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7 September 2022

Expert Panel
Planning System Implementation Review
Via email: DTI.PlanningReview@sa.gov.au

Dear Mr Stimson and Panel Members,

Planning System Implementation Review
Assessment Manager Submission

Thank you for the opportunity to provide feedback on the implementation of the new planning system, both through a facilitated workshop session (which I found to be a positive and well-delivered engagement exercise) and through this written submission.

For clarity I note that this submission is provided in my role as Assessment Manager at City of Prospect, and is influenced by the context of applications and policy outcomes desired within the City, but has been prepared by me with an accompanying attachment relating to the discussion paper questions prepared by my staff. A separate submission will be provided by the elected body of Council addressing matters of priority to our Elected Members.

I am certainly supportive of the objective of reviewing the new planning system holistically, and I don't envy the Expert Panel's task of conducting a very broad review within a constrained period of time. With this in mind my submission aims to address matters that I anticipate may be of more unique interest to our team's experience of the new planning system, rather than re-stating or incorporating feedback provided by the Local Government Associations or other Councils. This submission provides feedback in four parts:

1. Feedback on Legislative Matters
2. Feedback on Planning and Design Code (and related statutory instruments)
3. Feedback on ePlanning System (Development Application Processing)
4. Feedback on Plan SA Website

Attachment 1: Responses to Questions posed within Discussion Papers

1. Legislative Matters

Planning, Development and Infrastructure Act

Objects of the Act:

Taken together, sub-sections (1) and (2) of Section 12 of the *Planning, Development and Infrastructure Act 2016* (PDI Act) provide that a primary object of the Act is to create an effective, efficient and enabling planning system based on policies that are easily understood, digitally accessible, and promote certainty. I am concerned that early data indicators available to us that this object of the Act has not been achieved through the current design of the new planning system.

In the first full financial year of operation under the PDI Act (2021/22 financial year), City of Prospect received approximately 3,500 requests for advice with the majority of these requests made by phone (2,500). In the 2018/19 financial year, City of Prospect received approximately 3,800 requests for advice with the majority of these requests made by phone (2,700). This is a modest difference of less than 10% in volumes of enquiries.

This modest reduction in enquiries correlates to an approximate reduction of 12% in development applications lodged in those financial years, which appears to be largely environmental (interest rate rises, property purchase values, etc). While this may not be causative, the early data suggests that we are receiving the same volume of requests for assistance in understanding what policies apply to a property, how policies should be interpreted, whether matters require development approval, and matters of this sort after the transition to the new planning system.

Information provided through the Performance Indicators Scheme, when considered against the previous System Indicators Scheme, suggests that development assessment authorities are requesting further information in relation to a greater number of applications than under the old planning system (see comparison table in Part 2 of this submission).

The conclusion I would draw from this (admittedly early) data is that the new planning system is no more easily understood than the old system, and that significant numbers of customers of the new planning system cannot successfully interact with the planning system through digital means (as support via phone or in-person support is required to facilitate the interaction).

It appears to me that the related object of the Act to *facilitate development* through reduced assessment timeframes intended to be related to assessment complexity is not being achieved through the new planning system in any structural sense, but is currently being borne by Local Government engaging additional planners / consultants with resultant impact on Council rates.

In a City of Prospect context, this translates to an approximate $150,000 cost increase in operating under the new system; including an annual $62,000 contribution to the ePlanning system, the engagement of an additional staff member, consultant costs, and no savings having been achieved as we are still required to maintain own corporate system due to functionality gaps in the ePlanning system.

To this end it is somewhat frustrating to see media commentary around the 'success of the new planning system' when it is not a function of the system being fit for purpose, but rather the community subsiding Councils through rates to deliver additional administrative work within a shorter period of time.

Perhaps in essence though my commentary on this topic does no more than demonstrate the value of the State Government engaging the Expert Panel to review the implementation of the system. I hope that through this process the new planning system can take steps to close the gap to achieve the desired vision for the system expressed through the objects of the Act.

Section 73 Code Amendment process – Heritage Places:

While acknowledging that the Discussion Paper speaks to a structural change to the alignment of Local Heritage Places within legislation, I was keen to explore the scale of the difference involved in listing Local Heritage Places under the PDI Act by comparison to listing State Heritage Places under the Heritage Places Act.

