implementation Review



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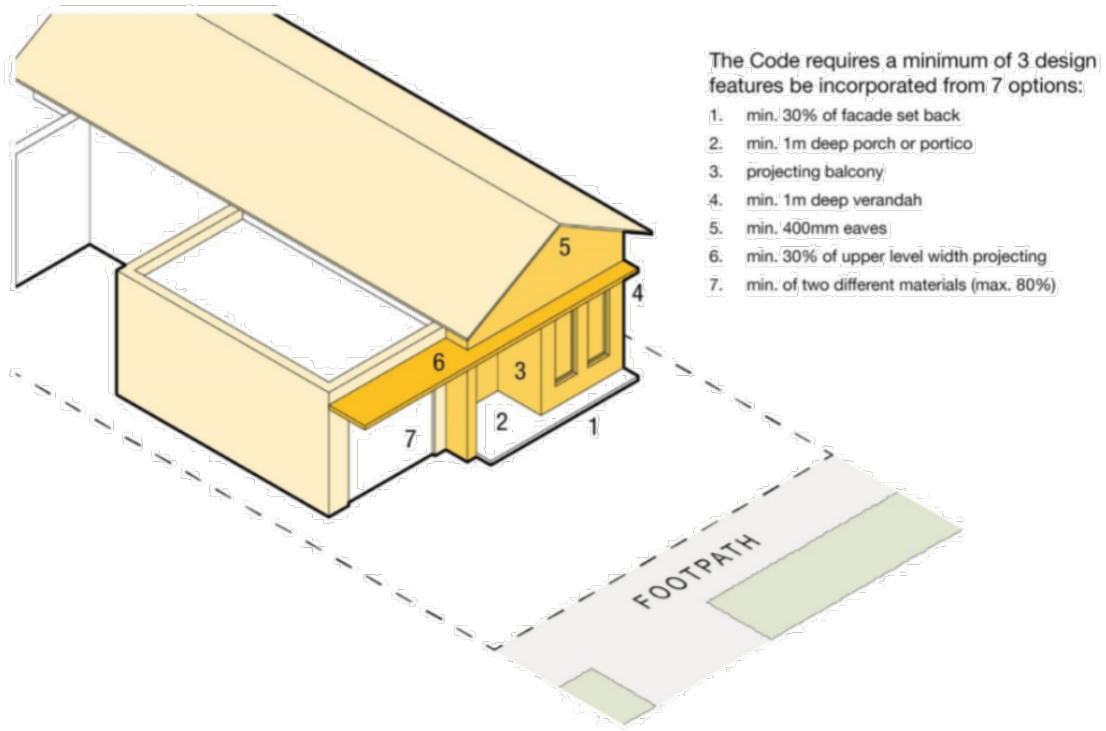
Design features

Design improvements were introduced through the new residential infill policy to improve the streetscape appearance of dwellings, including:

1. a minimum of three (3) design features (out of seven (7) design options) on front façades, including eaves, porches, balconies, different materials, stepping, etc., to improve visual interest and building articulation;
2. entry doors visible from the primary street boundary to create a sense of address;
3. a minimum 2m^2 habitable window area facing the street to improve street appeal and increase passive surveillance; and
4. allocation of a dedicated area for bin storage behind the building's façade.

These policies can be found in the Design and Design in Urban Areas General Development Policies in the Code.



Whilst these guidelines go some way to encouraging more appropriate design outcomes for residential infill, in the Panel's view, they still leave room for variation. That is, the Panel considers there is opportunity to provide more specific guidance materials to support the provision of well-designed infill development.

Infill development does not necessarily need to be provided only through narrow, typically detached, often abutting housing. There are a broad range of infill development outcomes and designs that are available for exploration and further consideration in South Australia. Indeed, the Commission has initiated the 'Future Living' Code Amendment which seeks new forms of housing and housing diversity in established suburbs. If approved, this Code Amendment would go some way to diversifying the types of infill development that is being established.

Notwithstanding, the Panel considers that there would be benefit in guidance material being prepared outlining what alternative or innovative options for infill development may be suitable for our neighbourhoods.

In this regard, the Panel also notes the ability for the Code to be supported by *'advisory material in the form of planning or design manuals or guidelines*' under section 66(5) of the PDI Act.

If there were appetite for more specific design guidelines to be prepared in relation to infill development, there may be opportunity to have the same designated as advisory material for the purposes of section 66(5), thus giving it greater force.

Questions for consultation:

1. Do you think the existing design guidelines for infill development are sufficient? Why or why not?
2. Do you think there would be benefit in exploring alternative forms of infill development? If not, why not? If yes, what types of infill development do you think would be suitable in South Australia?

Strategic Planning

Commentary on infill policy often focuses on numerical provisions such as minimum allotment sizes, with the assumption that larger allotments lead to better development outcomes.

However, investigations were undertaken in advance of the Code's implementation which demonstrated the types of housing that could be supported on a range of allotment sizes.

This analysis noted that allotments **over 200m²** (of which all minimum allotment sizes identified in the General Neighbourhood Zone exceed) can comfortably accommodate a range of 1-storey, 2-bedroom dwellings and 2- storey, 3-bedroom dwellings with single garages. Indeed, in the Panel's experience, allotments far smaller than 200m^2 can accommodate the range of housing types identified in the analysis.

As the evidence shows that smaller allotments can deliver a range of housing types, it is important that greater attention is paid to where infill policies are spatially applied to make sure that the Code has the right policies in the right locations.

The Panel acknowledges that opportunities to undertake strategic planning activities (such as the development of growth strategies, structure plans and concept plans) have been limited during the transition to the new planning system.

The current forthcoming reviews of Regional Plans and the 30-Year Plan for Greater Adelaide present an opportunity to reinvigorate local strategic planning to bridge any gap between regional planning and the spatial application of the Code.

The Panel is seeking feedback on the best mechanisms for state and local government and the private sector to work together to align plans and ensure that Code policies are being applied in the right locations to achieve State Policies and regional strategic objectives.

Questions for consultation:

1. What are the best mechanisms for ensuring good strategic alignment between regional plans and how the policies of the Code are applied spatially?
2. What should the different roles and responsibilities of State and local government and the private sector be in undertaking strategic planning?

Planning System Implementation Review

Questions relating to Infill Policy

Design Guidelines

1. Do you think the existing design guidelines for infill development are sufficient? Why or why not?
2. Do you think there would be benefit in exploring alternative forms of infill development? If not, why not? If yes, what types of infill development do you think would be suitable in South Australia?

Strategic Planning

1. What are the best mechanisms for ensuring good strategic alignment between regional plans and how the policies of the Code are applied spatially?
2. What should the different roles and responsibilities of State and local government and the private sector be in undertaking strategic planning?

Car Parking Policy

Background

During the Commission's investigations and consultation on the Code, car parking and garaging was identified as a particular area of concern, with submissions from community members and residents' associations commonly stating insufficient on-site car parking was an issue.

In preparing the car parking policy, and prior to the implementation of Phase Three of the Code, the Department commissioned a review of car parking rates by traffic engineers, who considered modern traffic and car parking survey demand data. This work included analysis of off-street car parking rates for all land uses and a review of access and car parking policy in relation to residential and infill development in the draft Code.

The draft Code consequently required that only one (1) car park needed to be provided for two-bedroom homes. Car ownership data (using the vehicle registration system and information from the Australian Bureau of Statistics) demonstrated that this would be sufficient, as 2016 statistics indicated that the highest proportion of households owned one (1) or no cars (42 per cent) and approximately 35 per cent of the population owned two (2) cars.

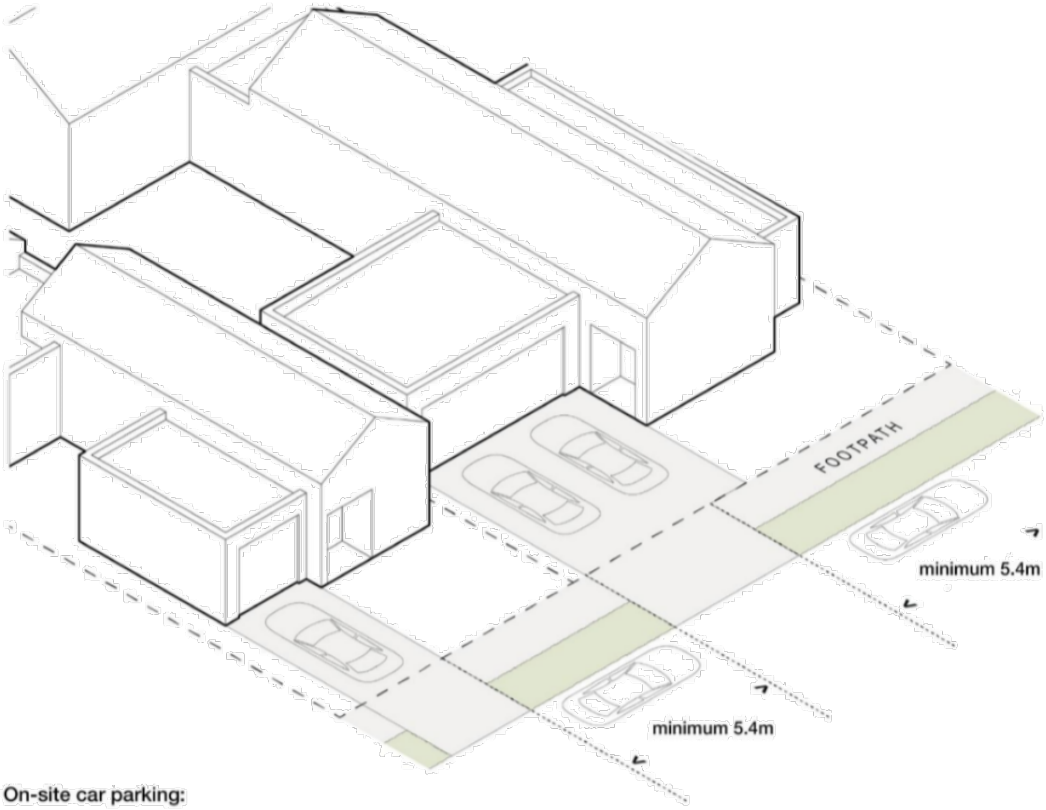
However, in response to feedback from the public and councils during consultation on Phase Three of the Code, the car parking rates were increased to provide at least two (2) car parks for two-bedroom infill housing, increased from one (1) car park originally proposed, and required at least one (1) of those car parks to be covered (e.g. carport or garage). These changes brought the car parking policy in line with the former Residential Code, which was the complying housing standard introduced into the *Development Regulations 2008* in 2009.

