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Attention Expert Panel
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Dear Expert Panel Members

Planning System Implementation Review

Thank you for providing Council with opportunity to provide feedback and contribute to the review on South Australia's Planning System.

The new planning system, and in particular, the Code has been in operation for around two years now. There have been many benefits and advancements brought in under the new system, however, as is to be expected from such a substantial change, there have been numerous teething problems, which PlanSA and the Commission have been working through since commencement.

Local Government Association Submission

Council's planning staff have considered the Local Government Association draft submission to the Expert Panel regarding the Planning System Implementation Review. Council's staff are very supportive of the submission believing that it appropriately and accurately covers the concerns raised by councils regarding the operation, efficiency, and usability of the planning system.

Nevertheless, there are issues that the City of Marion believes require further deliberation and/or addressing. A detailed submission is attached for the Panel's consideration.

Council further wishes to highlight the following key issues for its community. Please note the issues are also included in the attached submission.

1. Marion Plains Policy Area transitioned to General Neighbourhood Zone

The former Marion Plains Policy Area (approved 15 August 2019) was established to slow down and reduce the number of replacement dwellings being constructed on a single allotment in the northern sector of the City of Marion, and to reduce the impacts generally associated with infill development. The policy area required larger site dimensions than were previously deemed acceptable.

Council requested that PlanSA consider transitioning the affected areas to the Suburban Neighbourhood Zone, with TNVs that reflected the site dimensions of the former Marion Plains Policy Area, as part of the transition to the Planning and Design Code. Disappointingly, this did not eventuate.

This policy area has since been transitioned to the General Neighbourhood Zone in the Code. This has resulted in minimum site dimensions that are smaller than the dimensions that were originally in place, prior to being rezoned to the Marion Plains Policy Area. This has led to more ad-hoc infill with greater impacts on the character and amenity of the suburbs than was previously considered unacceptable by Council (and supported by the then Minister for Planning).

Attempts to provide stronger design policies than the Residential Code are acknowledged.

With Marion population and housing growth at 1% year-on-year, together with master planned infill opportunities created by the Seacliff Village site (former Cement Hill site), Oaklands Green development and various larger scale greenfield land divisions within Hallett Cove; Council believes that sufficient development opportunities would still exist for at least the next 10 years.

Sufficient infill opportunities could occur outside of the areas covered by the former Marion Plains Policy Area, allowing these areas to be rezoned to Suburban Neighbourhood Zone with policy variations provided by the former Marion Plains Policy Area – primarily design and appearance criteria, frontages, site areas, site coverage and on-street and off-street carparking requirements.

Council therefore seeks that Panel Members put consideration to the above to ensure appropriate and sensible redevelopment of the northern residential areas of Council.

2. Councils to be able to choose which of the zones listed within the Code should be applicable in a particular area of their Council

The Code has resulted in the loss of local character for particular areas within the City of Marion and increased opportunity for higher density infill to occur, with its commonly associated detrimental impacts.

The balance of power regarding the decision-making process for an appropriate zone within an area of a Council should be amended to provide Council with the final say on the zone if the choice of zone and associated policy reflects the desires of the community, and/or addresses a particular need or issue, and would not be contrary to the objectives of the 30-Year Plan.

3. Limited Provision of Urban Design Standards

The Code provides a range of residential design features relating to external appearance and function. However, the policy is limited and may lead to generic outcomes, rather than criteria informing and providing guidance on built form outcomes that more appropriately reflect or are complementary to the noteworthy characteristics of particular areas.

More appropriate design standards/guidelines, which provide better direction on the types of high-quality design outcomes desired for infill/small scale residential development, are required within the Code itself.

4. Reduction in on-site and on-street carparking requirements

The Code has resulted in a reduction in both off-street and on-street carparking requirements compared to Council's former criteria.

The Code's 'off-street' parking requirement for dwellings with 2 bedrooms or more is a minimum of 2 spaces. Council's previous criteria required 3 car parks for 4 or more bedrooms.

The Code's 'on-street' parking requirement is 1 space per 3 dwellings which is less than Council's previous requirement of 1 space per 2 dwellings.

The above reductions are likely to result in a further increase in demand for on-street parking and associated traffic flow issues, which have become a major issue in areas of infill development.

The explanation (by PlanSA) of using car ownership data to justify reductions to existing parking requirements does not align with Council's (staff and Elected Member) practical experience when dealing with local street traffic management and complaints from residents about congestion on local streets. These complaints have continued and increased in recent years.

Council is seeking a return to the former car parking requirements.

5. Tree Protection and Retention

Numerous trees are lost through the development of land, particularly as a result of ad-hoc infill development. Whilst most of these trees are located on private properties, Council is also losing many street trees to (often reluctantly) allow appropriate access to additional driveways. Many of these trees do not meet the regulated or significant tree criteria so are afforded little protection.

Maintaining, let alone increasing the amount of tree canopy cover, is becoming a major concern for metropolitan Councils, including Marion. It has been shown that there is not enough public land to plant enough trees to establish widely accepted tree canopy targets. More should be done to encourage tree retention and planting on private land. Importantly, the benefits of mature trees cannot be replaced by newly planted trees, as they are unlikely to attain the same size as those lost due to a reduction of space in which to grow.

6. Environmental Issues

Climate change and associated hazards, and opportunities for mitigation and adaption are matters where the planning system can play a key role.

The environmental performance policy within the Code needs to be strengthened to ensure future development is designed and built to standards that provide appropriate energy efficiency and carbon neutrality.

Council's Environmental Sustainability Department has provided a detailed response (attached) for the Expert Panel's consideration regarding tree and native vegetation protection and climate change impacts. It is noted that these comments represent the views of technical staff and are not a formal position of the Council as there has been insufficient time for Council to appropriately consider the matters.

7. Internal and garage door dimensions

One of the reasons garages are often not being used for parking of cars is that they are used for storage purposes and do not have enough room to also accommodate a car. Another reason is that garage door and internal dimensions are too small for comfortable access, so residents are reluctant to park their vehicles in the garage.

The Code was originally proposing minimum internal dimensions of 3.2m x 6m and 6m x 6m, which was seen as an appropriate amendment by Council. Unfortunately, the final version of the Code reduced the dimensions to 3m x 5.4m and 5.5m x 5.4m (reflecting the Australian

Standards, and the dimensions previously required by Council's Development Plan) – so nothing has changed for most Councils!
The additional 600mm in length would have provided room for storage as well as a car. The additional 600mm in length is not likely to cause issues with house designs and does not require a wider allotment. The additional internal width would have provided better space for accessing a vehicle.

A minimum garage door width of 2.4m should provide adequate dimension for the comfortable entering and exiting of a garage for a majority of vehicles.

Council looks forward to reading the Expert Panel's findings and recommendations regarding the Planning System Implementation Review.

Yours sincerely

Kris Hanna
Mayor

Tony Harrison
Chief Executive Officer

Enclosed:
1. Marion Council Submission to the Expert Panel
2. Marion Council's Environmental Sustainability Department Response

Planning System Implementation Review – 2022/23

Attachment 1: Detailed Marion Council Submission to the Expert Panel

	Issues Raised by Council	Summary of Issue/Proposed Amendment
1	Marion Plains Policy Area 8 to General Neighbourhood Zone	The former Marion Plains Policy Area (approved 15 August 2019) was established to slow down and reduce the number of replacement dwellings being constructed on a single allotment in the northern sector of the City of Marion, and to reduce the impacts generally associated with infill development. The policy area required larger site dimensions than were previously deemed acceptable. Council requested that PlanSA consider transitioning the affected areas to the Suburban Neighbourhood Zone, with TNVs that reflected the site dimensions of the former Marion Plains Policy Area, as part of the transition to the Planning and Design Code. Unfortunately, this did not eventuate. This policy area has since been transitioned to the General Neighbourhood Zone in the Code. This has resulted in minimum site dimensions that are smaller than the dimensions that were originally in place, prior to being rezoned to the Marion Plains Policy Area. This is likely to lead to greater impacts on the character and amenity of the suburbs than was previously considered unacceptable by Council. Council seeks that PlanSA reconsider Council's previous request, to ensure appropriate redevelopment of the northern residential areas of Council.
2	Reduction in on-site and on-street car parking requirements	The Code has resulted in a reduction in both off-street and on-street car parking requirements compared to Council's former criteria. The Code's 'off-street' parking requirement for dwellings with 2 bedrooms or more is a minimum of 2 spaces. Council's previous criteria required 3 car parks for 4 or more bedrooms. The Code's 'on-street' parking requirement is 1 space per 3 dwellings which is less than Council's previous requirement of 1 space per 2 dwellings. The above reductions are likely to result in a further increase in demand for on-street parking and associated traffic flow issues, which have become a major issue in areas of infill development. Council is seeking a return to the former car parking requirements.
3	Internal garage dimensions	One of the reasons garages are often not being used for parking of cars is that they are used for storage purposes and do not have enough room to also accommodate a car. Another reason is that garage door and internal dimensions are too small for comfortable access, so residents are reluctant to park their vehicles in the garage.

<table>
<tr><td></td><td></td><td>The Code was originally proposing minimum internal dimensions of 3.2m x 6m and 6m x 6m, which was seen as an appropriate amendment by Council. Unfortunately, the final version of the Code reduced the dimensions to 3m x 5.4m and 5.5m x 5.4m (reflecting the Australian Standards, and the dimensions previously required by Council's Development Plan) – so nothing has changed for most Councils!!

The additional 600mm in length would have provided room for storage as well as a car. The additional 600mm in length is not likely to cause issues with house designs and does not require a wider allotment. The additional internal width would have provided better space for accessing a vehicle.

A minimum door width of 2.4m should provide adequate dimension for the comfortable entering and exiting of a garage for a majority of vehicles.</td></tr>
<tr><td>4</td><td>Limited Provision of Urban Design Standards</td><td>The Code provides a range of residential design features relating to external appearance and function. However, the policy may lead to generic outcomes, rather than criteria informing and providing guidance on built form outcomes that more appropriately reflect the noteworthy characteristics of particular areas.