City of Prospect's Elected Members have committed to a path of seeking additional heritage listings with a particular focus on under-represented regions and periods in the city. To assist our Council in preparing time and budget expectations around this process the Mayor and I worked together to prepare process maps to demonstrate the steps involved in obtaining a new Local Heritage Listing under the PDI Act. By our estimate there are some 45 steps involved in working through this process, at a likely cost to Council of $50,000-$60,000 (depending on scope of Engagement Plan and involvement of suitably qualified heritage experts).

By contrast, there are in the order of 8 steps involved in the process of obtaining a State Heritage Listing for a property, at negligible cost to the nominator (noting that recent successful listings in City of Prospect were accompanied by information obtained from existing local history documents with no new or separate engagement of a heritage expert required).

It does not appear to me that the Section 73 Code Amendment process, insofar as it relates to amendments that affect individual properties with limited or no broader impact, is fit for purpose. If Code Amendment processes happen infrequently and require such significant expenditure on achieving obligatory procedural milestones, they divert attention away from ensuring robust and genuine engagements with communities about potential future development outcomes. I would recommend that the process through which the State Planning Commission evaluates Code Amendments requires substantial review and refinement.

Section 76 Code Amendment process:

Section 76 of the PDI Act is intended to provide a means whereby technical amendments to the Planning and Design Code correcting errors, inconsistencies or the like may be made quickly where there is no change to the effect of the underlying policy. City of Prospect has submitted multiple Code Amendment requests under Section 76, but the case study of interest relates to the Prospect Significant Tree List in Part 10 of the Planning and Design Code.

In August 2021, Council submitted a request that this list be altered to remove inconsistencies arising in the list due to a number of trees having been removed. The request included information demonstrating the background to each of the removals. These removals occurred as a result of the death of the tree, failure of substantial limbs, irresolvable substantial damage to buildings, or matters of this nature that were properly assessed through a development application. Development approval was ultimately granted in each of these cases with the tree then removed from the land, however at present such trees remain identified in the list embedded in the Planning and Design Code.

I received an initial response in relation to this Code Amendment request on 15 July 2022, advising that staff would be allocated to commence a review of our Code Amendment request in December 2022. I note that the initial advice provided to us in 2021 (before commencing the audit of our list) was that this would likely take 3 weeks to resolve after being submitted given that there is no impact to Planning and Design Code policy or property owners.

My submission is that the design of the Code Amendment process related to Section 76, or the allocated resources to delivering that process, must be fundamentally inadequate if simple changes of this nature require approximately 18 months to review and implement.

Tiered approach to public notification:

City of Prospect has experienced a significant increase in public notifications since the commencement of the new planning system. In the final year under the Development Act 10 applications were publicly notified in Prospect, whereas in the first year under the PDI Act 62 applications were publicly notified in Prospect. It is noted that the recently consulted Miscellaneous Technical Enhancement Code Amendment intends to significant revise policy settings in this space, to the extent that if those policy settings had been in place in March 2021 only 9 applications would have been publicly notified in Prospect (of the 62 that were actually notified within that period).

Council has received sustained community feedback that the current 'performance based' triggers that result in notification occurring when a development exceeds prescribed parameters are supported and should be retained in some form. At the same time, Council has received feedback that many unnecessary notifications are occurring where a person receives a letter related to a verandah in the back yard of a property on the other side of their street that will never be visible to the recipient of the notification.

It is my view that notification need not be an 'all or nothing' proposition. It seems to me that a second tier of public notification should be provided within the PDI Act such that domestic buildings and structures which fail to achieve a performance based trigger would be notified to the potentially affected neighbour only. Larger scale, commercial or industrial notification triggers could then maintain the present public notification settings inclusive of a sign on the site and letters within a 60m radius of the site.

Management of Funds / Off-set Schemes:

While Car Parking Funds from the Development Act have been maintained through transition provisions in the PDI Act, all Councils have received legal advice that it is presently not possible to change the relevant contribution rate or location in relation to which the fund applies. This arises due to the fact that none of the existing Car Parking Funds exist in relation to an Off-Set Scheme, and so a new Scheme with an accompanying new Fund must be developed as a required foundational step to achieving iteration of existing Funds.