The Code as we now know it seeks to promote both the use and sufficiency of functional on-site car parking by introducing the following policies:

1. minimum garage dimensions (mandated in accordance with the Australian Standard), ensuring garages are large enough to park a car (the Australian Standard dimensions fit most 'large' cars like a Holden Commodore, but not 4x4 vehicles, such as a Ford Ranger, due to length);
2. retention of on-street parking, ensuring driveways are located far enough apart to park a car on the street; and
3. minimum on-site car parking rates, ensuring:

a. one (1) on-site car park for one-bedroom dwellings (row houses, townhouses, semi-detached dwellings in infill neighbourhood zones); and

b. at least two (2) on-site car parks for houses with two (2) or more bedrooms, one (1) which must be covered.



On-site car parking:
2 x spaces per 2+ bedroom dwellings
1 x space per 1 bedroom dwelling

On-street car parking:
1 x space per 3 new houses @ 5.4m length

Car parking rates can be found in Tables 1 and 2 of the Transport, Access and Parking General Development Policies in the Code.

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Car Parking Off-Set Schemes

Part 15, Division 2 of the PDI Act enables councils to establish off-set schemes and associated funds for particular purposes. This mechanism can be utilised to establish a car parking fund as referred to in Table 1 General Off-Street Car Parking Requirements and Table 2 – Off-Street Car Parking Requirements in Designated Areas of the Code.

Payments into a fund created for this purpose can be utilised to off-set shortfalls in car parking provided for a development, by enabling a council to construct public car parking facilities in lieu of provision by a developer.

In a practical sense, payment into a car parking fund may be seen as a less desirable option than providing on-site car parking in accordance with the Code, due to perceived flow-on effects related to the under-provision of on-site car parking, such as increased congestion, competition for on-street or communal parking spaces and/or reduced convenience and/or accessibility. Ordinarily, a developer will be asked to demonstrate why an on-site car parking shortfall is appropriate in the context of a development by way of a traffic and parking analysis that considers the provision of all publicly accessible car parking in the surrounding area.

The intended advantage of a car parking fund is that it assists funding the provision of centrally located car parking by councils, particularly in areas where individual sites are constrained and have not traditionally provided on-site car parking (e.g., historic character areas). For example, the multi-level car park at Commercial Lane in Gawler was part-funded through a car parking fund established under the *Development Act 1993* and provides centrally located car parking within the historic township.

Planning System Implementation Review

Discussion

The Panel understands and recognises that there is a perceived congestion issue in some parts of metropolitan Adelaide, and that the significant number of vehicles being seen on our local streets is occurring not only in areas of infill development growth, but also around public transport corridors through 'ad hoc' Park 'n' Rides.

In addition, the expectation that the on-street parking space outside of a dwelling is 'reserved' for the visitors or occupants of that dwelling is potentially adding to the perception of congestion, particularly in circumstances when that parking space is occupied.

Whilst there appears, at least anecdotally, to be a desire to increase the off-street car parking rates prescribed in the Code, the Panel does not consider that it is either reasonable or practical to increase the current requirement for two (2) off street car parks for homes of two (2) or more bedrooms. Indeed, it may be suggested that as a society, we may be heading in the other direction, and the need for provision of off-street vehicle parking may reduce over time.

In the Panel's view, although car parking is a legitimate issue for South Australians, there is not significant work to be done to the Code, but rather in the appropriate management of both on and off-street car parking and local road design. These matters largely fall to local government authorities to manage and enforce.

Notwithstanding, the Panel has considered what opportunities for investigation and/reform in the Code may be available to assist in alleviating the consternation surrounding car parking and seeks further feedback on the topics that follow.

Planning and Design Code Policy

The argument for embedding minimum car parking rates in the planning system is driven by the dominance of motor vehicles as a means of urban mobility in Adelaide. For example, the 2016 Census revealed that 79.9% of respondents travelled to work by car as the driver[10]. This was the highest in Australia.

This argument is further driven by the fact that many people use garages for storage and not vehicle parking, which has a consequent impact on local streets.

However, there is emerging thinking that the provision of car parking spaces enables the choice to drive, and that a modal shift will not occur while there is a generous provision of car parking space within both the public and private realm. This is, at its core, a cultural issue and demonstrates a need to progressively uncouple existing car parking demand from development.

Whilst the Panel recognises that modal shift is multifaceted and relies upon investment occurring in many areas of the State (public transport and infrastructure most

[10] Transport data from the 2021 Census is expected to be released in October. This may reveal whether changes in working patterns post-Covid have influenced travel patterns.

obviously), the provision of off-street car parking, together with the appropriate use of off-street car parking, is a relevant consideration.

In this regard, there is opportunity to explore:

1. in an urban context, a nuanced approach in relation to the spatial application of car parking rates that is dependent on proximity to the Central Business District (CBD), other employment centres and/or public transport corridors;
2. whether the Code should offer more generous car parking rate dispensation for a broader number of land uses based on proximity to public transport or employment centres and what those discounts should be; and/or
3. whether car parking rates should be reviewed to ensure that they meet an average expected demand, rather than peak demand, to minimise future over-provision.

In addition, the Code's requirement for at least one (1) car park to be covered when two (2) car parks are provided may not be a contemporary proposition in 2022. The Panel is investigating where this requirement was borne from (noting its existence in development control policies under the *Planning Act 1982* the *Development Act 1993*) but seeks feedback as to whether there would be general support to remove it.

This may provide opportunity for improved design outcomes on smaller allotments (if no garaging is required), whilst also retaining the flexibility for developers to provide a covered car park if they so choose.

Questions for consultation:

1. What are the specific car parking challenges that you are experiencing in your locality? Is this street specific and if so, can you please advise what street and suburb.
2. Should car parking rates be spatially applied based on proximity to the CBD, employment centres and/or public transport corridors? If not, why not? If yes, how do you think this could be effectively applied?
3. Should the Code offer greater car parking rate dispensation based on proximity to public transport or employment centres? If not, why not? If yes, what level of dispensation do you think is appropriate?
4. What are the implications of reviewing carparking rates against contemporary data (2021 Census and ABS data), with a focus on only meeting average expected demand rather than peak demand?
5. Is it still necessary for the Code to seek the provision of at least one (1) covered carpark when two (2) on-site car parks are required?

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Design Requirements

Design requirements such as setbacks and driveway layouts can influence the design of development in a way that constrains the space available for provision of off-street car parking. This can, in turn, impact the practicality and availability of on-street car parking.

There may be an opportunity to undertake a holistic review of the various design elements that influence the interaction between a property and the primary street to ensure that sufficient provision for off-street car parking exists, together with other intersecting elements of design, such as urban greening, façade, driveway layouts and so on. This could lead to the development of a fact sheet or design guideline that builds on and/or updates the existing Commission fact sheet *Raising the Bar on Residential Infill in the Planning and Design Code*. This may be appropriately included in any review of, or addition to, infill development guidelines, as discussed in an earlier Chapter of this Discussion Paper.

The design of off-street car parking also has the capacity to impact associated policy areas including urban heat, urban greening and/or stormwater run-off from impervious surfaces.

There is scope to investigate means by which the planning system could encourage an uptake of design solutions to support improved environmental performance such as permeable paving materials or creating more space for tree planting within car parking areas. Again, this is necessarily connected to other policy areas of the Panel's review, namely trees and infill development.

Question for consultation:

1. What are the implications of developing a design guideline or fact sheet related to off-street car parking?

Electric Vehicles

The State Government released South Australia's Electric Vehicle Action Plan in December 2020. Action 10 in the Electric Vehicle Action Plan outlines potential interactions with the planning and building regulatory system, including:

1. investigating opportunities to streamline approval processes for Electric Vehicle (EV) charging infrastructure;
2. considering emerging transport mobility technologies in future growth management strategies; and
3. considering improvements in energy management in buildings (building policy).

The installation of EV charging infrastructure is not development as defined in the PDI Act. This means there are no impediments to installation of such infrastructure presented by the planning and building regulatory system. In the Panel's view, consideration needs to be given to the appropriateness of EV charging infrastructure

remaining unregulated, noting that the lack of regulation may result in undesirable consequences in certain locations (i.e installation near to heritage buildings, amenity impacts etc).

There are also currently no dedicated policies within the Code that seek to guide the design of residential or commercial car parking arrangements in relation to EV charging infrastructure. EV charging stations are envisaged to occur in conjunction with highway service centres (DTS/DPF 1.1 of the Roadside Service Centre Subzone), which may assist to provide for more streamlined consideration of EV charging stations as a component of such development proposals.

The anticipated take-up of EVs, and any associated changes to the Australian Road Rules, may drive a need to review car parking rates in the context of the demand for dedicated EV car parking.

Such a review would need to delve into the potential impacts of the provision of dedicated parks for EV parking and charging to ensure an appropriate rate of car parking provision remains in the event that certain parks are reserved for the drivers of EVs, particularly in association with commercial land uses.

The Panel seeks community and stakeholder views on this topic, noting that whilst not a contentious issue now, it is likely to be relevant in the not-too-distant future.

Questions for consultation:

1. EV charging stations are not specifically identified as a form of development in the PDI Act. Should this change, or should the installation of EV charging stations remain unregulated, thereby allowing installation in any location?
2. If EV charging stations became a form a development, there are currently no dedicated policies within the Code that seek to guide the design of residential

or commercial car parking arrangements in relation to EV charging infrastructure. Should dedicated policies be developed to guide the design of EV charging infrastructure?