In order to provide better design outcomes, than the policy within the Code may result in, PlanSA launched the Local Design Review Scheme, where applications could be put before Design Review Panels for critique. This scheme is not mandatory and has not received a great deal of uptake/support by Councils or the development industry.

More appropriate design standards/guidelines, which provide better direction on the types of high-quality design outcomes desired for infill/small scale residential development, are required within the Code itself.</td></tr>
<tr><td>5</td><td>Maximum garage door widths</td><td>Residential Development – Low Rise
External Appearance

PO 20.1
Garaging is designed to not detract from the streetscape or appearance of a dwelling.

DTS/DPF 20.1
Garages and carports facing a street:
(c) have a garage door / opening width not exceeding 7m
(d) have a garage door / opening width not exceeding 50% of the site frontage unless the dwelling has two or more building levels at the building line fronting the same public street.</td></tr>
</table>

		50% of the allotment width does not consider that the house may be set back from the side boundaries and therefore more than 50% of the building façade can be taken up by a garage. Marion Council previously required that garage door widths be limited to a maximum 50% of the building façade width which better ensures that garages do not dominate the façade design.
6	What constitutes a 'Minor Variation'	What constitutes a 'minor' variation is unclear. Under the former planning system there was limited direction as to what can be considered a 'minor variation' and subsequently what is 'minor' was interpreted differently. The Code has not provided any further direction on the matter. PlanSA has advised that it is up to the relevant authority to determine what is considered minor. This will result in maintaining inconsistencies between relevant authorities and prolonged opportunity to take advantage of the situation by some in the industry. The creation of a Practice Direction outlining what can be considered 'minor', how this will be implemented in practice, and rules/ a method outlining how this will be considered during the assessment process should be given consideration.
7	Industry Zone, Winery Policy Area 8 to Employment Zone	Policy within the former 'Winery Policy Area 8'recognised and sought to manage impacts that the (existing) Patritti Winery may have on the surrounding residential areas and restricted uses of the land to a winery and associated uses. The Employment Zone does not provide specific restrictions on the type of employment use and built form outcomes for the site. Although it envisages low impact activities that do not affect local amenity, it provides opportunity for other forms of light industry, commercial and business activities, which are unlikely to be compatible with the residential areas. Council has been seeking a sub zone which places restrictions on the future use of the site for less compatible employment uses.
8	Private Open Space	The minimum Private Open Space requirement of 24m² area for site areas < 301m² and 60m² area for site areas > 301m², with a minimum 3 metre dimension, for most dwelling types, is considered inappropriately small, will not complement existing character, is likely to have limited functionality and provides little opportunity for the growth of suitably sized replacement trees and shrubs. The amount of private open space required should be commensurate with the size of the site and the number of bedrooms proposed. Prior to the commencement of the Code, Council's requirement for Private Open Space area was a minimum of 20% of the site area or 35m², whichever was the greater. The areas and dimensions within the Code do not provide appropriate and functional areas of private open space, especially for a family. These dimensions in no way reflect or complement the character of rear yards in existing properties within the council

		area. They are considered inappropriate in general, but particularly in the Established Neighbourhood, Hills Neighbourhood and Suburban Neighbourhood Zones, where original site areas and associated rear yards are generally relatively large. The minimum Private Open Space requirement for all dwelling types at ground level should be 20% of the site area with a minimum dimension of 5m, and perhaps greater, in areas where the established character warrants retention.

	Additional Issues Raised by Council Administration	Summary of Issue/Proposed Amendment
9	Infill development	The consequences created by general infill continues to be a concern. Car parking (both on-site and on-street), tree loss (both on private land and within Council verges), streetscapes, inappropriate building designs and urban heat island effect are some of the main issues. Enhanced design standards /guidelines which provide improved direction on the types of high-quality design outcomes desired for infill/small scale residential development are required in the Code. The Code assumes a 'best case' outcome in relation to building design however, in Council's experience, the economic cost of construction and purchasing a home outweighs building design which is one of the first elements of a proposed reduced/eliminated to save costs. Building companies, especially large-scale volume builders, should be encouraged to provide improve design outcomes within their standard home designs.
10	Developer contributions towards infrastructure upgrades	Continued redevelopment within existing residential areas has a cumulative effect on the capacity of Council infrastructure (stormwater, road system). Councils however have limited control to seek contributions to infrastructure outside of a development site. Changes are required to address this situation (perhaps infrastructure contributions or required upgrades paid by/undertaken by developer) A relatively recent decision of the Environment Resources and Development Court involved a land division which a Council had approved, subject to a condition requiring off-site infrastructure works to be undertaken by the developer. The Court noted that conditions, in order to be valid, must fairly and reasonably relate to the proposed development and must be applied for a proper purpose. The Court found that the condition was ultra vires because it was beyond the Council's power to be imposed. Accordingly, mechanisms within the *Planning, Development and Infrastructure Act 2016* are required to support a Councils ability to require developer contributions towards necessary upgrades to council owned infrastructure (as is required for gas, electricity, sewer etc.)

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<tr><td></td><td></td><td></td></tr>
<tr><td>11</td><td>Demolition controls</td><td>The confusion surrounding some demolition types being exempt from approval has caused many issues.
Unauthorised demolition of part of semi-detached dwellings (causing damage to neighbouring dwelling/property) and damage to Council infrastructure are a couple of key examples.
With no requirement to notify Council of a demolition, the perpetrator of any damage to council infrastructure within the road reserve, as part of the demolition process, is difficult to determine and follow up.

Demolitions require approval (as it was under the Development Act). The legislation should be amended to reflect the Development Act interpretation of demolition.</td></tr>
<tr><td>12</td><td>Air Conditioning Units</td><td>Council has experienced increased complaints about noise emanating from air conditioning units due to the close proximity of houses. The following is suggested be included within legislation;
• Requirement for larger block sizes to enable greater distance from boundaries.
• Requirement for minimum side boundary setbacks from the noise source.
• Similar requirements to pool pumps (enclosed or certain distance from neighbouring dwelling)</td></tr>
<tr><td>13</td><td>Rear Setbacks</td><td>The dimensions designated in the Code (ranging between 3m - 4m for 1st building level and between 5m - 6m for any 2nd building level) are too small to provide meaningful and practical/usable areas of open space and distances between buildings. Also, in many instances (particularly in the ENZ and HNZ) the eventual built form outcome would be completely out of character with the existing pattern of development.</td></tr>
<tr><td>14</td><td>Issues with Hills Neighbourhood Zone and Policy for Sloping Sites</td><td><u>Variation in Allotment Size (within Council) (between Councils)</u>
• There are large discrepancies regarding the minimum site area required for an allotment within a particular gradient band, between the various Councils in the Hills Neighbourhood Zone, resulting in a considerable lack of consistency within the zone.
• It appears that in many cases with other Councils the intention is (was) to retain a character of large properties (low density) within a natural landscape (as per the Desired Outcome).
• Much of Marion's southern suburbs do not have a natural landscape as such; most are the result of traditional subdivisions, with many properties ranging between 600m² - 900m² and with frontages around 18m +/-.

<u>Boundary Walls / Side Boundary Setback</u>
• A building can be located on a boundary but, if not, a minimum side setback of 1900mm is required! A wall on the boundary could potentially have greater impact on light and ventilation.
• DTS/DPF 7.1 allows walls on boundaries no matter the slope of the land. However, if not on a boundary the setback distance is relative to the slope?
• Are walls on external boundaries appropriate on sloping land, particularly when there is no reference to the gradient of the slope, and Council is seeking frontages of 9m – 10m. It may be appropriate for common walls of semi-detached or row</td></tr>
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dwellings; which are designed to co-exist (even if there is a difference in level across the frontage) on gradients <1:8. However boundary walls on steeper gradients may create undesirable impacts?!

- The former Council Development Plan did not support walls on boundaries in the Hills Policy Area
- In the Code, boundary walls are measured from the lower of natural or finished ground level
- Walls not sited on side boundaries are measured from the top of footings
  - With no maximum height for a footing this could have a greater impact on a neighbouring property than a wall on the boundary
  - With no reference to natural ground level, footings may be sited on substantial depths of fill increasing the potential for impact on neighbouring properties

<u>Rear Boundary Setback</u>

- PO 9.1 - Buildings are set back from rear boundaries to provide:
  (a) separation between dwellings in a way that complements the established character of the locality
- DTS/DPF 9.1 states: Buildings are set back from the rear boundary at least:
  (a) 4m for the first building level
  (b) 6m for any second building level.
- 4m and 6m rear setbacks are far too small and will in no way complement the established character of Marion's southern suburbs, where rear setbacks range from a minimum of 6m (and greater) in the newer suburbs through to greater than 20m in the older suburbs. (Average would be between 8m and 15m)
- Also, such a small dimension on sloping land would result in unusable POS or need for site works that could result in visual impacts on neighbouring properties. There would be little if no space for landscaping.
- The former Hills Policy area required minimum of 8m
- The minimum rear setbacks should be at least 6m to 8m (or greater?)
- It is noted that there are site area TNVs for other Councils requiring minimum areas of 2200m^2. A 4m rear setback in this instance appears illogical.