It is of course possible to have a Fund without a Scheme, noting that this currently occurs under Section 200 of the Act in relation to the Urban Trees Fund. It is recommended that additional 'standalone' Fund provisions should be inserted into the Act for matters such as Car Parking Funds, or in the alternative that the transition provisions should be strengthened to allow contribution rates to be updated to have some meaningful relationship to market increases in the cost of acquiring and/or developing land for the purpose of facilitating public car parking.

Good faith Copyright Act exemptions:

Since the removal of Regulation 101 of Development Regulations following the repeal of the Development Act, there has been no enshrined right at law for the community to view plans that are not on public notification. I observe that my staff receive daily requests to review plans that are not the subject of public notification.

I am aware that Plan SA staff are currently advising members of the community that Council will provide this function, however there is no protection for Council in relation to the Copyright Act for digitally or physically reproducing plans for this purpose. I observe that the State has given itself good faith copyright protections at Section 238 of the Act, however no similar protections have been extended to Councils.

It is recommended that the Expert Panel consider reinstating an enshrined right for the community to be able to view plans (akin to Regulation 101 of the Development Regulations), or that Councils be added to the list of designated entities in Section 238 so as to facilitate Copyright Protections that

allow for this to occur. Either change would immediately impact our ability to service this function which is of significant interest to our community.

Planning, Development and Infrastructure Regulations

Irrational allocation of assessment timeframes:

Regulation 53 of the *Planning, Development and Infrastructure (General) Regulations 2017* (PDI Regulations) identifies the statutory assessment timeframes assigned to developments based on consent type, assessment pathway, and the existence of statutory processes (such as agency referrals or public notifications) of an application. For the purposes of this case study, performance assessed development is assigned a base maximum assessment timeframe of 20 days. While this case study does not identify particular addresses, it does draw directly from two applications assessed in City of prospect.

A carport with a length of 12 metres on a side boundary in the Established Neighbourhood Zone attracts a maximum assessment timeframe of 70 days; inclusive of the 20 day base assessment, 30 days associated with public notification, and an additional 20 days to allow presentation of the matter to the relevant Assessment Panel.

A three storey residential flat building comprised of a series of 8 townhouse style dwellings on Devonport Terrace in the Urban Corridor (Boulevard) Zone attracts a maximum assessment timeframe of 20 days. The same would be true of a four storey mixed use building with a ground level retail and apartments above.

The perverse consequence of this is that the assessment of the carport application must be necessarily delayed until after the three storey townhouse application has been assessed, because of the urgent need to shortcut the genuine time needed to undertake the assessment properly.

In our experience under the Development Act, proper assessment of three and four storey buildings in Urban Corridor Zones typically requires a 40-60 day timeframe. In the context that a 20 day maximum assessment timeframe currently applies, these largest scale buildings in transformational areas ae being subject to urgent 'drop everything' scrutiny upon lodgement. Internal referrals, design principles, nuanced 'value add' components of Planning and Design Code and other best practice planning assessment methods are very hard to apply in this timeframe.

In my view Regulation 53 has given insufficient consideration to its attempts to understand the ways in which one application may be more or less complex than another, and requires summary review to ensure that appropriate time is allocated to the assessment of applications. Aside from the improved assessment of those more complex applications, such an amendment would also improve the processing time of more easily assessed applications which would no longer be triaged behind complex applications so as to rush through an urgent assessment.

2. Planning and Design Code and related Statutory Instruments

Planning and Design Code

Opaque Purpose and Objective of Performance Outcomes:

Where Designated Performance Features (DPFs) are provided in association with a Performance Outcome (PO), the DPFs assist with some indication as to the intended outcomes of associated PO. Where no DPF is provided the policy intent of a PO can be very difficult to interpret.

A recent example discussed within our team is PO 36.1 of the Design in Urban Areas module in Part 4 of the Planning and Design Code. It is only through comparison to PO 18.1 of the Design module in Part 4 of the Planning and Design Code, which uses precisely the same language but has an accompanying DPF, that my staff understood that the key contaminants of interest to the PO include phosphorus and nitrogen. I don't think it is unreasonable that planners, or by extension the broader community, may not have appreciated the interest or relevance of examining phosphorus and/or nitrogen contamination in stormwater from residential developments if reading the PO alone.