Car Parking Off-Set Schemes

Whilst the Panel understands that car parking funds previously had a place in the planning regime, it questions whether they are contemporary in modern society, noting the disproportionality between the fee to be paid into a fund and the cost of constructing a multi-level car park.

It may be desirable to consider whether the car parking fund is able to instead be used for active transport initiatives such as separated bike lanes, improved footpaths/shared paths, or other initiatives that may assist to reduce the demand for car parking.

Alternatively, or in addition, it could also be considered whether the car parking fund could be used by councils to fund the planting of additional street trees, thus aiding to offset the carbon emitted by the vehicles on our roads.

Questions for consultation:

1. What are the implications of car parking fund being used for projects other than centrally located car parking in Activity Centres (such as a retail precinct)?
2. What types of projects and/or initiatives would you support the car parking funds being used for, if not only for the establishment of centrally located car parking?

Commission Prepared Design Standards

The PDI Act makes provision for the Commission to prepare Design Standards for the public realm. The Commission's first set of Design Standards are currently being prepared in connection with driveway cross-overs, and the design of narrower driveways to allow for more on-street parking.

It follows that Design Standards could also be prepared to address matters such as street design and layout which would further seek to enable appropriate rates of on-street car parking to complement off-street car parking, while retaining high levels of amenity, preserving traffic flow and maximising pedestrian safety.

Consideration could be given to the nexus between public and private realm car parking provisions and seek to improve congestion via improvements to street design and layout rather than increased off-street parking rates.

Question for consultation:

1. Do you think there would be benefit from the Commission preparing local road Design Standards under the PDI Act?

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Questions relating to Car Parking Policy

Code Policy

1. What are the specific car parking challenges that you are experiencing in your locality? Is this street specific and if so, can you please advise what street and suburb.
2. Should car parking rates be spatially applied based on proximity to the CBD, employment centres and/or public transport corridors? If not, why not? If yes, how do you think this could be effectively applied?
3. Should the Code offer greater car parking rate dispensation based on proximity to public transport or employment centres? If not, why not? If yes, what level of dispensation do you think is appropriate?
4. What are the implications of reviewing carparking rates against contemporary data (2021 Census and ABS data), with a focus on only meeting average expected demand rather than peak demand?
5. Is it still necessary for the Code to seek the provision of at least one (1) covered carpark when two (2) on-site car parks are required?

Design Guidelines

6. What are the implications of developing a design guideline or fact sheet related to off-street car parking?

Electric Vehicles

7. EV charging stations are not specifically identified as a form of development in the PDI Act. Should this change, or should the installation of EV charging stations remain unregulated, thereby allowing installation in any location?
8. If EV charging stations became a form a development, there are currently no dedicated policies within the Code that seek to guide the design of residential or commercial car parking arrangements in relation to EV charging infrastructure. Should dedicated policies be developed to guide the design of EV charging infrastructure?

Car Parking Off-Set Schemes

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10. What types of projects and/or initiatives would you support the car parking funds being used for, if not only for the establishment of centrally located car parking?

Planning System Implementation Review

Commission Prepared Design Standards

11. Do you think there would be benefit from the Commission preparing local road Design Standards?

Planning System Implementation Review

Summary of Questions Posed

Character and Heritage

1. In relation to prong two (2) pertaining to character area statements, in the current system, what is and is not working, and are there gaps and/or deficiencies?
2. Noting the Panel's recommendations to the Minister on prongs one (1) and two (2) of the Commission's proposal, are there additional approaches available for enhancing character areas?
3. What are your views on introducing a development assessment pathway to only allow for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved?
4. What difficulties do you think this assessment pathway may pose? How could those difficulties be overcome?

Trees

Native Vegetation

5. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?
6. Are there any other issues connecting native vegetation and planning policy?

Tree Canopy

7. What are the implications of master planned/greenfield development areas also being required to ensure at least one (1) tree is planted per new dwelling, in addition to the existing provision of public reserves/parks?
8. If this policy was introduced, what are your thoughts relating to the potential requirement to plant a tree to the rear of a dwelling site as an option?

Tree Protections

9. What are the implications of reducing the minimum circumference for regulated and significant tree protections?
10. What are the implications of introducing a height protection threshold, to assist in meeting canopy targets?
11. What are the implications of introducing a crown spread protection, to assist in meeting canopy targets?
12. What are the implications of introducing species-based tree protections?

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Distance from Development

13. Currently you can remove a protected tree (excluding Agonis flexuso (Willow Myrtle) or Eucalyptus (any tree of the genus) if it is within ten (10) metres of a dwelling or swimming pool. What are the implications of reducing this distance?
14. What are the implications of revising the circumstances when it would be permissible to permit a protected tree to be removed (i.e. not only when it is within the proximity of a major structure, and/or poses a threat to safety and/or infrastructure)?

Urban Tree Canopy Off Set Scheme

15. What are the implications of increasing the fee for payment into the Off-set scheme?
16. If the fee was increased, what are your thoughts about aligning the fee with the actual cost to a council of delivering (and maintaining) a tree, noting that this would result in differing costs in different locations?
17. What are the implications of increasing the off-set fees for the removal or regulated or significant trees?

Public Realm Tree Planting

18. Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?

Infill

Design Guidelines

19. Do you think the existing design guidelines for infill development are sufficient? Why or why not?
20. Do you think there would be benefit in exploring alternative forms of infill development? If not, why not? If yes, what types of infill development do you think would be suitable in South Australia?

Strategic Planning

21. What are the best mechanisms for ensuring good strategic alignment between regional plans and how the policies of the Code are applied spatially?
22. What should the different roles and responsibilities of State and local government and the private sector be in undertaking strategic planning?

Carparking

Code Policy

23. What are the specific car parking challenges that you are experiencing in your locality? Is this street specific and if so, can you please advise what street and suburb.
24. Should car parking rates be spatially applied based on proximity to the CBD, employment centres and/or public transport corridors? If not, why not? If yes, how do you think this could be effectively applied?
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Design Guidelines

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Car Parking Off-Set Schemes

31. What are the implications of car parking fund being used for projects other than centrally located car parking in Activity Centres (such as a retail precinct)?
32. What types of projects and/or initiatives would you support the car parking funds being used for, if not only for the establishment of centrally located car parking?

Commission Prepared Design Standards

33. Do you think there would be benefit from the Commission preparing local road Design Standards?

Planning System Implementation Review

How can you get involved?

You can participate in this process and contribute to the Expert Panel's deliberations by providing a submission to the Panel:

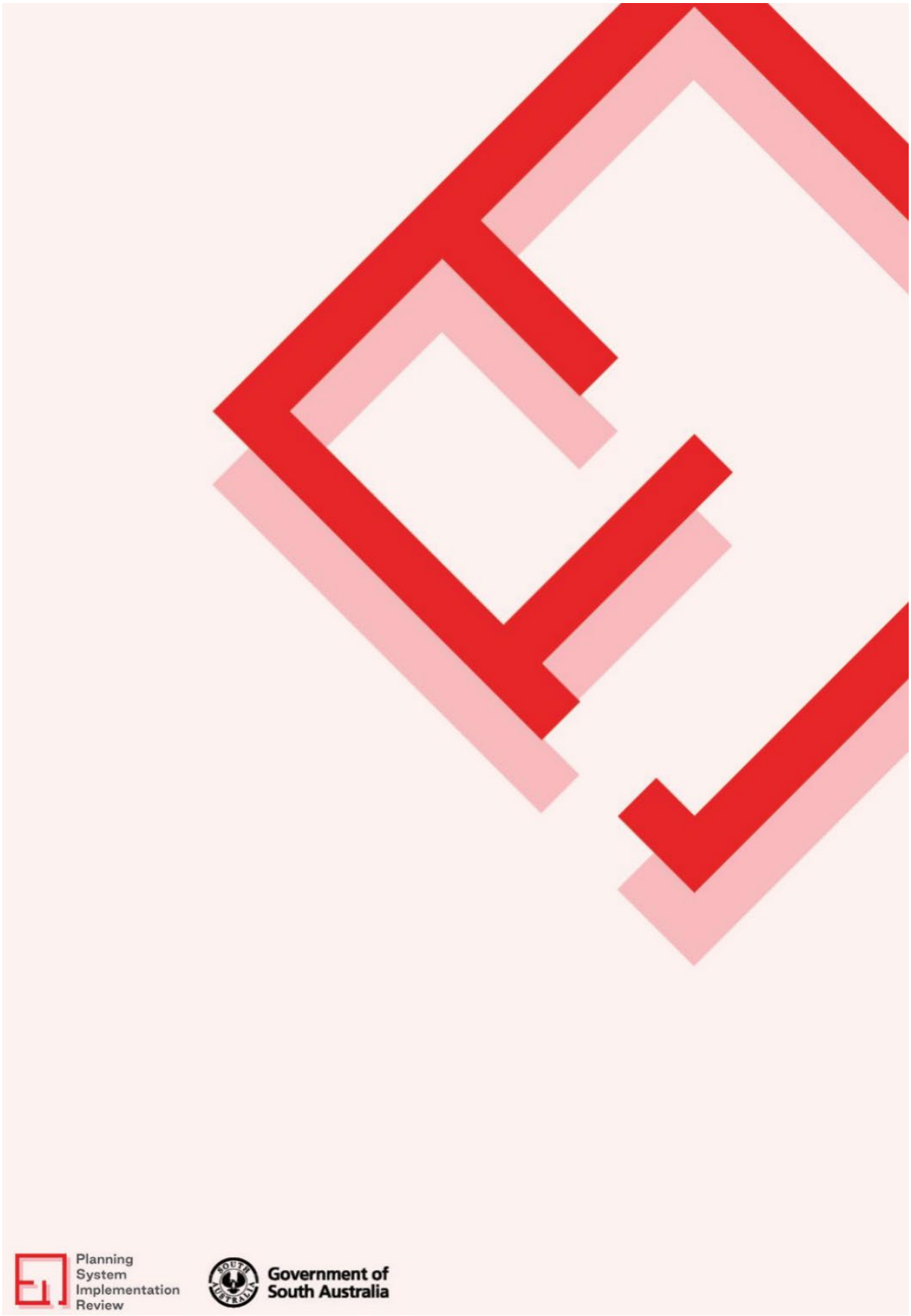
Via email: DTI.PlanningReview@sa.gov.au

Via post: Attention: Expert Panel, GPO Box 1815, Adelaide SA 5001

Via phone: 08 7133 3222

You can also complete a survey on the Expert Panel's YourSAy page: https://yoursay.sa.gov.au/planning_review