<u>Private Open Space</u>

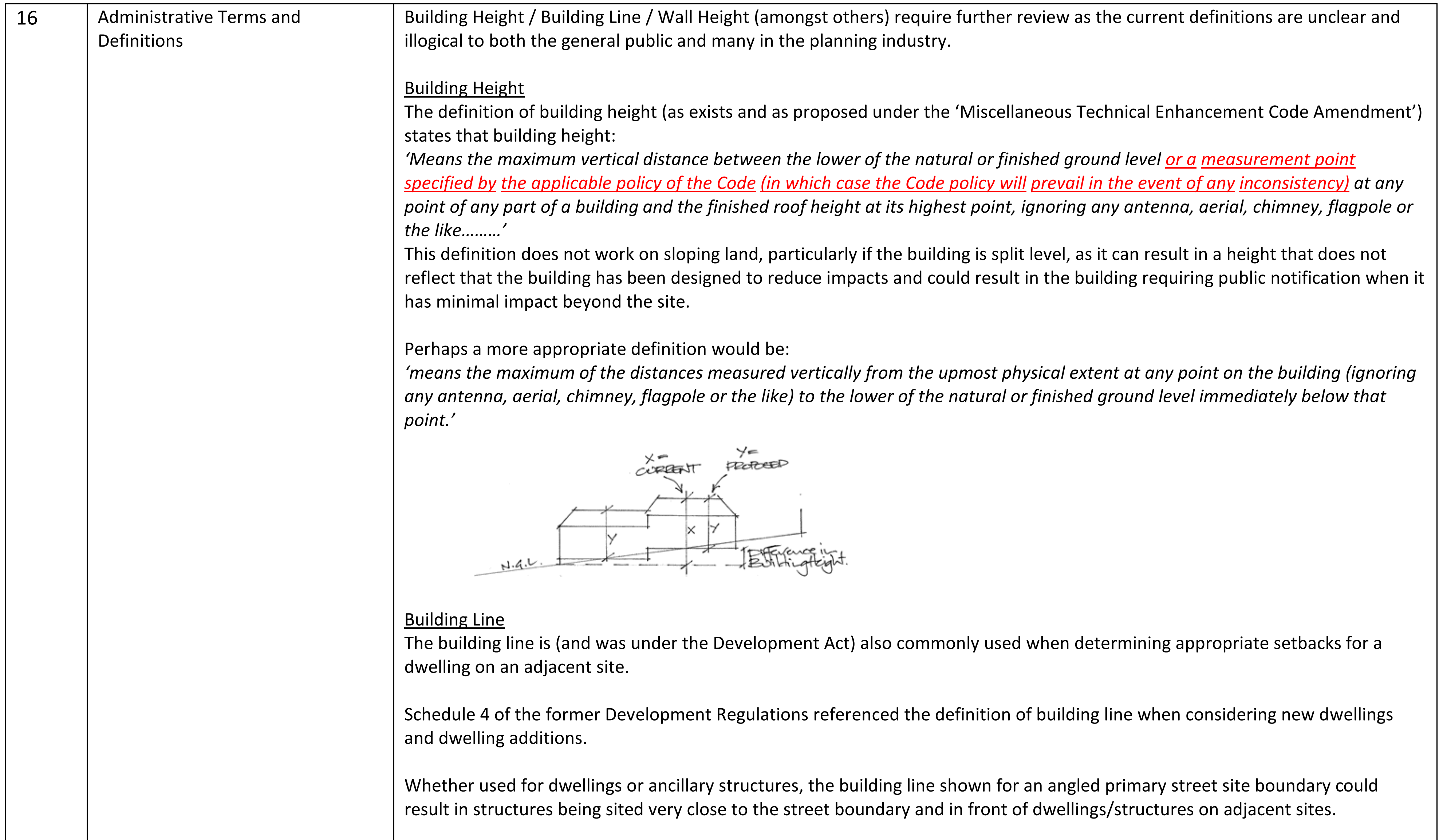
- Design in Urban Areas - Table 1 – seeks:
  Total private open space area:
  (a) Site area <301m2: 24m2 located behind the building line.
  (b) Site area ≥ 301m2: 60m2 located behind the building line.

  Minimum directly accessible from a living room: 16m2 / with a minimum dimension 3m.

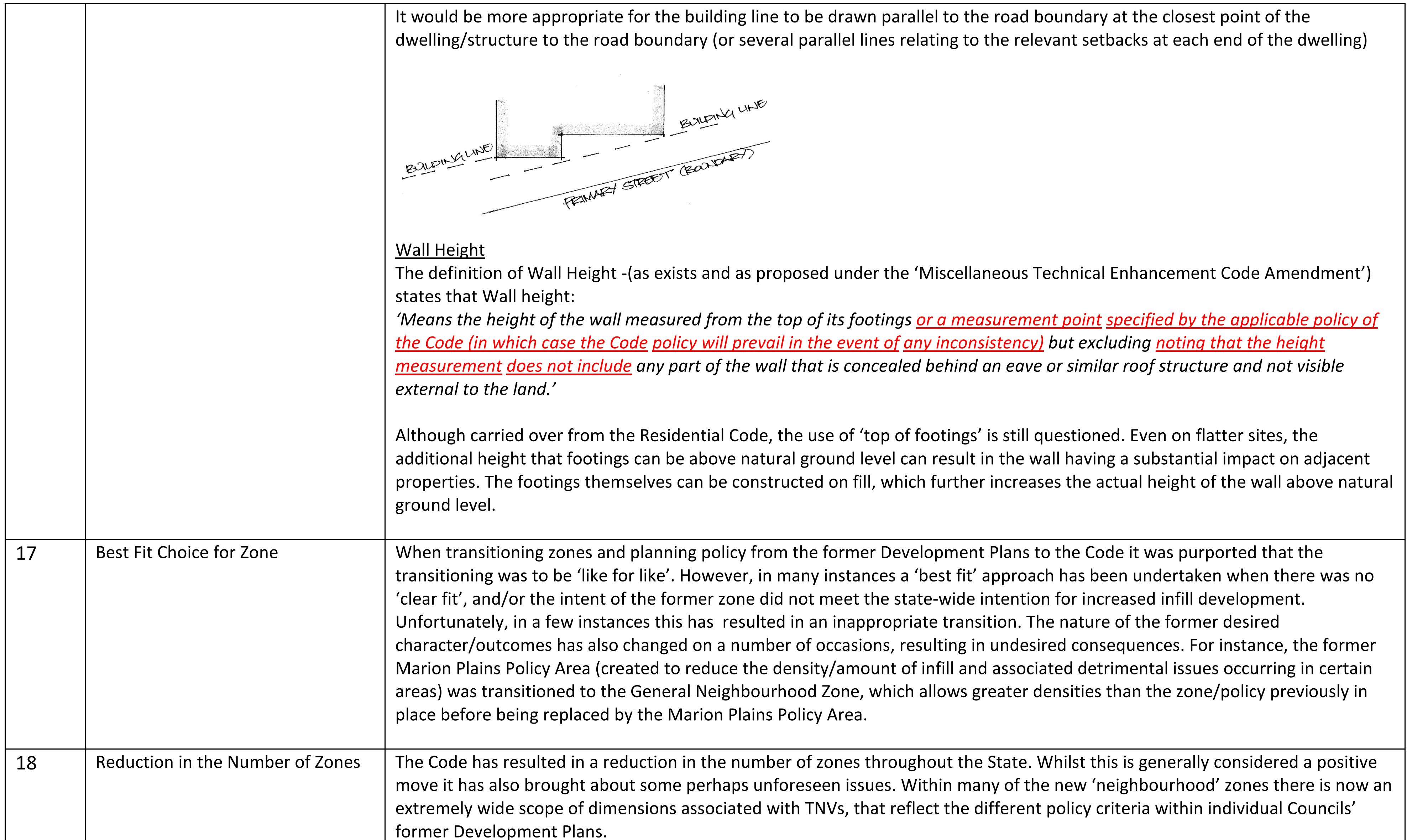
- The definition for Private Open Space - Means a private outdoor area associated with a dwelling that:

		(b) has a minimum dimension of 2.0m for ground level areas and 1.8m for balconies • As with boundary setbacks, a minimum dimension of 2m/3m for private open space is far too small on a sloping site. • The minimum open space areas of $24m^2$ and $60m^2$, whilst possibly appropriate for flat land on the plains, is too small for sloping land. Particularly when considering the $36m^2$ difference if $<$ or $> 301m^2$ • Council's former Development Plan required 20% of site area with a minimum of $35m^2$ and one part of the space being directly accessible from a living room and having an area equal to or greater than 10% of the site area with a minimum dimension of 5 m and a maximum gradient of 1-in-10. • The minimum private open space requirements (area and dimensions) need to be larger on sloping land to ensure the space is usable, it provides sufficient privacy for both the subject site and neighbouring sites, and the dimensions complement existing back yards in the area. The area and dimensions of open space should be relative to the slope of the land (steeper the land the larger the minimum area/dimension) and the size of the site (sliding scale/percentage?) • The use of the site area of $301m^2$ in Table 1 is questioned. Would the use of $\leq 300m^2$ and $>300m^2$ be more logical? <u>Earthworks and Retaining</u> • DTS/DPF 11.3 - *Retaining walls:* *(a) do not retain more than 1.5m in height* *or* *(b) where more than 1.5m is to be retained in total, are stepped in a series of low walls each not exceeding 1m in height and separated by at least 700mm.* • Under Design in Urban Areas (General Development Policies) 'Earthworks and sloping land' DTS/DPF 8.1 - *Development does not involve any of the following:* *(a) excavation exceeding a vertical height of 1m* *(b) filling exceeding a vertical height of 1m* *(c) a total combined excavation and filling vertical height of 2m or more.* • With the inconsistency in height between the two provisions, which takes precedence in the HNZ?
15	Land Use Definitions	The land use definitions should be further reviewed and modernized to recognise new forms of land use i.e. • a definition or supporting policy for Electric Vehicle Charging stations • Micro-brewery / small distillery uses (should be considered 'Urban hospitality venue' or something similar • 'Multiple dwelling' definition was removed from Dev Act/ Dev Regs definition, this should be re-introduced. • Any word which is listed as an 'element' within the Planning & Design Code should have an associated definition. In particular, many minor development forms are not defined – i.e., deck, verandah, carport, treehouse. It can be difficult to define certain non-typical structures and may require dictionary or legal interpretation. 'Tiny dwelling/house' and supporting policy • 'Function centre' (space used for holding events, receptions etc) and supporting policy

Attachment 1: Detailed Marion Council Submission to the Expert Panel

16	Administrative Terms and Definitions	Building Height / Building Line / Wall Height (amongst others) require further review as the current definitions are unclear and illogical to both the general public and many in the planning industry. Building Height The definition of building height (as exists and as proposed under the 'Miscellaneous Technical Enhancement Code Amendment') states that building height: *'Means the maximum vertical distance between the lower of the natural or finished ground level or a measurement point specified by the applicable policy of the Code (in which case the Code policy will prevail in the event of any inconsistency) at any point of any part of a building and the finished roof height at its highest point, ignoring any antenna, aerial, chimney, flagpole or the like………'* This definition does not work on sloping land, particularly if the building is split level, as it can result in a height that does not reflect that the building has been designed to reduce impacts and could result in the building requiring public notification when it has minimal impact beyond the site. Perhaps a more appropriate definition would be: *'means the maximum of the distances measured vertically from the upmost physical extent at any point on the building (ignoring any antenna, aerial, chimney, flagpole or the like) to the lower of the natural or finished ground level immediately below that point.'*  Building Line The building line is (and was under the Development Act) also commonly used when determining appropriate setbacks for a dwelling on an adjacent site. Schedule 4 of the former Development Regulations referenced the definition of building line when considering new dwellings and dwelling additions. Whether used for dwellings or ancillary structures, the building line shown for an angled primary street site boundary could result in structures being sited very close to the street boundary and in front of dwellings/structures on adjacent sites.