It is my view that DPFs should be inserted into the Planning and Design Code wherever possible, or that additional guidance should be supplied in relation to POs without an accompanying DPF to offer clarity as to what is intended to be achieved through the application of a PO.

Opaque Purpose and Application of Policy Modules:

There is a significant burden on Council staff attempting to undertake the assessment of 'All Other Code-Assessed Developments', noting that there is no guidance offered within the Code regarding the spatial application of General Development Policies. It can take days of targeted work to establish relevant policies for these applications, which can be quite simple matters (such as decks or tennis court lights).

It is recommended that each Zone, Overlay and General Development Policies module should be accompanied by explanatory text explaining the intended purpose of its policies together with guidance as to where it is intended to be applied.

Further, continual iterative improvements should be made to the Planning and Design Code to limit (to the maximum extent possible) the number of times that Council staff are required to assess developments (particularly relatively common domestic structures) through the All Other Code Assessed Developments pathway.

Criticism from Environment, Resources and Design Court:

I would strongly urge that the Expert Panel review the matter of Evanston South Pty Ltd v Town of Gawler Assessment Panel [2022] SAERDC14 in its consideration of whether the current structure of the Planning and Design Code is fit for purpose. Commission Rumsby makes a number of observations in relation to the Planning and Design Code in paragraphs 65 to 72 of that judgement concluding with the observation:

> *72. Contrary to the Objects of the Act, the digital planning system is not simple and easily understood.*[46]

This judgement may be accessed via the following link: http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SAERDC//2022/14.html and I would urge the Expert Panel to consider the observations of the Environment, Resources and Development Court regarding the functional shortcomings of the Code portal and the structure of the Planning and Design Code itself when viewed as a single 5,000 page document.

Diminished precinct / place-making based planning policy framework:

An example of diminished place-making capacity within the Planning and Design Code is Charles Cane Reserve on Churchill Road. A concept plan previously existed over the properties adjacent this public open space which obliged the delivery of ground floor retail and commercial uses to activate and improve the amenity available to visitors of the reserve. To balance this obligation, an additional storey of building height was supported in this concept plan area.

The removal of the concept plan has meant that it is possible for corner sites to be developed as residential flat buildings with access from Devonport Terrace or Churchill Road, with no active frontage required to the reserve whatsoever and no benefit to the community through enhanced access to services and amenities.

This type of local policy nuance should be inserted into the Planning and Design Code, which could possibly occur through additional sub-zones, detailed area statements within relevant zones applied to relevant precincts through the Technical and Numeric Variations Overlay, or some other methodology.

Gaps created by applying policy based on mixed criteria:

The Design in Urban Areas module, in Part 4 of the Planning and Design Code, attempts to apply policies based on a range of varying criteria. For example, in relation to waste management or stormwater management, some POs apply to certain types of development (for example a detached dwelling or a shop) and some POs apply depending on a performance based trigger (for example a building being more than two storeys in height, or having a driveway located in common property).

Perhaps unsurprisingly, there are a series of gaps where there is no stormwater management or waste management PO that can be used to assess some development applications. An example of this was a two storey residential flat building comprised of 8, two storey townhouse style dwellings gaining access from an existing right of way on an adjoining site. While we were able to negotiate some basic outcomes with that particular developer, it should not be the case that there are transformational infill development projects in relation to which no stormwater management or waste management policies apply.

This is one of many examples of policy structure being not fit for purpose within the Planning and Design Code. Another is that there is no stormwater management policy that applies to dwelling additions of any size (including in City of Prospect multiple dwelling additions greater than 300 square metres in size this year) within the Established Neighbourhood Zone.

In my view a thorough review is required of the policy structure of Part 4 of the Planning and Design Code, which is the part of the Code most prone to these gaps, anomalies and errors.

Practice Directions

Practice Direction 2

Further to earlier commentary in relation to Section 73 Code Amendments, I observe that Practice Direction 2 imposes significant administrative barriers to undertaking Code Amendments that don't exist in legislation. In cases such as those identified earlier in this submission it does not appear to me that these additional layers of internal review by staff within the State Planning Commission assist in achieving the object of the Act to genuinely engage and obtain social licence from the South Australian community around policy settings.