For more information about the Expert Panel and the engagement events that it is facilitating, please visit www.plan.sa.gov.au/planning_review


Planning
System
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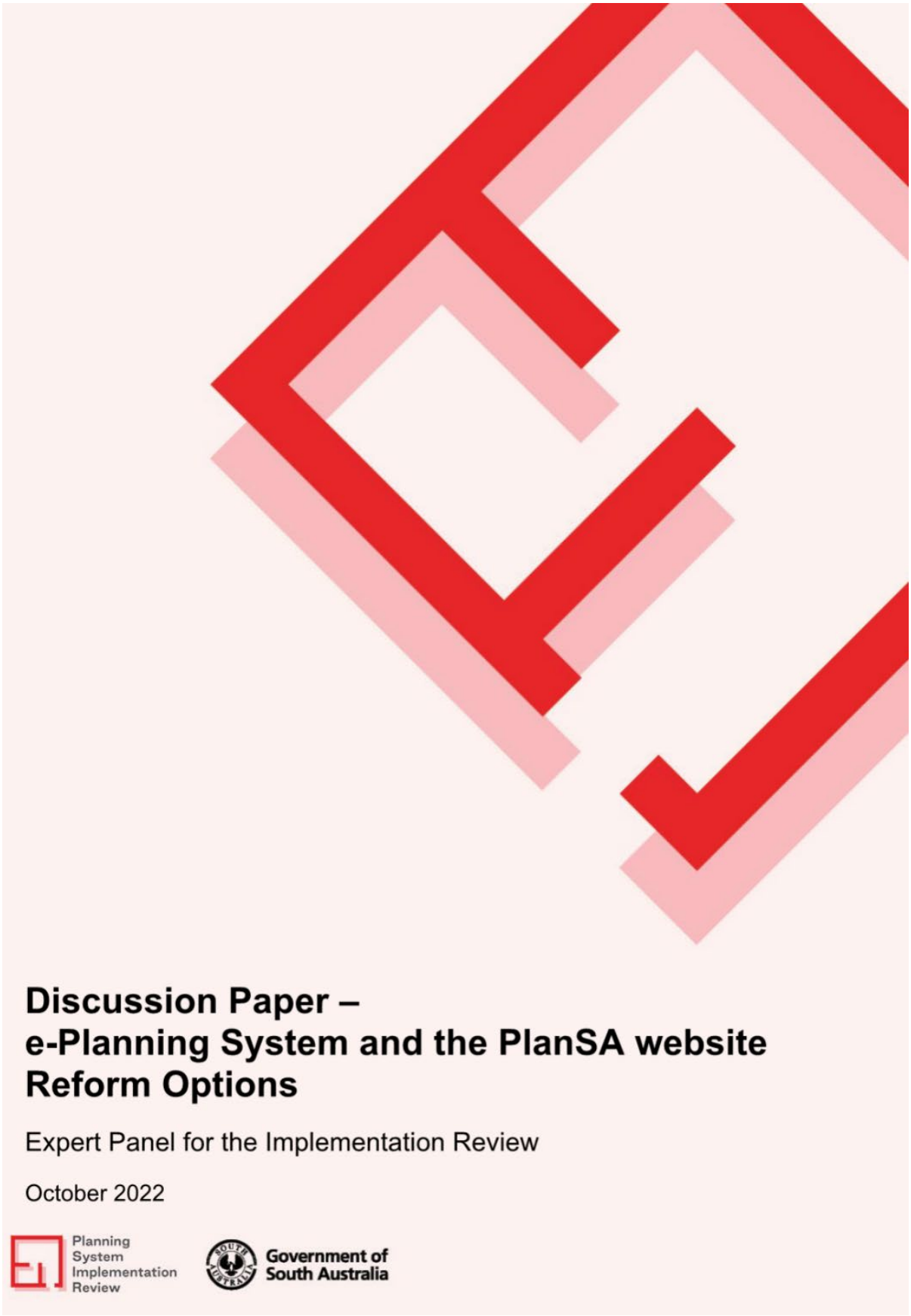
Discussion Paper –
e-Planning System and the PlanSA website
Reform Options
Expert Panel for the Implementation Review
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Planning System Implementation Review

Message from the Chair

South Australia's planning system has undergone significant change in recent years. Firstly, with the implementation of the *Planning, Development and Infrastructure Act 2016* and *Planning, Development, and Infrastructure (General) Regulations 2017* and more recently with the introduction of the state-wide Planning and Design Code.

In response to concerns raised by local communities and industry groups, the Minister for Planning, the Hon. Nick Champion MP, has commissioned a review of South Australia's planning system and the implementation of recent reforms made to it.

I am honoured to have been appointed Presiding Member of the independent panel of experts that has been established to undertake this review. Importantly, each of the Panel members has significant experience with the South Australian planning system, having all lived and worked in South Australia for many years.

I'm delighted to be joined on the Panel by **Lisa Teburea**, independent consultant and former Executive Director of Public Affairs with the Local Government Association of South Australia, **Cate Hart**, President of the Planning Institute of Australia (SA) and Executive Director, Environment Heritage and Sustainability for Department of Environment and Water, and **Andrew McKeegan**, former Chief Development Officer and Deputy Chief Executive for the Department of Planning, Transport and Infrastructure.

The Panel has been tasked with reviewing key aspects of the planning system and identifying opportunities to ensure planning decisions encourage a more liveable, competitive, affordable, and sustainable long-term growth strategy for Greater Adelaide and the regions.

We are pleased to present these Discussion Papers which outline the key areas in the Act, Code, and e-Planning system that the Panel has identified warrant further examination. We encourage all South Australian's – whether industry groups, practitioners, community groups, local government or the general public - to consider these Papers, share their feedback and contribute to the review.

After all, South Australia's planning system affects all of us.

John Stimson

Planning System Implementation Review

Introduction

The South Australian planning reforms commenced in 2012 with the appointment of the former Expert Panel, which made a series of initial recommendations that shaped new legislation that we now know as the *Planning, Development and Infrastructure Act 2016* (the PDI Act).

For the past ten (10) years, South Australians have considered and contributed to planning policy and have now lived with the provisions of the PDI Act and Planning and Design Code (the Code) for 18 months.

The Expert Panel for the Planning System Implementation Review was appointed by the Minister for Planning, the Hon. Nick Champion, to review the new system and to consider where there is scope for improvement.

The Panel has been given a Terms of Reference to review:

- the PDI Act;
- the Code and related instruments, as it relates to infill policy, trees, character, heritage and car parking;
- the e-Planning system, to ensure it is delivering an efficient and user-friendly process and platform; and
- the PlanSA website, to check usability and ease of community access to information.

Importantly, the Panel is not a decision-making body, but rather, a group of subject matter experts brought together to review, consider, consult, and make recommendations to the Minister as to what improvements to the new planning system could be. Those recommendations will, of course, be influenced by the feedback received from the community throughout this engagement process.

In preparing its Discussion Papers, the Panel has acknowledged the volume of submissions and representations that have been made by groups and individuals during previous engagement and review processes. Many of the issues that have been raised over the course of the past 10 years have already been thoroughly examined by various bodies, and the Panel considers that the fundamental elements of the PDI Act are sound.

However, this review is an opportunity to reconsider some of the details and the Panel is looking for new information, new feedback and experiences directly related to the implementation of the PDI Act and the Code, and how the community is interacting with the e-Planning system.

Planning System Implementation Review

In undertaking this review, the Panel will play a key part at a point in time. A time where the system is still young and arguably in its 'teething' phase, but equally a time that is ripe for considering what amendments – big or small – could make what is already a comprehensive planning regime, even better.

This Discussion Paper seeks to identify the known opportunities for improvement within the e-Planning system and the PlanSA website, with those opportunities being presented through survey results obtained by the Department for Trade and Investment (the Department) and through feedback received directly to PlanSA through its user forums.

It will guide you, as the reader, through the implementation of the e-Planning system in South Australia, how it is currently operating and identify opportunities to enhance the user experience, both now and in the future. It will then ask questions for your consideration and response. Notwithstanding, the Panel is, of course, interested to hear about all ideas for reform that may benefit the South Australian community and encourages you to raise any matters that have not otherwise been canvassed in this Discussion Paper.

The Panel acknowledges and appreciates the time and effort that will be put into preparing submissions for its consideration and looks forward to reviewing and considering all the feedback.

Planning System Implementation Review

Implementation of the e-Planning System

In 2014 the Minister for Planning engaged an Expert Panel on Planning Reform to review the State's Planning System. Their final report was provided to the Minister in December 2014 and identified several areas where there was opportunity for significant reform.

That Expert Panel undertook several community and sector specific workshops relating to planning processes under the *Development Act 1993* (Development Act) and reported feedback relating to an e-Planning system within the '*Expert Panel – What We Have Heard*' consultation report.

The following ideas were captured by the Expert Panel:

- There should be a clear **e-Planning** governance model within the planning legislation, backed by mandated legislative standards.
- Use Geographical Information System (GIS) to underpin the **online delivery** of spatial information.
- Allow for referral information to be **exchanged electronically** between assessment bodies and government agencies.
- Allow landowners to **download** information about zoning policies applying to their property from an easy-to-access website.
- Use **digital modelling software** to provide a new way to engage with the public on development proposals and strategic planning.