Attachment 1: Detailed Marion Council Submission to the Expert Panel

		It would be more appropriate for the building line to be drawn parallel to the road boundary at the closest point of the dwelling/structure to the road boundary (or several parallel lines relating to the relevant setbacks at each end of the dwelling)  Wall Height The definition of Wall Height -(as exists and as proposed under the 'Miscellaneous Technical Enhancement Code Amendment') states that Wall height: *'Means the height of the wall measured from the top of its footings or a measurement point specified by the applicable policy of the Code (in which case the Code policy will prevail in the event of any inconsistency) but excluding noting that the height measurement does not include any part of the wall that is concealed behind an eave or similar roof structure and not visible external to the land.'* Although carried over from the Residential Code, the use of 'top of footings' is still questioned. Even on flatter sites, the additional height that footings can be above natural ground level can result in the wall having a substantial impact on adjacent properties. The footings themselves can be constructed on fill, which further increases the actual height of the wall above natural ground level.
17	Best Fit Choice for Zone	When transitioning zones and planning policy from the former Development Plans to the Code it was purported that the transitioning was to be 'like for like'. However, in many instances a 'best fit' approach has been undertaken when there was no 'clear fit', and/or the intent of the former zone did not meet the state-wide intention for increased infill development. Unfortunately, in a few instances this has resulted in an inappropriate transition. The nature of the former desired character/outcomes has also changed on a number of occasions, resulting in undesired consequences. For instance, the former Marion Plains Policy Area (created to reduce the density/amount of infill and associated detrimental issues occurring in certain areas) was transitioned to the General Neighbourhood Zone, which allows greater densities than the zone/policy previously in place before being replaced by the Marion Plains Policy Area.
18	Reduction in the Number of Zones	The Code has resulted in a reduction in the number of zones throughout the State. Whilst this is generally considered a positive move it has also brought about some perhaps unforeseen issues. Within many of the new 'neighbourhood' zones there is now an extremely wide scope of dimensions associated with TNVs, that reflect the different policy criteria within individual Councils' former Development Plans.

		The dimensions (TNV) associated with a specific property/area can only be determined by entering an address in SAPPA or the Planning and Design Code. One of the main reasons for reducing the number of residential zones was to make the planning process throughout the state, clearer and less confusing for those involved in the development industry. Such extreme variation within a single zone must be both confusing and frustrating for those who would reasonably expect the rules to be the same for all properties within the same zone. On the surface, a reduction in the number of zones appears to have simplified the planning process, however, as dimensional criteria associated with the former zones is still being used, the benefit appears to have been eroded.
19	Notification	The notification process requires refinement so that development applications/proposals which are considered to have potentially significant impacts on the wider locality are appropriately notified, whilst applications which are likely to only impact the adjacent property (I.e., wall on a boundary) have limited notification. A ‘two tier’ notification system should be considered.
20	Traffic Generating Development Overly	The overlay is relevant and appropriate for large scale land divisions. However, it currently also captures small scale developments (i.e., 1 into 2, or 1 into 3 allotments) that are unlikely to have a measurable impact on major transport routes. Moreso, the Overlay is triggered even when an associated land use application has already been considered and approved by Council. The subsequent need to assess the proposal as ‘Performance Assessed’ results in unnecessary resource and time delays for the applicant and Councils. The overlay needs to be amended to correct this situation.
21	Referrals	There is currently no ability for a referral agency to update their referral response or conditions once the referral has been responded to, nor is there a mechanism for them to receive and review amended plans via the Portal. It is not uncommon for meaningful amendments to a proposal to be made following the receipt of referral comments, and this can affect the relevance of the referral agency’s response or conditions. A new referral could be generated; however, this is overly cumbersome, and may potentially require additional referral costs(?). The Portal should provide the ability for an assessor to ‘re-open’ an existing referral back to a referral agency for them to review updated plans and update their referral response/conditions if necessary.
22	Requirement for a Tree to be planted as part of new developments	The Policy needs to be reviewed. The long term resourcing needs for Council’s to inspect properties to ensure the tree has been planted and retained is unclear. How are future residents to be made aware of the need to retain and maintain such trees on their private land (which aren’t Regulated or Significant)? It is also legally questionable if a future owner can be ‘forced’ to retain a tree which does not required approval to remove.
23	Verification and assessment timeframes	The legislated 5-day timeframe in which to provide verification is insufficient, particularly as the development assessment process under the new planning system has resulted in significant additional workloads for Council planning staff.

		The administration time taken to ensure that the required information has been provided and correctly verifies the form of development is considerable and is essentially a mini assessment within 5 days. The Relevant Authority should be financially compensated via an initial (verification) fee or part of the lodgement fee retained by PlanSA being forwarded to the applicable Authority. Council suggests the PDI Act be amended to provide for the following; • Submission of a fee upon submission, paid to the Relevant Authority, to recognise the volume of work associated with verification • 10 business days for the first verification • 5 business days for subsequent verifications
24	Water Sensitive Urban Design (WSUD)	There are currently no POs to achieve WSUD outcomes (e.g., “green” stormwater management systems, swales, permeable pavers etc). WSUD techniques should be incorporated into developments and include evidence of bio-filtration systems, grassed or landscapes swales, slotted kerbs, permeable pavements, and retention systems, consistent with the examples provided in the "Water Sensitive Urban Design Technical Manuals for the Greater Adelaide Region”.
25	Stormwater Management Overlay	The Stormwater Management Overlay is only applicable to some Residential Areas. This needs to be reviewed and expanded to include all residential and commercial areas. Additional relevant stormwater policy should be introduced into the Code to ensure appropriate consideration of potential flood impacts is undertaken in the assessment process.
26	Stormwater	A general stormwater management AP/PO/DTS/DPF is required that gives Council powers to request further information when there are basic issues with an Engineers siteworks design. As an example, a recent plan was submitted to Council by an Engineer, only a single 90mm pipe was proposed when a pipe of around 300mm was required. These types of mistakes are commonplace. There are no general stormwater POs in the PDI currently that can be referred to ensure that on-site drainage systems are designed in accordance with recognised standards and best practices. It is essential this be provided, as without them, Council may be forced to accept a design which contains fundamental design errors that could result in nuisance or flooding. The design and installation of on-site stormwater systems should comply with the National Construction Code (NCC), AS/NZS 3500.3:2018 and industry recognised Engineering best practices.

<table>
<tr><td rowspan="3"></td><td rowspan="3"></td><td></td></tr>
<tr><td>Similar to above, Councils (the stormwater drainage authority) must have the ability to provide direction as to where stormwater must discharge. There is currently no wording in the PDI code which facilitates this.

All stormwater should be managed on site or conveyed to a legal point of discharge as deemed appropriate by the relevant authority.</td></tr>
<tr><td>It needs to be noted that Council drainage systems (excluding new areas where OSD is not required) have historically been designed for much lower runoff coefficients (around 0.35). A majority of pre-development sites are already well above the capacity of receiving Council drainage systems (e.g., up around 0.65).

So, limiting post-development flows to pre-development levels may not always be enough. As an example, if a pre-development site was 100% paved, but the pipe in the street is severely undersized, then it is critical that more stringent OSD be provided in order to prevent flooding of both the new development, and within the road.

Accordingly, it is strongly recommended that wording used for stormwater detention (for all forms of development and land division) in the PDI code is revised to:

Development includes stormwater management systems to mitigate peak flows and manage the rate and duration of stormwater discharges from the site to ensure that development does not increase peak flows or exceed the capacity of receiving drainage systems.</td></tr>
<tr><td>27</td><td>Flooding Evidence Required Overlay</td><td>A more conservative minimum height above top of kerb (e.g., 500mm above TOK, not 300mm) would encourage applicants to engage an Engineer to provide the “evidence required”, which is favourable.

DTS/DPF 1.1 could be changed to:
Habitable buildings, commercial and industrial buildings, and buildings used for animal keeping, covered by the Flooding Evidence Required Overlay, shall incorporate a finished floor level at least 500mm above:

(a) the highest top of kerb immediately adjacent the proposed building
or
(b) the highest point of natural ground level adjacent the proposed building where there is no kerb

Alternatively, a suitably qualified Engineer be engaged to investigate the site and nearby catchment to provide evidence of flood risks and prescribe finished floor levels that provide appropriate protection with freeboard above 1% AEP (100 year ARI) flood risks.”</td></tr>
</table>

28	Easements	The code needs to include AP's regarding development in proximity to, and over easements. If not planned and designed correctly, building footings are at MAJOR risk of being undermined (not to mention the construction nightmares that are caused) if footings adjacent easements are not deep enough. Applicant also need to be aware of the limitations associated with easements (refer Schedule 6 (Section 89A) of the Real Property Act 1886 Design of development should ensure that any structures proposed on or adjacent an easement, or a right of way, does not unreasonably prevent access to the easement, or the right of way pursuant to the requirements outlined in Schedule 6 of the Real Property Act 1886, or any relevant easement documentation. Development on or adjacent an easement, or a right of way must not create the potential for property or building damage should maintenance or works within an easement, or a right of way being undertaken.
29	Driveways	PO permits 1:4 driveway grades without transitions. This does not comply with the requirements of AS2890.1 and will result in vehicles bottoming or scraping. There is also nothing in the code regarding grade limitations for commercial vehicles. The maximum gradient of driveways shall comply with AS/NZS 2890.1:2004 section 2.5.3 (passenger vehicles) and AS 2890.2:2018 section 3.3.3 (commercial vehicles).
		DTS/DPF 3.6 refers to the width of driveway access point no greater than 3.5m or 6m. It needs to clearly mention where this width is to be measured – at the property boundary or at the kerb
		Additional DTS's are required to ensure crossovers are appropriately flared to facilitate unobstructed access into developments. If only a 3-4m crossover (at the kerb) is provided, and if a vehicle parks on-street at the edge of crossovers (legally allowed), then it is not physically possibly to manoeuvre into and out of an allotment. A multi-point turn is often also of very little benefit (plus unsafe) because of the tight nature. This results in complaints to Councils to restrict on-street parking, so that residents can get in and out. Residential crossovers should measure a minimum 5.0m at the kerb (driveway plus flaring). Commercial crossovers should comply with the minimum dimensions outlined in AS 2890.2:2018 section 3.4, figures 3.1 & 3.2. Alternatively, a vehicle turning path assessment should be completed to confirm that the largest sized vehicle expected to access that site can enter and exit the land when all on-street parking spaces are full, and vehicles are parked the edge of crossovers, or on the opposing side of the road (where possible).