This then affects the ability of the development assessment component of the system to deliver outcomes to the satisfaction of the community within desirable timeframes.

Performance Indicators Scheme

No attempt to measure quality of outcomes of assessment processes:

Emphasis entirely on throughput of system. Metrics place emphasis on quick decision making rather than good decision making. Fundamentally misaligned to objects of Act.

Offline assessment:

Aware of a number of accredited professionals who are taking offline 'lodgements' and payments of application fees, undertaking the assessment and reaching a decision, and then lodging the application onto the ePlanning system so as to appear to have done the assessment within 1 day. A recent example of this is a development undertaken by Council at Broadview Oval, which was a two storey mixed use building of commercial construction.

The ePlanning system indicates that this was assessed for building rules consent in 2.5 days, after being lodged and having fees paid by the accredited professional engaged to undertake the Building Rules Consent on behalf of the applicant (in this case being Council).

This approach to undertaking assessments outside of the ePlanning system distorts the system's intent, allows for potential erroneous assessment against previous versions of the Planning and Design Code or National Construction Code, and diminishes the value of the Performance Indicators Scheme that is already limited in functionality.

It is my view that outliers at both the longer and shorter ends of the average assessment timeframe established from Performance Indicators data should attract consideration of an audit.

Usefulness of data:

While it is understood that only so much data can be evaluated, it is unclear to me whether the type of data collected has been strategically evaluated from a user or economic perspective. An example of this is that no data appears to be collected on the gross time involved in assessing a development application (for example from point of submission for verification to grant of planning consent).

The Performance Indicators are suggesting that net assessment timeframes have improved under the new planning system, but given the apparent increase in requests for further information does this actually translate to any real difference in the time between someone submitting their application and their receipt of consent?

It is my view that data should be collected and analysed based on its usefulness in understanding the outcomes of the system, rather than by selecting data based on the relative ease with which it can be gathered.

Missed opportunity to evaluate planning system implementation:

To my disappointment, the first 2021/22 financial year Performance Indictors report made no attempt to evaluate comparable metrics between System Indicators scheme under the old planning system and the Performance Indicators scheme under the new planning system.

While it is true that some metrics don't see 'eye to eye', there are a number of areas of relevant comparable data that I have tabulated below that I saw as being useful indicators of certain aspects of the new planning system's performance:

	2019/20 (Dev Act)	2021/22 (PDI Act)	Comment
Schedule 1A/Accepted Developments (No.)	6,152	6,458	
Schedule 1A/Accepted Developments (% of all DAs)	18.2%	16.1%	Decrease in % of 'planning exempt' DAs as proportion of total. Does this achieve intent of planning reform in reducing assessment workload of DAs that don't need oversight by planners?
Schedule 4 Complying/Deemed to Satisfy Developments (No.)	3,429	5,415	
Schedule 4 Complying/Deemed to Satisfy Developments (% of all DAs)	10.1%	13.5%	Increase in % of 'tick box assessed' DAs as proportion of total. Metric does not include Development Plan complying developments (no data captured), so not 'apples to apples'.
Public Notification (No.)	2,569	2,333	
Public Notification (% total DAs notified)	7.6%*	5.8%	*Note: this does not match the Expert Panel Discussion Paper, I think because the Discussion Paper does not include Schedule 1A DAs under the Development Act but does include Accepted DAs under the PDI Act in their calculation of %.
Public Notification (% of Merit/Performance Assessed DAs notified)	9.3%	8.1%	This seems to me to be the more useful metric, which suggests a relatively modest reduction in public notification when considered as a proportion of DAs that may or may not be notified (i.e. excluding categories that definitely are or are not notified).
Requests for Additional Information	15,059	14,418	
Requests for Additional Information (% total DAs with RFI)	45%	36%	On its face this suggests a modest reduction in requests for information, although note that RFIs under Development Act included requests for mandatory documents which are not reflected in the PDI Act stats – so not an 'apples to apples' comparison.
Requests for Additional Information (% Merit or Performance Assessed DAs with RFI)	63%	51%	As above, this continues to suggest a modest reduction albeit data on mandatory document requests needed to make true comparison. Overall I think this suggests that the verification process has not meaningfully assisted the assessment process (i.e. if more than half of performance assessed DAs still required additional information post-lodgement, is the administrative burden expended in the verification process worthwhile?).
RFIs responded to on time by applicants	70.5% (10,616)	80.3% (11,619)	This data point suggests that the system has improved the responsiveness of applicants to RFIs.