Following receipt of the Expert Panel's report, the Government issued a response to the Panel's recommendations, supporting the reform to establish an online planning system. Importantly, the Government identified that it would '*incorporate heads of power to support e-planning's staged roll-out*' in a Bill that was slated for introduction in 2015.

The *Planning, Development and Infrastructure Bill 2015* (PDI Bill) was ultimately introduced and sought to give effect to the Government's commitment to establishing a digital planning framework.

The scope of the proposed e-Planning solution included the:

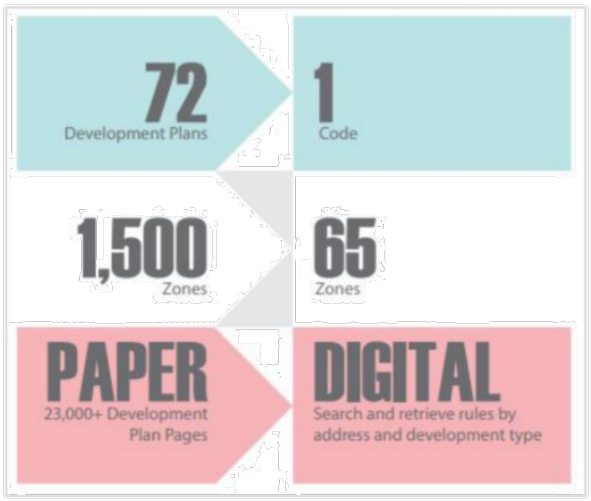
- replacement of aging technology that supported planning processes under the Development Act; and
- the implementation of a new online Planning Portal to provide:
    - 24/7 access;

- a single online planning portal with links to councils, agencies, communities, and other users/participants of the planning system;
- online access to the Planning and Design Code;
- digitisation of development application processes to support new or revised assessment pathways and enable applicants to track their application; and
- improved reporting and monitoring of planning and assessment activities.

Following the implementation of the PDI Act, all aspects of the South Australian planning system are now available through the PlanSA website, which includes statutory documents such as the Community Engagement Charter and State Planning Policies, as well as access to the electronic systems, such as Development Application Processing (DAP), South Australian Property and Planning Atlas (SAPPA) and the online Planning and Design Code (the Code).

It is noted that there are also numerous references throughout the PDI Act to publishing statutory instruments on the PlanSA website, which requirements are duly met through the functionality of the website.

To date, the e-Planning system has received and processed upwards of **67,000** development applications.



Planning System Implementation Review

Nation Leading

The South Australian e-Planning system is an advanced and sophisticated Government system that is yet to be replicated in any other State or Territory in the nation.

Indeed, as of June 2022, there are three (3) states/territories outside of SA offering online lodgement of development applications across state or territory: Northern Territory, New South Wales, and the Australian Capital Territory. However, it is noted that despite the online platforms, the development applications are still sent to relevant councils for processing rather than having centralised processing of development applications.

Accordingly, South Australia is the **only jurisdiction** that has a single state-wide planning system and online lodgement, including a centralised system to process development applications. It follows that as the nation leader in this space, several interstate and overseas jurisdictions have contacted PlanSA requesting information as to how the system was built and ultimately implemented.

Planning System Implementation Review

System Enhancements

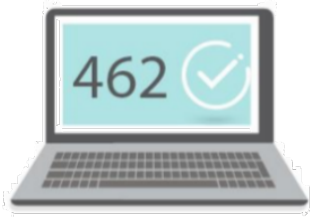
Since the commencement of the e-Planning system, PlanSA has maintained an enhancement program committed to introducing new functions, enhancing user experience, and addressing technical issues.

Enhancement requests are raised through the PlanSA Service Desk and are prioritised based on risk and value to users.

Those enhancement requests are categorised into four (4) associated focus areas – regulatory compliance, system stability, cyber security, and user experience - and are prioritised based on number of parameters including level of positive user impact, reference group input, efficiency gains, compliance matters and associated enhancements already under development.

A Quarterly PlanSA roadmap is published that outline work projects that are both in-progress and planned, as well as a list of completed projects.

More than **450 enhancements** have been made to the system since its implementation in July 2020, and more than **200** enhancement requests are **currently in progress** and linked to projects identified in the PlanSA roadmap documents.



Number of system enhancements made to date (as at 30 September 2022)

E-Planning Stakeholder Engagement

Stakeholder feedback is a key driver in determining enhancement work. **80 per cent** of enhancements that are delivered stem from stakeholder initiation.

PlanSA works with stakeholders to continually improve the system through various forums. Each forum provides an opportunity for attendees to provide input on topics of interest and contribute to the outcome of enhancements and projects. These forums include:

- Planning and Building Forums for Planning and Building professionals;
- Project Working Groups with smaller focus groups with relevant councils and industry professionals who have expressed interest in specific projects and enhancements;

Planning System Implementation Review

- Heads of Planning and Building Reference Groups as established by the planning regime governance model;
- Discussion with the service desk through raising service requests and having conversations with service desk staff;
- One on One PlanSA and council meetings which may occur weekly, fortnightly, or monthly depending on a council's preference;
- Policy Forums which enable Development Assessment, Policy and Strategic Planners from councils, private sector and agencies to hear updates on a range of strategic planning and policy topics; and
- Local Government Authority and Planning Land Use Services leadership meetings which occur monthly and provide an opportunity for the LGA to provide consolidated feedback based on council advice that it receives.

In addition to these forums, PlanSA conducts a short voluntary user survey following the completion of each application through the e-Planning system, as well as an annual market research survey (discussed later in this Discussion Paper).

The PlanSA website also provides multiple options to enable the community to stay informed through:

- interactive mapping tools such as the Metropolitan Development Activity Tracker, and Code Amendment Map Viewer;
- registers for development applications and applications on notice; and
- the functionality to subscribe to Code Amendments, and to the development application register.

Image: Snapshot of the Metropolitan Development Activity Tracker

Planning System Implementation Review

AMR Annual Survey Results

Action Market Research group (AMR), an independent survey and research consulting firm, recently conducted a survey which included anyone who has had contact with the e-Planning system from 19 March 2021 to 15 June 2022.

Key aspects of this survey were:

1. the survey separated respondents into user groups: Community, Decision Makers, and Industry; and
2. a total of 14,785 emails were sent out, each with a unique survey link and **1,502 surveys** were completed.

AMR presented its final report and findings to the Department on 17 August 2022. The results have since been published on the PlanSA website and are available for public consideration.

The key findings and feedback include:

1. individual applicants and Volume Builders are the **most satisfied** types of users of the new system;
2. Accredited Professionals and Representors are the **least satisfied**;
3. customers are mostly satisfied with each of the elements pertaining to the website, DAP, the online Planning and Design Code and the South Australian Property and Planning Atlas (SAPPA);
4. SAPPA is the **highest scoring element** of the system, with a mean score of 7.39 (out of 10);
5. most customers (75 per cent) believe the new system is an **improvement** on the previous system, and 19 per cent believe the new system **is worse** than the previous system;
6. among respondent types, Other Decision Makers (such as Referral Bodies / Relevant Authorities, SCAP, State Planning Users) and Volume Builder End Users are the most supportive of the new system (87 per cent and 82 per cent); and
7. the key customer sentiment was the positive experience with interacting with customer service officers. A popular description used on the service received was 'courteous, helpful and always polite'.

Overall, **73 per cent** of survey respondents recorded that they were **satisfied** with the e-Planning system, with the applicants (including volume applicants) recording highest satisfaction and public notification representors recording the lowest satisfaction. The

lower satisfaction recorded by representors could be related to their objection to the development itself, rather than the public notification process.

For a systemic change the scale of the e-Planning system, a satisfaction result of **73 per cent** is significant and demonstrates that the system is operating well.

For comparison, the following table identifies satisfaction results from analogous user surveys. These results further indicate that the e-Planning system is doing well when measured against user feedback for other broad system changes.

Where	Year	System	Satisfaction	Comments
New South Wales		ePlanning Portal	• 79.2% of respondents did not find the portal easy to use • 86.7% said their workload had increased.	NSW ePlanning portal is not as comprehensive as SA's ePlanning portal. For example, SA has one Planning and Design Code.
South Australia	2020	Department of Premier and Cabinet (DPC) Customer Satisfaction Measurement Survey	• Overall DPC survey shows consumer satisfaction index at 7.8 (out of 10). ○ Comparatively PlanSA survey scores system satisfaction at 6.8 and support satisfaction at 6.9. However, the scoring gauge used in the DPC survey ranges from 1 to 10 whereas the PlanSA user survey used 0 to 10. This means the DPC survey will return slightly higher average.	Although this is not a "system" or "support" satisfaction survey specifically related to introduction of new system, it does provide a useful benchmark for state-wide user satisfaction.
	2016	South Australian Digital Landscape	• Overall satisfaction rate for digital services provided by the SA Government is 6.9 (out of 10) • 38% believe digital services have improved over the last 12 months (vs. 8% worsened)	
Scotland	2017	eDevelopment Scotland – User Analysis Report	• Survey response comments used for denoting positive, negative and neutral response categories • Broadly even split between positive and negative (around 37%) and 26% described as neutral	

Planning System Implementation Review

Early Recommendations to the Minister for Planning

The Panel has been fortunate to consider the results of the AMR survey early in its appointment. Noting that the AMR survey data is current and that there were a significant number of responses received, the Panel was satisfied that it was able to make early recommendations to the Minister for Planning (the Minister) on certain e-Planning and PlanSA matters. This is consistent with, and permitted by, the Panel's Terms of Reference.

The matters that the Panel has made early recommendations on are those that it understands have been the subject of feedback (through both the AMR survey and to PlanSA directly), are able to be implemented in the next **six (6) months** and which are able to be implemented through existing budget forecasts. That is, these improvements will not require additional resourcing and there will be no need to delay the implementation whilst awaiting funding.