Attachment 1: Detailed Marion Council Submission to the Expert Panel

30	Planning and Development Fund	The offsetting of lost open space through payment into the P&D Fund could have an increased allocation of funding to urban greening priorities. The current fund favours large-scale projects and does not have a clear method for prioritising projects based on urban greening or climate resilience needs. P&D Fund to have a more direct link to the priorities emerging from the Adelaide Urban Greening Strategy (in development by Green Adelaide) along with the evidence-base being collected through the state government urban heat and tree canopy mapping. Options for funding of smaller projects and bio-diversity projects to also be considered.
31	Request for Further Information – timeframe and purpose	Timeframe – The current 10-day period from lodgement in which to issue a valid RFI is not sufficient. Due to various factors typical of the assessment process, such as workloads, assessment complexities, public notification or referrals, the need for additional information is often not identified until after the initial 10-day period. It is suggested that an RFI should be able to be sent at any time during the assessment period, subject to reasonable limitations (such as within the first 20-30 days for applications with longer assessment timeframes). Purpose – The legislated purpose of an RFI is to ask for information only. A common practice within the industry (across both Councils and private certifiers) is to use RFIs/RFDs not only to request information, but also to request amendments. Negotiation is often a key part of the assessment process, and the current RFI mechanism (as legislated) does not allow for this to occur.
32	Public Open Space	The purpose of and usability of land allocated as public open space within a land division proposal can often be a matter of disagreement between Councils and the developer. The shape, size and slope of the land and its location within a watercourse are often matters of debate/negotiation. Some of the policy within the Code relative to the matter appears to be inconsistent regarding what should be included as public open space: *General Development Policy* *Land Division* *PO 2.6* Land division results in watercourses being retained within open space and development taking place on land not subject to flooding. *PO 9.2* *Land allocated for open space is suitable for its intended active and passive recreational use considering gradient and potential for inundation.*

		What can and cannot be considered as part of the 12.5% provision of open space needs to be better articulated within the Code, the PDI Act 2016 and PDI Regulations 2017.
33	Detached dwellings in terrace arrangement 'loophole'	Detached dwellings in a terrace arrangement can be approved with DTS land division to follow. Then land division results in creation of allotments which could then be sold on separately, developed separately, and as a result, detached dwellings in a terrace arrangement are not constructed on allotments which were created for that purpose. This situation requires amending to ensure that the approved development (detached dwellings in terrace arrangement) is constructed rather than an ad-hoc group of compromised designed detached dwellings that may result in detrimental impacts on the amenity and function of the streetscape.
34	Large ancillary structures	The numerical limits in DTS/DPF 19.1 are not reflective of the wording of associated PO 19.1, particularly regarding wall height and the extent of a boundary the structure can be located on. PO 19.1 (Ancillary Development) under 'Design in Urban Areas' should be strengthened to provide greater control over larger outbuildings which can affect the amenity of neighbouring properties and the streetscape. i.e.: *'Residential ancillary buildings are sited and designed to not detract from the streetscape or appearance of primary residential buildings on the site* ***or where there will be an impact on amenity when viewed from internal or external living areas of*** *neighbouring properties,* ***particularly regarding overshadowing and bulk and scale****.'* Ancillary buildings larger than the 60m² maximum floor area may be appropriate on larger properties where impacts beyond the site would be minimal. It may therefore be appropriate to allow floor areas greater than 60m² as a DTS if the structure is no more than 10% of the site area. A definition for 'non-habitable ancillary development' should be included in the Administrative Terms and Definitions Table in Part 8 of the Code, which provides a clear understanding of the terms ancillary and subordinate.
35	Height of wall measured from footings	There is limited criteria within the Code to prevent the construction of high footings and/or unnecessary or excessive fill, which could exacerbate the impacts of a 3m high wall. There are inconsistencies within the Code regarding the way the height of a wall is to be measured. The wall height of a dwelling and an ancillary building on the same site are measured differently (top of footing and natural ground level are used; with also no reference to either method for ancillary buildings). i.e., Dwelling boundary walls are limited to 3m from the top of footings, in the GNZ, whereas an ancillary building boundary wall is limited to 3m, with no reference to where it is measured from.

		In the Miscellaneous Technical Enhancement Code Amendment, the definition of wall height is proposed to be changed to make this situation clearer: - *Means the height of the wall measured from the top of its footings or a measurement point specified by the applicable policy of the Code (in which case the Code policy will prevail in the event of any inconsistency) but excluding noting that the height measurement does not include any part of the wall that is concealed behind an eave or similar roof structure and not visible external to the land.* For consistency and to better ensure that the height of a wall (particularly when located on a boundary) has minimal impacts on adjoining properties, all wall heights should be measured from natural ground level.
36	When earthworks are development	Earthworks (over 9 cubic metres) is not development in many zones. To enable better control, assessment, and possible enforcement of excessive or unnecessary earthworks, the number of zones where earthworks is designated as development should potentially be expanded. In addition, other different triggers for earthworks could be introduced. One of the biggest issues is the impact the height of fill has on the overall scale/bulk of development; a maximum height trigger could be used in addition to the overall volume proposed. Council has an example where fill in the Rural Neighbourhood Zone is not development. The zone covers properties with a watercourse running through them and were previously recognised in the former Watercourse Zone. Uncontrolled fill can be a problem adjacent a watercourse. The area is covered by the 'Water Resource Overlay' and Council suggests that excavating or filling of land covered by a 'Water Resource Overlay' should designated as development (see below) and therefore requiring assessment. . 'Water Resource Overlay' should be included in '*Part 5 - Table 1 - Specified matters and areas identified under the Planning, Development and Infrastructure (General) Regulations 2017 - Additions to definition of development.'*
37	URNZ and HDNZ southern side setback criteria	There are no DTS/DPF additional requirements for southern side setbacks (overshadowing) in these Zones. Other neighbourhood zones require a greater DTS/DPF southern side setback. It is understood that these zones are to be developed with higher density development than other neighbourhood zones, however, many of the lower density dwellings within these zones have been recently built so would be impacted by multi storey development for the distant future. They therefore warrant greater protection from overshadowing/overlooking etc. Greater setback distances should be applied for southern side boundaries, particularly if abutting a low density newly built dwelling constructed prior to the commencement of the Code.

38	Car Parking Rates	Table 2 - Off-Street Car Parking Requirements in Designated Areas - Transport, Access and Parking - Part 4 - General Development Policies Table 2 is very difficult to interpret. Determination of the parking rate requires consideration of two tables, both of which contain extensive criteria that are 'subject to' other criteria or subject to 'exceptions'. The table/s and directions on how to determine the appropriate parking rate should be made simpler and less confusing. The wording for parking rates for an 'Educational establishment' could be made clearer, as it can be interpreted that both employee carparking and student pick-up areas can be either on-site or on the public realm (on-street). It is taken that employee parking is meant to be on-site only and that student pick-up areas can be either. Suggested change to wording below: *'For a primary school - 1.1 space per full time equivalent employee* ***on-site,*** *plus 0.25 spaces per student for a pickup/set down area either on-site or on the public realm within 300m of the site.'* The availability of on-street parking for student pick-up can be contextual, dependent on surrounding land uses. Schools are quite often within residential areas where conflict between student related vehicles and residents can be high. There is no parking rate for a Function Centre
39	GNZ Public notification trigger for Shops/offices/consulting rooms adjacent to Activity Centre Zone	Public notification trigger for GNZ shops/offices/consulting rooms (Table 5, Clause 4) adjacent to an Activity Centre Zone refers to criteria – GNZ DTS/DPF 1.4(d) – which requires excessive measurements of existing floor areas within and adjacent to the Activity Centre Zone. This requirement is very cumbersome and introduces the risk of error.
40	Student accommodation POS	Student accommodation definition excludes 'dwelling' and 'Residential flat building' – this has resulted in an argument that student accommodation does not require POS. The POS table should be updated to specifically list student accommodation.
41	Interchanged use of 'dwelling' and 'building' in various Zone POs	Criteria such as setbacks in certain zones refer to 'dwellings' not 'buildings' even when building is mentioned in the PO – This lacks consistency and is not helpful if the application is not for a dwelling.
42	Waste	Waste POs should be strengthened so that if the site frontage/kerb cannot accommodate the required number of bins for kerbside collection, then on-site collection or communal bins are required
43	Portal enhancements	When a Request for Further Information expires, the Portal should automatically follow up with the applicant rather than it being the responsibility of Council The Portal should illustrate any applications previously submitted on the subject land to assist the relevant authority to understand what development has been previously lodged/approved on the site (i.e., visual link to Application ID and status).