I would hope to see greater attempts made to analyse changes to the system, the economic environment, or other matters through the data collected in the Performance Indicators Scheme. It is my view that future iterations of the Performance Indicators report should be driving improvements to the system, rather than simply used to ascertain net assessment timeframes.

3. ePlanning System

Development Application Processing

UI/UX of System Design:

There is no consistency or coherency to the design of workflows or functional buttons within the ePlanning system. Functions are sometimes located at the top right of a page or sometimes at the bottom left, sometimes only available at application level within the system or sometimes only available at consent level. The arrangement of tabs at the consent level within each application has little relationship to the actual assessment workflow. My staff have lost significant time in reviewing user guides and/or calling Plan SA staff for assistance despite continual use of the DAP for over 18 months.

I do not consider that this is a training issue, but rather that the user interface of the ePlanning system is not fit for purpose. Substantial efficiency would be gained by implementing a user interface with a higher level of coherency and clarity as to where functions are performed.

Need for Document Management System:

In order to operate documents, such as to endorse them for consent purposes, each document must be manually downloaded from the Portal and then manually uploaded back to the Portal. Further, there is no storage capacity within the Portal for documents such as emails, which must then be stored in Council's corporate system (necessitating continuing licensing and administrative expenditure on the maintenance of such systems).

It is my view that a document management system should be deployed within the Development Application Processing (DAP) area of the ePlanning system.

Design of system workflows not aligned to legislation:

There remain several workflows within the DAP that do not align to relevant processes set out in the PDI Act or PDI Regulations. An example is the Regulation 65 variation assessment workflow, which requires an assessing officer to upload a decision in relation to the request (visible to the applicant) before the fee to lodge the request can be charged.

I obtained legal advice on this issue in March 2021 and provided it to the State Planning Commission in good faith as part of a request for enhancement to the system. I am yet to receive a response as to whether this enhancement will or will not be implemented, despite the current noncompliance with the PDI Regulations. The impact of this non-compliance is that dozens of Regulation 65 requests have been assessed and refused with no remuneration for staff time involved in their assessment.

PowerBI

Usefulness of Data:

System essentially useless at launch due to data inaccuracies / hidden assumptions. Iterative improvements have resulted in the reports now containing useful data following updates in late November/early December 2022.

Still don't understand why data rich application and consents level base data can't be supplied to Councils to allow us to undertake our own analysis. We would prepare our own PowerBI dashboards with information of value to our jurisdiction if a commitment was made to ongoing availability of a data-rich dataset (example; has taken years to demonstrate merit of adding 'Development Value' to consents level underlying dataset).

Possible that we may still pay $10,000 to enable data relationship between ePlanning system and corporate system (Civica Authority) to allow us to have access to a data-rich dataset for dashboard purposes. Don't understand why this should be necessary given the substantial contribution we make each year to the ePlanning solution.

Observation regarding PLUS staff in the team managing this product:

Must note that the team of staff working in this space has perhaps been the single most responsive team within the Planning and Land Use Services Department to stakeholder feedback and this criticism about opaque access to data is in no way a criticism of the hard work that this team has put in (particularly in 2022) to render substantial improvements to the system.

4. PlanSA Website

Too many target audiences to be fit for purpose:

Should consider use of entry question to differentiate target audience and allow language and priority links/information to be tailored to common target audiences for the website. Obvious target audiences include: Planning professionals; Architects, Builders or Building Designers; Home Owners or Tenants.

Payment of fees exceeding credit card limits:

Case study of two recent applications with fees exceeding $10,000. Exceeds credit card limit of applicant, who contacted Plan SA for assistance with payment options and were advised that 'Council would assist'. Contributes to continuing 'cost shift' to Councils who must continue to licence and administer corporate systems in relation to fundamental functionality that should have been obvious in UX testing of website.

Navigation of Planning and Design Code:

Common query around purpose and policy settings on a particular street or within a particular region – developers or interested parties without specific site in mind but with specific project. Unable to understand spatial application of Code.