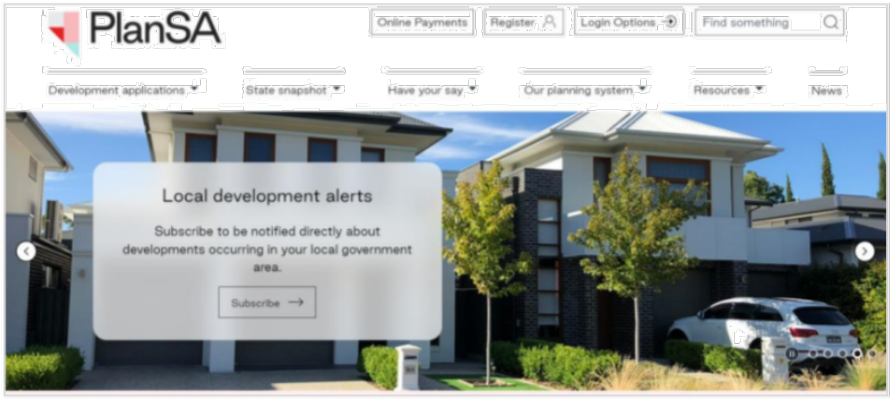
Importantly, the early recommendations are all related to user experience and are intended to enhance the useability and functionality of both the e-Planning system and the PlanSA website.

The Panel is advised that, notwithstanding that these improvements can be implemented in the next six (6) months, any unforeseen additions or regulatory changes may necessarily delay the proposed implementation timeframe.

The Panel's early recommendations to the Minister were as follows:

1. **Subscription Service Improvements**

   The e-Planning Portal currently includes several subscription options for users and the community to subscribe to alerts related to Code Amendments and development applications lodged within the public register.



The Panel **recommends** that these subscription services are refined to include additional opportunities for the community to subscribe to receive notification of:

- applications for certain types of development (i.e., tree removals); and
- changes to the status of applications.

2. **Development Application Map**

To enable the community to visualise the location of development applications more easily, the Panel **recommends** that a feature be added to the PlanSA website whereby development applications are shown on an interactive map.

The development application point should show key attributes of the development application and provide both a link to the detailed development application public register and a link to the public notification page (if the development application is under consultation).

3. **Builders Database**

To assist applicants, the Panel **recommends** that a centralised database of Builder's information (or access to Consumer Business Services data) is integrated into the e-Planning portal to remove the requirement for Builder's data to be re-entered for each individual application.

4. **Refined Submission Process**

The current development application form in the DAP could be improved to make it easier for applicants to understand and use. This arises from feedback relating to the submission form, specifically regarding the:

- management and entry of contacts;
- addition of project reference numbers;
- builder contact details; and
- ongoing access to a development application.

This would provide efficiencies for applicants, particularly those organisations who submit applications on behalf of applicants and low volume applicants.

The Panel **recommends** that the application form is revised to address these concerns, with such improvements potentially including:

- simplifying the application process by reducing the number of clicks and pages;
- increasing the use of predictive selections determined by the organisation information or user signed in;
- providing the ability to save and reuse common contacts; and

- recording a project reference number to assist application management for high volume applicants.

5. **Conditions and Notes by Element Type**

In the existing system, conditions and notes must be applied to each consent separately. There is the ability to record standard conditions and notes for each organisation, that can then be selected on a consent. There is also no ability to integrate and populate consents with conditions and notes that are typically applied to that element type (i.e., standard conditions that are typically applied to a development application for a shed) or other grouping.

The Panel **recommends** that enhancements are made to the e-Planning system to enable relevant authorities to:

- group standard conditions and notes by element type or other grouping, to enable relevant authorities to apply them on a consistent and typical basis;
- rename, add, view, order and search conditions and notes, to improve how relevant authorities manage conditions and notes;
- allocate Reserved Matters to a specific building stage; and
- set standard Reserved Matters, including a preamble, if required.

6. **Code Rules as a Checklist**

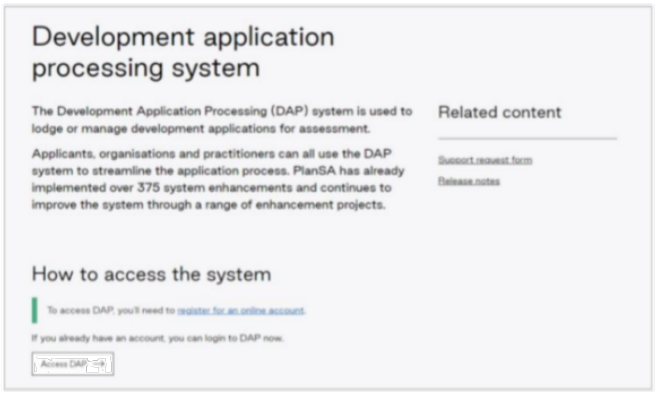
The DAP system has the existing capability to generate a PDF document of the relevant Code provisions associated with a development application. However, the Panel **recommends** that this is enhanced to enable a checklist to be generated with each application, which identifies the relevant assessment criteria.

This will provide efficiencies to assessors and consistency to the assessment process. It is recommended that the first phase of this project ('Phase One') deals with Deemed to Satisfy applications.

7. **DAP Homepage**

To assist users of the DAP (namely relevant authority assessors and team leaders) to better manage their workloads, the Panel **recommends** that PlanSA develop a new user interface to enable applications to be quickly searched and located within the DAP system.

Planning System Implementation Review



It is envisioned that a homepage and dashboard interface within the DAP could identify:

- application workloads;
- outstanding tasks;
- assessment clocks;
- outstanding fee management; and
- referral management.

The Panel was pleased to provide these early recommendations to the Minister on 11 October 2022.

The Panel will communicate the status of the early recommendations in its Final Report which is due to be delivered to the Minister in early 2023.

Planning System Implementation Review

User Experience

The Expert Panel has been tasked with reviewing the e-Planning system, with a key focus being to ensure that the system is delivering an efficient and user-friendly process and platform.

It follows that the Panel has specifically considered what improvements may be made to the e-Planning system that would enhance the user experience, noting the feedback received through the AMR survey and to PlanSA directly.

The following ideas for improvement are separated into medium term (6-12 months) and long-term implementation (as would require legislative amendment).

Notwithstanding the suggestions and questions that follow, the Panel encourages all stakeholders to put forth their ideas for improvement, if they are not otherwise identified. This will assist the Panel in obtaining a holistic and broad understanding of the pressure points associated with the e-Planning user experience.

Medium Term (6-12 months)

The Panel has positioned the following ideas for improvement as being deliverable in the 'medium term'. This is because further options analysis needs to be undertaken to ascertain the potential resourcing of facilitating the improvement (including specialist skills and budget requirements).

1. **Website Re-Design**

   The current layout of the PlanSA website could be re-designed with the intention to improve:

   - search functionality;
   - access to information; and
   - available resources, including tailoring the level of information available to the public and key industry users of the system.

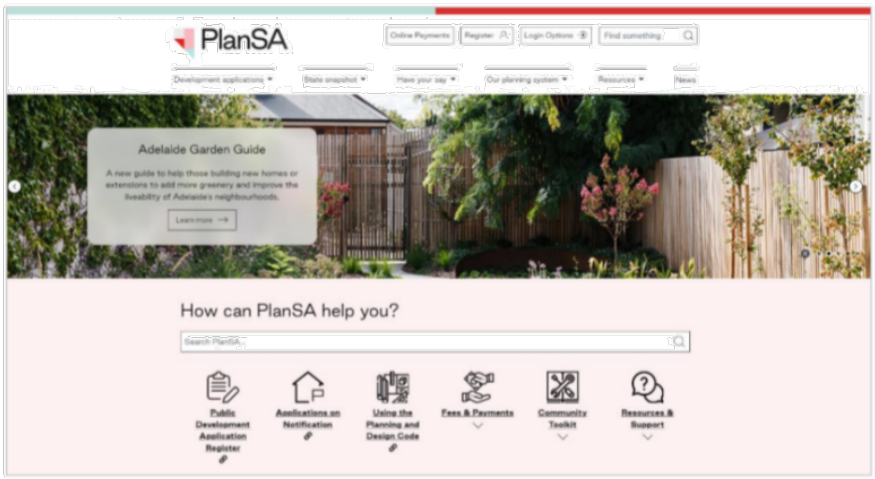
   The Panel considers that any website re-design should focus on overall customer experience from varying user groups, ensuring that it is suitable to those that access the website on both a frequent and infrequent basis.

   This improvement was identified following feedback received in the AMR survey which demonstrated low respondent satisfaction in response to questions whether:

   - the website was easy to navigate; and
   - the information was presented concisely.

Planning System Implementation Review

In addition, the survey feedback indicated that the overall complexity of the search functions was also a barrier to website satisfaction.



2. **Mobile Application for Submission of Building Notifications and Inspections**

   Building notifications and inspection results are currently only able to be submitted through the DAP on a desktop computer. The DAP is not currently designed to be compatible with mobile devices (neither mobile phone nor tablet).

   There is an opportunity for an application to be developed to enable building notifications, and inspections, to be submitted through a mobile device. This has the potential to improve efficiencies as the data could potentially be updated whilst onsite, without the need to return to a desktop setup.

   As above, this improvement arises in connection with the AMR survey which indicated respondents' appetite for the website to be better integrated with mobile devices.

3. **Online Submission Forms**

   To lodge a development application within the DAP system, an applicant must first have a PlanSA account and login. This subsequently results in potential one (1) time users having to create an account for this purpose. There is a separate organisation-based user account setup for volume applications (e.g. home building companies).

   To simplify the application process, the Panel considers there is opportunity to create a new (optional) online submission form which would allow an applicant to submit a development application, without a login.

This would provide a benefit to those applicants who do not want to track their application through the portal or interact with the full assessment system. Instead, these applicants could be notified of the progress of their application via email, which could attach relevant documents for their consideration.

This has the potential to improve the overall user experience for infrequent users of the system, as it would reduce the time it takes to 'get started'.

4. **Increase Relevant Authority Data Management**

   As relevant authorities, decision makers should have the ability to make an informed judgement to alter certain information within the DAP system if it determines a change is required.