44	Act/Reg changes	A Request for Further Information should expire after 12 months and the application should automatically lapse/be withdrawn at that time (Act/Regs)
45	State-wide infrastructure design standards	State wide infrastructure design standards should be implemented i.e., consistent driveway crossover standards etc
46	Land division - with retention of existing dwelling	Within many of the Neighbourhood Zones PO 2.2 states *'Development creating new allotments/sites in conjunction with retention of an existing dwelling ensures the site of the existing dwelling remains fit for purpose.'* DTS/DPF 2.2 states: *Where the site of a dwelling does not comprise an entire allotment:* *(a) the balance of the allotment accords with site area and frontage requirements specified in Suburban Neighbourhood Zone DTS/DPF 2.1* *(b) if there is an existing dwelling on the allotment that will remain on the allotment after completion of the development, it will not contravene:* *I. Private open space requirements specified in Design in Urban Areas Table 1 - Private Open Space* *II. Car parking requirements specified in Transport, Access and Parking Table 1 - General Off-Street Car Parking Requirements or Table 2 - Off-Street Car Parking Requirements in Designated Areas to the nearest whole number.* The wording in (b) suggests that the only criteria the existing dwelling and its associated allotment is required to meet, in addition to site area and frontage dimensions, is car parking and private open space criteria, in order to be classified as DTS. This criteria is too limited. The existing dwelling should have to meet, or at least be assessed against, all of the same criteria as the new dwelling is required to. Other considerations such as site coverage, soft landscaping, setbacks etc. are warranted and would better reflect PO 2.2 requirement for the site of the existing dwelling remaining 'fit for purpose'.

Attachment 2: List of Issues - CoM Environment Department

	Summary of Issue	Possible Resolution/Proposed Amendment
Native vegetation protection	Protection of native vegetation on private land is a challenge and within the City of Marion there continues to be clearance of remnant vegetation on land that is in private ownership – particularly in the southern areas of the City of Marion. The collective loss of these high value biodiversity sites is of strategic importance not just to our local community, but also as part of national and global commitment to halt biodiversity loss (Australian Government Nature Positive Plan and UN Convention of Biological Diversity). The current policies in the Code provide very little protection for native vegetation in the metropolitan area and the fate of these rare patches of vegetation that have persisted through colonisation falls to the individual opinions of landowners and developers. The application of the Native Vegetation Overlays under the Code does not reflect the actual distribution and value of native vegetation in our council area. The distribution is largely an historic administrative relic based on Hills Face Zone and the former Metropolitan Open Space System zone under the Native Vegetation Regulations of the Native Vegetation Act.	• Native Vegetation Act and Native Vegetation Overlay to apply to all of the metropolitan area OR (for Marion at a minimum) all areas south of Seacombe Road plus the Sturt River corridor (as per council resolution). • Definition of "State Significant Native Vegetation Overlay" to change and instead apply to all areas with Conservation Zone or Hills Face Zone. This is particularly important in how first breaks can be managed and reducing the development of residential areas directly abutting Conservation Zones. • State government mapping of remnant native vegetation to also include native vegetation on private land in metropolitan Adelaide (new mapping required). Councils would be able to assist with data. • Conservation Zones to be applied to all areas containing native vegetation that are strategically important regeneration / restoration areas - as identified by the local councils, regional landscapes board and DEW (similar to the old Metropolitan Open Space System and Parklands 2036 Strategy, but with an updated focus on wildlife corridors and biodiversity sensitive urban design). • There are currently areas of Hills Face Zone covering existing built residential areas (e.g. around Seaview Downs) and that have no conservation value. Zoning of these areas should be reviewed to support better administration of the Code. • A review of this provision could also incorporate a review of the Hills Face Zone and how it supports native vegetation protection. • Ensure review process for qualified native vegetation specialists has a similar pathway for reviews by qualified arborists. • Assessment of native vegetation onsite to include before and after ratings that can be publicly reported. Target of net positive biodiversity to be achieved in key zones. This is similar to systems being adopted in the United Kingdom.
Tree protection	Large numbers of trees are lost through Development Applications under the 'Reasonable Development' clause in the PDI Act. No clear definition is provided on what constitutes 'Reasonable Development'. Arguments are made for tree retention on the grounds	Clear definition on 'Reasonable Development', eg. If X amount of canopy cover is lost, the development is not reasonable.

	that it is unreasonable to lose the tree, however it often swings back to zoning, and if the zoning allows the development, then it is reasonable.	
	Privately Certified developments: Privately certified approvals cause lots of issues, with inaccurate/misleading plans submitted to Council which often do not reflect Council street trees in the plan. As a consequence of the approved development approval Council's Arboriculture Team will (often reluctantly) need to remove an otherwise healthy and beneficial street tree.	Council should be able to refuse development if the plans are inaccurate/misleading, forcing private certifiers to ensure all lodged documents are accurate and reflect Council vegetation. There is no wording in the Act which provides this to Council at this stage.
	With ongoing urban infill, the ability to remove any tree that is within ten metres of a dwelling or swimming pool effectively means that many "protected" trees in urban areas are exempt from protection. A recent case where an abandoned, filled-in pool was used to remove a Regulated Tree and a recent ERD court decision whereby a Norfolk Island Pine which had a stem >10m away from any structure was removed on the basis that a basal root was within 10m of a building demonstrate that this section is problematic.	Replace current 10m provision with a requirement for a proponent to demonstrate that a protected tree is interfering with a substantial structure (e.g. through an engineer's report) and the value of that structure be weighed up against the value of the tree.
	The conflict between the requirement for one new tree per allotment and 10m exemption for most species suitable for small areas means that most of trees planted will have no protection. The planted young tree is offered no additional protection if the property is sold and new owners move in and simply remove it.	Reduction in minimum trunk size / crown size for approvals, and removal of 10m provision (see detailed responses on this in TABLE 1 below)

Attachment 2: List of Issues - CoM Environment Department

	The use of a blanket exemption for "declared weeds" can be problematic since many examples exist where declared weeds have either heritage value (e.g. olive groves) or provide ecosystem services that are of greater value within their local context e.g. shade canopy (e.g. Desert Ash) or food sources to threatened species (e.g. Aleppo Pine for Yellow-tailed Black Cockatoo). Trees are often removed by state government on state government land without independent consideration of the value of the trees against the reasons for their removal. This often occurs along roads (e.g. for City of Marion as part of the Darlington South Road upgrades) and at public school sites. These types of locations have particularly high risks associated with increased urban heat.	Declared weeds (under the *Landscape South Australia Act 2019*) should not have a blanket exemption from approvals. Instead applications could be made for defined areas (e.g. woody weed control along a creekline). It is recommended that current exemptions from tree protection regulations for some state government agencies (notably the Department of Infrastructure and Transport and Department for Education) be removed; as well as advocacy to exempt Commonwealth agencies (e.g. the Department of Defence) to promote the protection of trees on public land – particularly given the increase urban heat risk exposure of these publicly managed areas.
Open Space and Trees Project	We note the State Planning Commission's "Open Space and Trees Project" and provide general support for Part 1 and Part 2 of the project and the concept that these should be reviewed by the Expert Panel as part of the Planning System Implementation Review. The *Open Space and Trees Project – Part 1A (Arborist Review)* has been reviewed by City of Marion arborists together with key staff (including arborists) regional collaboration on urban greening priorities in the Resilient South regional climate partnership (www.resilientsouth.com). The following key notes were made: • Dr Dean Nicolle does not appear to hold arboricultural qualifications, nor is he a	Specific detailed responses are provided in Table 1 and Table 2 below. We note in particular that many of the recommendations will have resourcing and financial implications for councils and therefore need further formal consideration by Council. <u>The comments in the table represent views of technical staff and not a formal position for City of Marion.</u> • **TABLE 1.** Summary of Recommendations from the Report *Open Space and Trees Project – Part 1A (Arborist Review)* with Resilient South council responses. • **TABLE 2.** Summary of Recommendations from the Report *Urban tree protection in Australia: Review of regulatory matters* with Resilient South council responses. In relation to Regulation 3F (exempt species), t would be preferable to remove this section and that proponents wishing to remove/modify <u>**ANY TREE**</u> above a specific size threshold having to apply for a council permit to do so.

<table>
<tr><td></td><td>member of, or endorsed by, a relevant professional association (e.g. the International Society of Arborists or Arboriculture Australia).
The methodology that Dr Nicolle has used to value and rank species appear to be based on his opinion and professional experience and is not recognised externally. These valuations should be evaluated by a group of industry professionals before being accepted by the state government.
The majority of Dr Nicolle’s report is concerned with the inclusion of various species on exemption lists under Regulation 3F of the Planning, Development and Infrastructure Act 2016. The presence of such lists complicates the implementation of the Act in that a proponent needs to identify a tree to evaluate if it can be modified/removed.</td><td>While several of the recommendations from the reports are supported, there is concern that increased protection of trees will increase the regulatory burden on local governments. It is therefore recommended that any increase in regulation be accompanied by a mechanism to resource local governments for this, e.g. through leveraging fees or state government provision of funds.</td></tr>
<tr><td>Coastal climate change hazard</td><td>Increased understanding of coastal change is highlighting the need for progressive changes to coastal zoning to accommodate sea-level rise and other climate-related impacts.</td><td>Coastal planning policies to be based on statewide modelling of 2050 and 2100 inundation and erosion hazards.
State government to develop a state Coastal Retreat Policy that links to the PDI and other relevant legislation.
State government to implement similar coastal legislation reforms to NSW, VIC and QLD with reviews to ensure improved interaction between Planning, Development and Infrastructure Act, Coast Protection Act, Harbors and Navigation Act, Crown Land Management Act and heritage legislation.</td></tr>
<tr><td>Protection of coastal land</td><td>Impacts to coastal land from changing coastal conditions can result in changes to the land that are similar to the impacts of “development”.