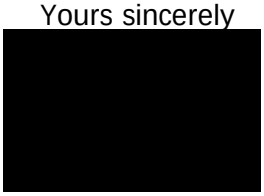
Common feedback that the format and layout of the Code extracts is unintelligible to a non-planning professional audience. Contradictory policies between zone/overlay not filtered (for example), leading to duplicated policy settings with no clarity in extract about relevance.

Regular feedback from builders that the Planning and Design Code is easier for them to read, while concurrent regular feedback from members of our community that Development Plans were easier for them to read. Consistent concern is removal of Desired Character Statements that set out the purpose and vision for a Zone / Overlay in a few paragraphs, which prevented need to review 30-40 policies and attempt to distil from those policies the overall intent of the Zone (including reduced need to review contradictory policies and understand how they operate within the policy hierarchy).

The primary intent of this submission is to provide constructive feedback on elements of the new planning system from our experience as planning professionals operating in a Local Government environment. I hope that the mix of forward looking policy feedback and backwards looking case studies about operational challenges is of assistance to the Expert Panel.

If there is any clarification or additional detail that I can provide that would be of assistance to the Expert Panel, please do not hesitate to contact me via phone [redacted] or email [redacted]

Yours sincerely



Scott McLuskey
Assessment Manager, City of Prospect

Pre-amble:

This response on the Planning System Implementation Review by the Expert Panel is restricted to matters of policy and on the following key issues:

- PDI Act 2016 (public notification and appeals, Accredited professionals, Local heritage)
- Planning and Design Code [P&DC] (character and heritage, tree policy & infill policy).

The Panel has provided a general caveat that there has not been enough time elapsed since the introduction of the Code to confirm whether policy is fit-for-purpose. Whilst this is noted, it is considered that the responses to gaps and areas of concern should be addressed as soon as is practical rather than allowing issues and tensions as identified to fester.

The following table provides council's responses to the issues as raised in the Expert Panel's Discussion Papers.

ISSUE	RESPONSE
Discussion Paper - PDI Act 2016 Reform Options	
1. Public notifications and appeals	
Based on principle that if land use is envisaged and meets the prescriptive rules (built form and intensity) then a streamlined approval process proceeds, without notification and third-party appeal rights	Agree with intent of the principle, but it is only as good as the detail sitting behind it. The prescriptive rules need to be well tailored to capture built form design issues, intensity and functionality of land uses that are not envisaged. These criteria need to be strengthened in the P&DC.
Expectation from community that there would be more notification not less	Observe that City of Prospect has seen a substantial increase in public notification under the new system, from 10-15 per year to 62 in the first financial year. Feedback we've received suggests this isn't fit for purpose, with a verandah in a backyard not visible from the street being notified to dozens of neighbours. Suggest that two 'tiers' of notification be provided such that issues addressing one neighbour are notified only to that neighbour. Issues of broader interest could then be notified as presently undertaken.
Looking at other mechanisms for reviewing planning decisions outside of the ERD Court	Supportive of current use of CAP to review decisions of the Assessment Manager upon request by applicant. Open to suggestion that third parties could be able to access CAP review of Assessment Manager decisions for prescribed matters as defined in Section 201 of the PDI Act. Observe that fee for access to this review is likely to be higher than ERD Court fee, in order to ensure that cost recovery exists for this service, but note that time and legal cost