   There is opportunity to investigate increasing the ability for relevant authority users to 'self-service' changes to development applications in the DAP, to reduce (or potentially remove) the need for PlanSA to provide validation of any amendments. This could be achieved by relevant authorities being assigned ownership of development applications they are determining (or have determined).

   For the avoidance of doubt, the Panel recognises that any proposed increase in data management capability would also need to be supported by a comprehensive application audit history, to ensure system stability and integrity.

5. **Inspection Clocks**

   The *Planning, Development and Infrastructure (General) Regulations 2017* (the PDI Regulations) and Practice Direction 9 both outline that councils must undertake inspections of different stages of development of certain building works.

   Currently, there are no inspection clocks built into the DAP to assist councils in the oversight of this area.

   The Panel considers that there is opportunity to add inspection clocks to the e-Planning portal to improve the management, monitoring, and reporting on inspection compliance.

Longer Term (Legislative Amendment Required)

The current legislative framework of the PDI Act and associated PDI Regulations provides some limitations to PlanSA being able to progress certain enhancements and system improvements. Amendments to this framework will assist in being able to progress several of the improvements that have been identified through both the AMR survey, and feedback to PlanSA directly.

Planning System Implementation Review

To facilitate the following improvements, amendment to either or both the PDI Act and PDI Regulations is required. It will be important for consideration to be given to the resourcing implications and time that may be required to implement the proposal.

In addition, it is also appropriate to recognise that a number of these opportunities have been identified on the basis that they may aid in streamlining the development assessment process, particularly for developments that do not attract complex processes (such as public notification or referrals) for assessment.

6. Lodgement

a. Collection of lodgement fee at submission

PlanSA currently allows applicants to submit development applications into the portal without paying a lodgement fee. However, the version of the Code used to assess the application is only 'locked in' once all 'appropriate fees' (being the planning consent and lodgement fees, as required by section 119 of the PDI Act) are paid. The complexity that arises is that the 'appropriate fees' are only determined following verification of the application for planning consent.

This may have unintended consequences for applicants, particularly in circumstances where there is a Code Amendment scheduled for implementation and/or the verification process is delayed.

To remedy this issue, the Expert Panel proposes to recommend a minor amendment to the PDI Act to make it clear that the provisions of the Code are 'locked in' at submission when the lodgement fee is paid, rather than both the lodgement fee and the planning consent fee. This slight amendment would place the burden of securing the Code provisions on the applicant, as they would be required to pay the lodgement fee when submitting an application.

This amendment could be achieved through defining the term '*appropriate fee*' as the '*Electronic Lodgement Fee*' in the PDI Act.

b. Combined Verification and Assessment Processes

The DAP does not currently allow an application to progress to assessment whilst fees are outstanding. This consequently results in the assessment of simple applications being delayed by the need to request fees and await payment following the verification of the application.

However, if the PDI Act is amended to require the lodgement fee to be paid on submission of an application (and thus 'lock in' the provisions of the Code per suggested improvement 6a above), the Panel has identified that there may also be an opportunity to combine the verification and assessment process of more straight forward applications (i.e. Deemed To Satisfy and less complex Performance Assessed applications).

That is, following submission of a development application (which would necessarily include payment of the lodgement fee), the assessing relevant authority could complete the verification and assessment on the application, without navigating out of the consent in the e-Planning portal.

It is thought that this could be facilitated at the discretion of the assessing relevant authority but would only be available where all required documentation has been provided and where the proposal does not require an agency referral or public notification.

Importantly, this improvement has been identified following feedback from key user groups that having to request fees and await payment following verification hinders the expeditious assessment of straight forward development applications.

c. Automatic Issue of Decision Notification Form

Further to improvements identified above, there may also be scope to investigate the benefit of automatically issuing a Decision Notification Form (DNF) in certain circumstances.

This would necessarily be contingent on the 6a and 6b improvements being implemented. However, if a relevant authority was able to verify and assess an application and then seek the relevant planning fees from the applicant, there is opportunity for the e-Planning system to automatically issue a DNF when all outstanding fees have been paid.

The Panel expects that if this were implemented, it would be structured to enable a relevant authority to determine what type of applications this functionality would be enabled for.

The culmination of improvements 6a-6c have the capacity to provide an efficiency to relevant authorities, which would mean they do not need to track and re-assess a consent following payment of lodgement and planning consent fees.

7. Building Notification through PlanSA

The e-Planning system currently allows builders to submit building notifications directly into the PlanSA portal. However, as this is not mandated, builders still have the option to submit notifications to the relevant council either by telephone or in writing.

The receipt and management of building notifications directly to councils places unnecessary administrative burden on local government. On that basis, the Expert Panel proposes an amendment to regulation 93 of the PDI Regulations (which relates to section 146 of the PDI Act) to require builders to submit building notifications directly into the PlanSA portal.

Planning System Implementation Review

8. Remove Building Consent Verification

The current regulatory framework requires a development application to be verified for each consent (per regulation 31 of the PDI Regulations). At the planning stage, there are several reasons that an application needs to be verified prior to progressing to assessment, including:

- determine nature of development;
- proposed elements;
- confirm correct Relevant Authority;
- confirm assessment category;
- determine fees and invoice; and
- check plans submitted (for planning consent, requests for information can only be sent once).

However, building consent is less prescriptive. To simplify the assessment of an application, and to remove administrative burden for relevant authorities, the Expert Panel proposes to remove the requirement to verify an application for building consent. It is thought that this may also assist in streamlining the assessment process.

9. Concurrent Planning and Building Assessment

The Panel understands that PlanSA regularly receives feedback that the e-Planning system is too linear and does not provide enough flexibility to undertake multiple processes at once. For example, it only allows for one (1) consent to be assessed at a time.

The PDI Act contemplates that consents can be sought in any order and does not preclude planning and building consent assessments occurring concurrently.

To provide additional efficiencies to relevant authorities (and to potentially reduce end to end assessment timeframes for applicants), the Panel considers there is opportunity to enhance the e-Planning system to enable consents to be assessed at the same time.

This would also likely require subsequent enhancements to the e-Planning system to ensure assessment timeframes are accurately recorded i.e., as each consent has its own assessment clock, the clock would need to be able to be paused once each consent has been assessed.

61,137 applications have received planning and building consents between July 2020 and September 2022 and may have benefitted from the ability for planning and building consents to be assessed concurrently.

In addition to the above, the Panel would also like to hear about any other user experience improvements that could be made to the e-Planning system and PlanSA, and how those improvements may increase the accessibility and useability of the platforms.

Planning System Implementation Review

User Experience Questions

Website Re-Design

1. Is the PlanSA website easy to use?
2. What improvements to the PlanSA design would you make to enhance its usability?

Mobile Application for Submission of Building Notifications and Inspections

3. Would submitting building notifications and inspections via a mobile device make these processes more efficient?
4. Where relevant, would you use a mobile submission function or are you more likely to continue to use a desktop?

Online Submission Forms

5. Is there benefit to simplifying the submission process so that a PlanSA login is not required?
6. Does requiring the creation of a PlanSA login negatively impact user experience?
7. What challenges, if any, may result from an applicant not having a login with PlanSA?

Increase Relevant Authority Data Management

8. What would be the advantages of increasing relevant authorities' data management capabilities?
9. What concerns, if any, do you have about enabling relevant authorities to 'self-service' changes to development applications in the DAP?

Inspection Clocks

10. What are the advantages of introducing inspection clock functionality?
11. What concerns, if any, would you have about clock functionality linked to inspections?
12. What, if any, impact would enabling clock functionality on inspections be likely to have on relevant authorities and builders?

Collection of lodgement fee at submission

13. Would you be supportive of the lodgement fee being paid on application, with planning consent fees to follow verification?
14. What challenges, if any, would arise as a consequence of 'locking in' the Code provisions at lodgement? How could those challenges be overcome?

Combined Verification and Assessment Processes

15. What are the current system obstacles that prevent relevant authorities from making decisions on DTS and Performance Assessed applications quickly?
16. What would be the advantages of implementing a streamlined assessment process of this nature?
17. What, if any, impact would a streamlined assessment process have for non-council relevant authorities?

Automatic Issue of Decision Notification Form

18. What are the advantages of the e-Planning system being able to automatically issue a Decision Notification Form?
19. What do you consider would be the key challenges of implementing an automatic system of this nature?
20. If this was to be implemented, should there be any limitations attached to the functionality (i.e., a timeframe for payment of fees or the determination will lapse)?

Building Notification through PlanSA

21. Would you be supportive of mandating building notifications be submitted through PlanSA?
22. What challenges, if any, would arise as a consequence of removing the ability for building notifications to be received by telephone or in writing to a relevant council? How could those challenges be overcome?
23. Would this amendment provide efficiencies to relevant authorities?

Remove Building Consent Verification

24. Would you be supportive of removing the requirement to verify an application for building consent?
25. What challenges, if any, would arise as a consequence of removing building consent verification? How could those challenges be overcome?

Concurrent Planning and Building Assessment

26. What would be the implications of enabling multiple consents to be assessed at the same time?

Planning System Implementation Review

Innovation

The changes to the planning system that commenced ten (10) years ago were referred to as a '*once in a generational*' change for the development industry. The scope and implementation of a fully digital system has been proven to be nation, and indeed world, leading.

The questions that follow then are, what does the digital future of planning look like in South Australia? And what else can be integrated into the e-Planning system to ensure that we are continuing to innovate and improve on the foundation that has been built?

The Expert Panel has considered what innovations and industry leading ideas may be available and now seeks your views on whether you would consider that these ideas would improve the overall experience and useability of the digital system, and whether they would provide demonstrable value to the State.

Whilst the ideas listed below are not 'project-ready' and further investigation is required as to how they may be facilitated, the Panel has included them in this Discussion Paper to encourage 'future thinking' and to demonstrate the possibilities that are available to the State.