Areas of “coastal land” are commonly under the care, control and management of councils. The role of</td><td>State government to implement similar coastal legislation reforms to NSW, VIC and QLD with reviews to ensure improved interaction between Planning, Development and Infrastructure Act, Coast Protection Act, Harbors and Navigation Act, Crown Land Management Act and heritage legislation.</td></tr>
</table>

	council in managing changes to coastal land due to changing environmental conditions is unclear. As climate-related coastal changed increase this lack of clarity will continue to increase. For the City of Marion, this currently includes a lack of role clarity for making decisions on the protection of heritage places and registered cultural sites on the coastline.	
Climate Resilience	Reference is made to page 12 of the LGA's draft submission document: ***Energy Positive and Carbon Neutral Housing*** *The current Code does not have clear policy outcomes that promote more energy efficient and carbon neutral buildings apart from minimal standards of insulation and shading and tree planting.* *Land use planning can play an important role in climate change mitigation and adaptation. The Planning Development and Infrastructure Act 2016 requires the Minister for Planning to prepare a specific state planning policy relating to climate change. The Policy identifies the specific policies and principles that should be applied with respect to minimising adverse effects of decisions made under the Act on the climate and promoting development that is resilient to climate change. A key action for government is to strengthen these policies for climate smart development through the planning system.* *Upcoming amendments to the National Construction Code will see a requirement for new constructions to increase from a 6 star to 7 star rating and the Planning and Design Code should also be amended to promote more energy efficient and carbon neutral buildings.*	As natural hazards intensify, living expenses like energy, mortgages and insurance will get more expensive for climate vulnerable homes – that is, homes that are in high-risk areas and have not been built to mitigate those risks. The 'Where We Build What We Build' initiative developed by the Resilient Hills & Coasts Regional Climate Partnership aims to encourage building or retrofitting of homes that are climate-ready, by demonstrating that the benefits of doing so outweigh the costs. This awareness and encouragement approach could be promoted throughout the State via both the planning and building systems and the development industry. Policy regarding climate smart development should be strengthened within the planning system.

Attachment 2: List of Issues - CoM Environment Department

Climate hazard mapping	Climate-related hazards have the potential to change over time and need to include some flexibility in planning responses on a regular basis as new information is collected. This is particularly important for: • Bushfire • Urban heat • Coastal erosion • Flooding (including seawater flood).	The State government should coordinate regional climate hazard mapping on a regular basis and include hazard overlays directly into the SA Planning Atlas. Hazard overlays to direct permitted types of development, housing design and planning requirements for community emergency responses. SA Planning Atlas to be a central location for climate hazard mapping.
Planning and Development Fund	The offsetting of lost open space through payment into the P&D Fund could have an increased allocation of funding to urban greening priorities. The current fund favours large-scale projects and does not have a clear method for prioritising projects based on urban greening or climate resilience needs.	P&D Fund to have a more direct link to the priorities emerging from the Adelaide Urban Greening Strategy (in development by Green Adelaide) along with the evidence-base being collected through the state government urban heat and tree canopy mapping. Options for funding of smaller projects and biodiveristy projects to also be considered.

Attachment 2: List of Issues - CoM Environment Department

TABLE 1. Summary of Recommendations from the Report *Open Space and Trees Project – Part 1A (Arborist Review)* with Resilient South council responses.

Section 2.4.1 – Currently generically excluded species under Regulation 3F (4) (b)

Section 2.4.1 – Currently generically excluded species under Regulation 3F (4) (b)	
Recommendation	**Response**
Retain *Acer negundo* (box elder) on the list of species excluded from Regulation 3F (4) (b).	Not supported.
Remove *Acer saccharinum* (silver maple) from the list of species excluded from Regulation 3F (4) (b).	Supported.
Retain *Ailanthus altissima* (tree of heaven) on the list of species excluded from Regulation 3F (4) (b).	Not supported. Suggest this species could be better managed through use of planning overlays.
Remove *Alnus acuminata* subsp. *glabrata* (evergreen alder) from the list of species excluded from Regulation 3F (4) (b).	Supported.
Remove *Celtis australis* (European hackberry) from the list of species excluded from Regulation 3F (4) (b).	Supported.
Remove *Celtis sinuensis* (Chinese hackberry) from the list of species excluded from Regulation 3F (4) (b).	Supported.
Remove *Cinammomum camphora* (camphor laurel) from the list of species excluded from Regulation 3F (4) (b).	Supported.
Retain *Cupressus macrocarpa* (Monterey cypress) on the list of species excluded from Regulation 3F (4) (b).	Not supported. Suggest this species could be better managed through use of planning overlays.
Remove *Ficus* species (figs) from the list of species excluded from Regulation 3F (4) (b) except where <10m from dwelling.	Supported.
Remove *Ficus macrophylla* (Moreton Bay fig) from the list of species excluded from Regulation 3F (4) (b) except where <10m from dwelling.	Not supported. Suggest removal of this species from the list entirely as it is captured within the genus *Ficus* covered by the previous recommendation.
Retain *Fraxinus angustifolia* (desert ash) on the list of species excluded from Regulation 3F (4) (b) except for the grafted cultivar 'Raywood' (claret ash).	Not supported. Suggest removal of this species (including the Raywood cultivar) from the list entirely as it is a high performing street and garden tree.
Remove *Fraxinus angustifolia* 'Raywood' (claret ash; listed as *F. angustifolia*) from the list of species excluded from Regulation 3F (4) (b).	Supported (noting recommendation to remove the entire species from Regulation 3F).
Retain *Lagunaria patersonia* (Norfolk Island hibiscus) as exempt from tree-damaging activity under Schedule 4 (18).	Not supported.

Attachment 2: List of Issues - CoM Environment Department

Remove *Melaleuca styphelioides* (prickly-leaved paperbark) from the list of species excluded from Regulation 3F (4) (b).	Supported.
Retain *Pinus radiata* (Radiata pine) on the list of species excluded from Regulation 3F (4) (b).	Not supported. Suggest this species could be better managed through use of planning overlays.
Remove *Platanus x acerifolia* (London plane) from the list of species excluded from Regulation 3F (4) (b).	Supported.
Retain *Populus alba* (white poplar) on the list of species excluded from Regulation 3F (4) (b).	Not supported. Suggest this species could be better managed through use of planning overlays.
Retain *Populus nigra* 'Italica' (Lombardy poplar) on the list of species excluded from Regulation 3F (4) (b).	Not supported. Suggest this species could be better managed through use of planning overlays.
Retain *Robinia pseudoacacia* (black locust) on the list of species excluded from Regulation 3F (4) (b).	Not supported. Suggest this species could be better managed through use of planning overlays.
Retain *Salix babylonica* (weeping willow) on the list of species excluded from Regulation 3F (4) (b).	Supported. Suggest all *Salix* species should be excluded.
Retain *Salix chilensis* 'Fastigiata' (Chilean pencil willow) on the list of species excluded from Regulation 3F (4) (b).	Supported. Suggest all *Salix* species should be excluded.
Retain *Salix fragilis* (crack willow) on the list of species excluded from Regulation 3F (4) (b).	Supported. Suggest all *Salix* species should be excluded.
Retain *Salix* x *rubens* (hybrid crack willow) on the list of species excluded from Regulation 3F (4) (b).	Supported. Suggest all *Salix* species should be excluded.
Retain *Salix* x *sepulcralis* var. *chrysocoma* (golden weeping willow) on the list of species excluded from Regulation 3F (4) (b).	Supported.
Remove *Schinus molle* (peppercorn) from the list of species excluded from Regulation 3F (4) (b).	Supported.
Section 2.4.2 – Other species recommended as generically excluded species	
Recommendation	**Response**
Add *Eucalyptus globulus* (Tasmanian blue gum) to the list of species excluded from Regulation 3F (4) (b).	Not supported. Suggest these species could be better managed through use of planning overlays or applications for removal across defined areas.
Add *Eucalyptus grandis* (flooded gum) to the list of species excluded from Regulation 3F (4) (b).	
Add *Eucalyptus saligna* (Sydney blue gum) to the list of species excluded from Regulation 3F (4) (b).	

Add *Melaleuca armillaris* (bracelet honey-myrtle) to the list of species excluded from Regulation 3F (4) (b).	
Add *Olea europa* (olive) to the list of species excluded from Regulation 3F (4) (b), excepting non-fruiting cultivars and individuals.	
Add *Phoenix canariensis* (Canary Island date palm) to the list of species excluded from Regulation 3F (4) (b).	
Add *Pinus halepensis* (Aleppo pine) to the list of species excluded from Regulation 3F (4) (b).	
Add *Pittosporum undulatum* (sweet pittosporum) to the list of species excluded from Regulation 3F (4) (b).	
Add *Populus* species (all poplar species) to the list of species excluded from Regulation 3F (4) (b).	
Add *Prunus* species (all stone fruit species) to the list of species excluded from Regulation 3F (4) (b).	
Add *Pyrus* species (all pear species) to the list of species excluded from Regulation 3F (4) (b).	
Add *Salix* species (all willow species) to the list of species excluded from Regulation 3F (4) (b).	
Add *Tamarix aphylla* (Athel pine) to the list of species excluded from Regulation 3F (4) (b).	
Add *Ulmus minor* (English elm) and *Ulmus* x *hollandica* (Dutch elm) to the list of species excluded from Regulation 3F (4) (b).	
Section 2.4.3 – Species currently not excluded even when <10m from a dwelling/pool.	
Recommendation	**Response**
Regulation 3F (4)(a) be abolished, and replaced with a list of species to be excluded from the definition of a ‘regulated tree’ and ‘significant tree’ under the *PDI Act 2016* when located <10 m from a dwelling or pool.	Not supported. The ability to remove a tree in proximity to a structure without any evidence the structure is of value or being negatively impacted makes this provision open to abuse.
Agonis flexuosa (willow myrtle) not be excluded, even when <10m from a dwelling or pool.	The meaning of this recommendation is unclear. We recommend that trees not be exempt from protections based on proximity to a structure alone.
Eucalyptus species (gums) not be excluded, even when <10m from a dwelling or pool.	The meaning of this recommendation is unclear. We recommend that trees not be exempt from protections based on proximity to a structure alone.

Attachment 2: List of Issues - CoM Environment Department

Section 2.4.4 – Species recommended for exclusion when <10m from a dwelling/pool	
Recommendation	**Response**
Casuarina species (all species and excluding the genus *Allocasuarina*) be **excluded** from the definition of a 'regulated' or 'significant' tree when <10m from a dwelling or pool.	Not supported.
Cupressus species (all species except *C. macrocarpa*) be **excluded** from the definition of a 'regulated' or 'significant' tree when <10m from a dwelling or pool.	Not supported.
Ficus species (all species) be **excluded** from the definition of a 'regulated' or 'significant' tree when <10m from a dwelling or pool.	Not supported.
Section 2.4.5 – Trunk size triggers	
Recommendation	**Response**
For multi-trunked individuals, only trunks that are 1m or greater in circumference be included in the total trunk circumference, with no average trunk circumference required.	We agree that there is value in instituting a minimum threshold for trunks when calculating the trunk circumference of multi-stemmed individuals. However, we regard the current 2m circumference threshold for a tree to reach 'regulated' status as too high. We therefore support this suggestion but suggest an individual trunk circumference threshold lower than 1m. Any change in the way multi-trunked trees are assessed should ensure typical mature grey box (*Eucalyptus microcarpa)* meet the definition of a Regulated/Significant tree.
Section 2.4.6 Consistency with the *Landscape South Australia Act 2019*	
Recommendation	**Response**
All tree species of Declared Plants in the Landscape South Australia Act 2019 also be listed as generically excluded species in the PDI Act 2016. Regulation 3F (4)(c) of the PDI Act 2016 could then be removed from the regulations, as it would become redundant. This option will result in a longer list of generically excluded species under Regulation 3F (4)(b) of the PDI Act 2016, but would mean that all generically excluded species are listed together in the PDI Act 2016, without the need to cross-reference the Landscape South Australia Act 2019.	Not supported. The *Landscape South Australia Act* is primarily focused on the management of productive landscapes and open areas and some species that are identified as weeds in a general sense may be suitable for cultivation under some conditions in an urban environment.

No species of Declared Plants in the Landscape South Australia Act 2019 be listed as generically excluded species in the PDI Act 2016, and Regulation 3F (4)(c) of the PDI Act 2016 is retained (effectively excluding all Declared Plant species). While this option would result in a much shorter list of generically excluded species under Regulation 3F (4)(b) of the PDI Act 2016, it is less user-friendly, as it would require anyone enquiring about which species are exempt to consider both Regulation 3F (4)(b) of the PDI Act 2016 and the numerous classes of Declared Plants in the Landscape South Australia Act 2019.	Supported, noting that consideration should be given to including any Declared Plant in the PDI Act also.
Section 2.4.7 Species identification concerns	
Recommendation	**Response**
It is recommended that the identification concerns regarding certain species that are recommended for exclusion be further investigated. Such an investigation is beyond the scope of this report. Potential mechanisms to address species identification concerns could include a clause in the Regulations requiring for the professional identification of a tree prior to approval of its removal/damage/pruning. Professional identification could be undertaken by agreement with the Botanical Gardens and State Herbarium of South Australia (likely requiring some additional resources by this organisation to undertake the identifications), or by an appropriately qualified and/or experienced consultant (e.g. a botanist) at a financial cost to either the applicant or the approving body.	Not supported. While we agree that incorrect identification remains a problem with the protection of trees, we do not regard mandating identification by the Botanic Gardens and State Herbarium or other experts as necessary. Rather, we recommend increased enforcement and penalties of arborists who incorrectly identify protected trees leading to their damage or removal to encourage greater upskilling of the industry, and the use of external consultants for identification when required. Planning overlays could be used to identify areas where expert identification might be warranted, e.g. in native conservation areas where superficially similar weeds may grow alongside native relatives (e.g. *Casuarina glauca* and *Allocasuarina verticillata*).
Section 3 – Should Regulation 3F(4)(a) be extended to include genera *Corymbia* and *Angophora?*	
Recommendation	**Response**
It is recommended that all species (and therefore all genera) be included in the definition of 'regulated tree' and 'significant tree' under the PDI Act 2016, even when <10 metres from a residential dwelling or swimming pool, excluding generically excluded species (listed in Section 4.1) and excluded species when <10 m from a dwelling or pool (listed in Section 4.2). This makes redundant the question of whether the genus Eucalyptus as referred to in	Supported, noting earlier comments around exemptions close to a dwelling or swimming pool.

Attachment 2: List of Issues - CoM Environment Department

Regulation 3F(4)(a) should be extended to also include the genera *Corymbia* and *Angophora*.	
In the case that the alternative and non-preferred recommendation is adopted, that all species be excluded from the definition of 'regulated tree' and 'significant tree' under the PDI Act 2016 when <10 metres from a residential dwelling or swimming pool, excepting for *Agonis flexuosa* and *Eucalyptus* species (i.e. the current regulations), then the following is recommended: - *Eucalyptus* (all species) be maintained as an exception to the exclusion from the definition of 'regulated tree' and 'significant tree' under the *PDI Act 2016* when <10 metres from a residential dwelling or swimming pool - *Angophora* (all species) and *Corymbia* (all species) be added as exceptions to the exclusion from the definition of 'regulated tree' and 'significant tree' under the *PDI Act 2016* when <10 metres from a residential dwelling or swimming pool. - *Agonis flexuosa* (Willow Myrtle) be removed from the exception to the exclusion from the definition of 'regulated tree' and 'significant tree' under the *PDI Act 2016* when <10 metres from a residential dwelling or swimming pool.	Supported, noting earlier comments around exemptions close to a dwelling or swimming pool.

TABLE 2. Summary of Recommendations from the Report *Urban tree protection in Australia: Review of regulatory matters* with Resilient South council responses

Section 6.1 Recommendations drawn from regulatory review data	
Recommendation	**Response**
Reduce circumference protection threshold from two metres to approximately 50cm.	Supportive of reducing circumference protection in PDI Act (perhaps to 1m) as a baseline and then giving councils power to institute further protections based on their own contexts.
Institute an independent height protection threshold of less than six metres.	
Institute an independent crown spread protection threshold of ≤6m.	

Attachment 2: List of Issues - CoM Environment Department

Institute location-based protections for trees.	Supported. Councils should be able to develop their own zoning/planning overlays to protect particular tree types in different areas of their councils.
Designate one or more tree registers to which nominations can be made, the entries on which should be extended full protections.	Supported, particularly if exemptions (e.g. due to species or proximity to a structure) remain. Protections from a tree register should override any exemptions. The process for nominating and reviewing (e.g. who has standing) a listing also need to be elucidated. Also need to consider the maintenance requirements for a Registered Tree to prevent them being neglected.
Reduce proximity-based exemptions to existing tree protections to three metres of a substantial structure (house or other major building).	Support reduced distance but suggest distance less important than impact assessment balanced against tree value.
Ensure that any assessments or works on significant trees are undertaken by a suitably qualified arborist	Supported with modification. Suggest amendment to “significant or regulated trees”. The requirement for an expert assessor under the Native Vegetation Act may provide a useful parallel here.
Provide a tree protection mechanism to promote the biodiversity of the urban forest through the protection of rare or unusual species.	Supported.
Institute limits on the pruning that may be undertaken on protected trees without arboricultural advice.	Supported.
Stipulate all pruning of protected trees, including clearance from public utilities, must be undertaken in accordance with AS4373: Pruning of Amenity Trees.	Supported.
Provide a mechanism for local governments to charge a fee for assessment of tree works applications.	Supported.
Provide a mechanism for local governments to erect structures where protected trees have been vandalised or illegally removed.	
Provide a mechanism for local governments to require bonds be paid to protect Regulated and Significant trees on development sites.	Supported. Funds need to be directed to tree management in local government.
Review the penalties available for local governments to police protected tree provisions.	Supported. Funds need to be directed to tree management in local government.
Section 6.2 Recommendations based on expertise	
Recommendation	**Response**
A fee and bond be instituted to apply for any works with the potential to impact a Regulated, or Significant tree.	Supported. Funds need to be directed to tree management in local government.

Attachment 2: List of Issues - CoM Environment Department

For protected trees on private land, bond to have a floor value of $1000 (indexed) per tree, plus up to 100% of the value of the tree (calculated using stipulated methodology) plus replacement cost (cost to remove existing tree, purchase, plant and establish a similar tree (i.e. cost within first three years). "Similar tree" to be defined by a government authority in line with a council or State Urban Forest Strategy and may represent a tree of a similar age/size and the same or a different species.	Supported. Funds need to be directed to tree management in local government.
For protected trees on private land, bond to have a floor value of $1000 per tree (calculated using stipulated methodology), plus up to 100% of the value of the tree and land area (area within crown extent). Land value to be calculated using council rates and post any rezoning or subdivision.	Supported
Value of tree to be calculated using a methodology that has been developed or optimised for Adelaide conditions and tree species (suggest upcoming Minimum Industry Standard MIS506: Industry guidance on tree valuation methodologies, practices and standards to be used as a starting point) and used across greater Adelaide area. Methodology to be developed or endorsed by the South Australian government.	Supported. State government should provide direction on which methodology to use (or use in specific circumstances) to avoid wildly different valuations.
Tree valuations to be undertaken by a Level V arborist who has undertaken a training course in the state-endorsed valuation methodology indicated above. Register of qualified valuers to be maintained by appropriate industry body or SA govt.	Supported. This would be analogous to the system used for Accredited Native Vegetation Consultants.
Tree valuations can be disputed by a proponent or council by commissioning a second appropriately qualified valuer. Final decision to be made by a relevant authority, who may commission a third independent valuer if required.	Supported.
Level V arborist to inspect bonded trees for damage, and if necessary, undertake a new valuation using the valuation accepted in the development application as a benchmark. Any damage reducing the value of the tree will be penalised through the forfeiture of that amount. The inspecting arborist may recommend deferral of inspection by up to a year if they suspect impacts are not yet detectable.	Supported, however the council/inspecting arborist should have the ability to defer inspection by up to three years if warranted.
In the case of works impacting the structural root zone or >25% of the tree protection zone, including soil compaction, grade change or interference with roots, proponent remains liable for tree damage for a period of one year following work completion. Tree to be inspected by council arborist one year	Supported.

after works completed, if tree appears to be in decline, clock extended for a maximum of three years.	
Fees and forfeited bonds are to be collected by a relevant authority and held in a dedicated fund to be used for the development of urban canopy within the local area, including to fund the purchase of land for tree planting	Supported. Funds should be collected in the Urban tree canopy offset scheme and distributed to local governments on an equitable basis. Funding may need to be provided to councils to hire additional arb/compliance staff to manage increased regulation/compliance.