1. **Automatic Assessment Checks for DTS Applications**

   Technology currently exists to automate the assessment of development applications with clearly defined rules. For certain applications, particularly DTS, it may be possible for the system to:

   - do the assessment to review, consider and assess proposed developments that meet the DTS requirements of the Code; and
   - highlight the rules that the proposed development passes or fails.

   A tool like this would have the capacity to assist in the pre-lodgement phase of an application, as well as during the assessment of an application. In addition, it may provide resource relief to relevant authorities (namely councils) in facilitating the assessment of applications in the requisite timeframes.

   Whilst this technology already exists, it would need to be further developed for it to be integrated into the e-Planning system.

2. **3D Modelling for Development Application Tracker and Public Notification**

   The Expert Panel considers that there is scope for the e-Planning system to accept 3D renders and to digitally display approved, in-progress and completed developments on the Development Activity Tracker. This would require the expansion of the Development Activity Tracker across the State.

The way this would be facilitated is yet to be explored in full, although it is thought that there may be a future requirement for 3D modelling to be provided with a development application (potentially limited to those of a certain size/status/classification) such that the community can experience the impact that a development will have in a locality. This can be taken further by also building in a tool to show the visual and overshadowing impacts for the development.

A mobile application of this nature may also assist public notification as a QR Code linked to the 3D model of the development could be featured on the on-site notice.

3. **Augmented Reality Mobile Application**

   Further to the inclusion of 3D modelling, and in terms of increasing transparency of information for the community, a mobile application could be developed that would enable anyone to use their mobile phone to view planned and in-progress developments in augmented reality.

   As with the 3D modelling, the development of an application of this nature would enable people to experience the impact that a development will have in a locality, through augmented reality.

4. **Accessibility through Mobile Applications**

   The e-Planning system and PlanSA website are not particularly mobile friendly, and currently expects the user to be on a computer to use it to its full capacity.

   In a world that is becoming increasingly mobile, it seems logical to the Expert Panel that adapting the PlanSA website to be mobile friendly should be in the plan for the future.

   However, given the complex nature of the e-Planning system, particularly the use of maps, this idea necessarily falls within the future innovation category of improvements as it will take both time and significant resourcing to adapt it for full mobile consumption.

In addition to the above, the Panel would also like to hear about any other innovative improvements that could be made to the e-Planning system and PlanSA, and how those innovations may increase the accessibility and useability of the platforms.

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Innovation Questions

Automatic Assessment Checks for DTS Applications

1. What do you consider would be the key benefits of implementing an automatic system of this nature?
2. What do you consider would be the key challenges of implementing an automatic system of this nature?
3. Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?

3D Modelling for Development Application Tracker and Public Notification

4. What do you consider would be the key benefits of the e-Planning system being able to display 3D models of proposed developments?
5. Do you support requiring certain development applications to provide 3D modelling in the future? If not, why not? If yes, what types of applications would you support being required to provide 3D modelling?
6. Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?

Augmented Reality Mobile Application

7. Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?

Accessibility through Mobile Applications

8. Do you think there is benefit in the e-Planning system being mobile friendly, or do you think using it only on a computer is appropriate?
9. Would you be supportive of the Government investing in developing this technology so that the PlanSA website and the e-Planning system is functional on mobile?

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Summary of E-Planning Questions

User Experience

Website Re-Design

1. Is the PlanSA website easy to use?
2. What improvements to the PlanSA design would you make to enhance its usability?

Mobile Application for Submission of Building Notifications and Inspections

3. Would submitting building notifications and inspections via a mobile device make these processes more efficient?
4. Where relevant, would you use a mobile submission function or are you more likely to continue to use a desktop?

Online Submission Forms

5. Is there benefit to simplifying the submission process so that a PlanSA login is not required?
6. Does requiring the creation of a PlanSA login negatively impact user experience?
7. What challenges, if any, may result from an applicant not having a logon with PlanSA?

Increase Relevant Authority Data Management

8. What would be the advantages of increasing relevant authorities' data management capabilities?
9. What concerns, if any, do you have about enabling relevant authorities to 'self-service' changes to development applications in the DAP?

Inspection Clocks

10. What are the advantages of introducing inspection clock functionality?
11. What concerns, if any, would you have about clock functionality linked to inspections?
12. What, if any, impact would enabling clock functionality on inspections be likely to have on relevant authorities and builders?

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Collection of lodgement fee at submission

13. Would you be supportive of the lodgement fee being paid on application, with planning consent fees to follow verification?
14. What challenges, if any, would arise as a consequence of 'locking in' the Code provisions at lodgement? How could those challenges be overcome?

Combined Verification and Assessment Processes

15. What are the current system obstacles that prevent relevant authorities from making decisions on DTS and Performance Assessed applications quickly?
16. What would be the advantages of implementing a streamlined assessment process of this nature?
17. What, if any, impact would a streamlined assessment process have for non-council relevant authorities?

Automatic Issue of Decision Notification Form

18. What are the advantages of the e-Planning system being able to automatically issue a Decision Notification Form?
19. What do you consider would be the key challenges of implementing an automatic system of this nature?
20. If this was to be implemented, should there be any limitations attached to the functionality (i.e., a timeframe for payment of fees or the determination will lapse)?

Building Notification through PlanSA

21. Would you be supportive of mandating building notifications be submitted through PlanSA?
22. What challenges, if any, would arise as a consequence of removing the ability for building notifications to be received by telephone or in writing to a relevant council? How could those challenges be overcome?
23. Would this amendment provide efficiencies to relevant authorities?

Remove Building Consent Verification

24. Would you be supportive of removing the requirement to verify an application for building consent?
25. What challenges, if any, would arise as a consequence of removing building consent verification? How could those challenges be overcome?

Concurrent Planning and Building Assessment

26. What would be the implications of enabling multiple consents to be assessed at the same time?

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How can you get involved?

You can participate in this process and contribute to the Expert Panel's deliberations by providing a submission to the Panel:

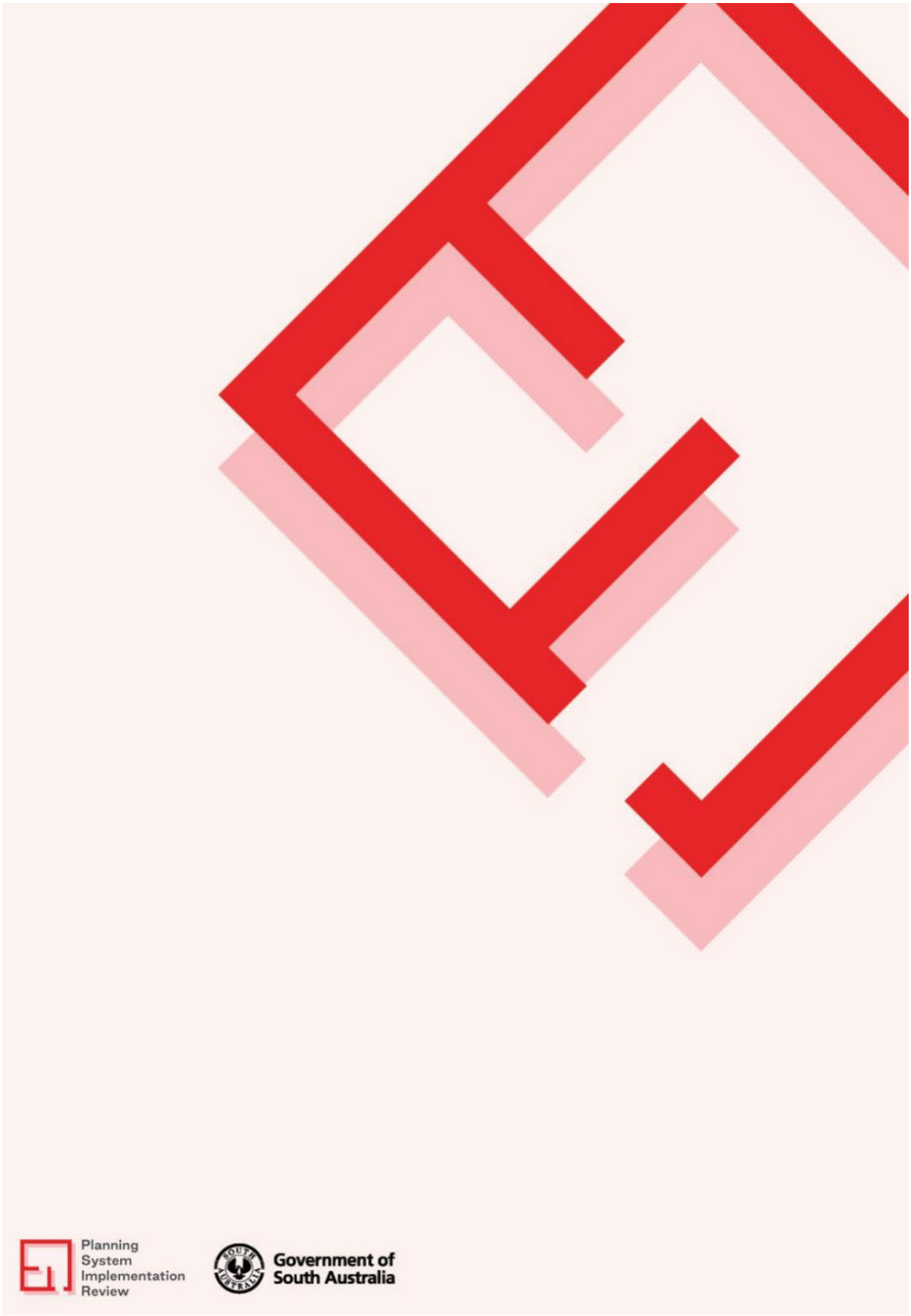
Via email: DTI.PlanningReview@sa.gov.au

Via post: Attention: Expert Panel, GPO Box 1815, Adelaide SA 5001

Via phone: 08 7133 3222

You can also complete a survey on the Expert Panel's YourSAy page: https://yoursay.sa.gov.au/planning_review

For more information about the Expert Panel and the engagement events that it is facilitating, please visit www.plan.sa.gov.au/planning_review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