	expenditures associated with ERD Court likely to result in overall better outcome if CAP serves this function.
2. Accredited professionals	
Concern with building professionals issuing planning consents	Agree if there is any planning analysis that needs to occur and even if it is to just tick the right box. Otherwise, the system is disregarding professional input into decision making and opening the system up to errors and lower standards.
3. Local heritage	
Panel suggest removing provision where a heritage or character zone/sub-zone can't be designated in the Code unless the Code Amendment is approved by 51% of relevant owners. (S67(4) &(5))	Agree with proposal and the opinion of the Panel that zoning decisions are based on sound and logical policy objectives, expert opinion and wider community interests/future generations and affected property owners can appeal through the existing system.
Local Heritage Listing is better placed with heritage experts and not planners and therefore value in local heritage provisions going into Heritage Places Act 1993 (not PDI Act 2016) to provide legislative separation between heritage listing and planning matters.	In the current system there is capacity within the Code Amendment process for investigations to weigh up the suitability for desired development for an area alongside the merits of heritage listing? How is this going to be achieved under a separate process and legislation? With the separation of legislation, how does Council trigger the need for more listings within its local area?
Other	
Activities deemed to be 'Not development' in Character Areas that affect the streetscape. Note: 'Accepted Development' can be amended within the P&DC.	Introduce requirements for certain types of activities that have a potential impact to the street to become defined as development within Character Areas (& performance assessed in P&DC), including: - All fencing forward or aligned with the main building (fences up to 2.1m high) - Altering soft landscapes to hard landscapes above a certain threshold.
Discussion Paper **– 'Planning and Design Code Reform Options**	
1. Character and Heritage	
Panel's view that the new system strengthens character and heritage protection (Overlays, Statements, RBs, Design Guidelines)	Loss of detailed policy from previous Development Plans and need to strengthen Statements in the Code. Refer to comments on RBs in row below.
Transitioning of Contributory Items (CIs) across to Representative Buildings (RBs) in P&DC. Miscellaneous Technical Enhancement CA to move RBs from SAPPA and add to a mapping layer for Historic Area and Character Area Overlays to be more visible in Code for applicants and relevant authorities.	This has not prevented anomalies in Historical Areas where in City of Prospect you have an odd situation where there are many RBs in some areas and none in others. This was due to an enforced requirement not to include CIs prior to the new Planning System (despite heritage expert investigations identifying them in the

	heritage survey that was consulted on as part of the DPA process) as they would not be appearing in the P&DC. Why then should this adjusted situation trigger the need for another full Code Amendment?
State Planning Commission's 3 'prong' approach to character and heritage reform by: (1) Elevate character areas to historic areas (2) Character area statements updates (3) Tougher demolition controls in character areas (subject to approval of replacement dwelling). Panel is supportive of 'prongs' 1 and 2 and await consultation feedback on 3 prior to making any commitment.	(1) Character Areas do not mean Historic Areas and therefore to elevate does not make sense unless justification exists. If based only on demolition control then introduce tougher demolition control within Character Areas (refer to No.3) (2) Agree with increased capacity to introduce local criteria even if it is non-standard (3) Agree otherwise will witness a potential loss of character and/or vacant properties.
2. Tree policy	
Code contains 2 Overlays relevant to urban trees (Urban Tree Canopy & Regulated and Significant Tree Overlays) to meet directions of 30 Year Plan for Greater Adelaide with its green cover target. Panel's comment: - 'limited consideration to native vegetation in planning and development processes has led to impacts after Development Approval granted'.	The Code for urban areas is confined to trees and not vegetation (unlike Native Vegetation Overlays relevant to areas outside of Metropolitan Adelaide). The scope needs to be broadened to include all stratums of vegetation in urban areas and to provide an additional Overlay ('Critical Habitat Overlay') to include strategic areas for urban biodiversity (existing and proposed vegetation corridors) to deal with the following matters: - Urban biodiversity (most abundant in understorey plants and not trees) - Urban heat - Climate change - WSUD/flooding - Green space/living with nature/amenity (at the human scale below tree canopy height).
Off-set scheme to provide replacement trees has merit and should increase in usage with greater infill development. Relevant funding (Planning and Development Fund & Greener Neighbourhoods Grant Program) to provide opportunities for greening areas	This option needs careful further consideration so that it is fit-for-purpose and not just an easy way of removing trees, including: - To be used when other options have been exhausted - More realistic value for tree replacement provided and to better represent what it is replacing eg tree maturity etc - Strategic areas identified for off-site tree planting (refer to 'Critical Habitat Overlay' above)

	- Increasing the weighting of criteria in Funds to allow for urban biodiversity (including land purchase) and not prioritised for multi-purpose recreational use
Regulated and Significant Trees: Panel states that SA has the highest parameters for minimum tree requirements and this should be revised. Based on circumference parameters and not height, spread of crown or tree species. Also, 10 metre distance from buildings or in-ground swimming pool would see total removal in infill areas.	Need to be clear on exactly what it is we are trying to protect. If it is large and visually dominant trees then circumference and height are important. If it is urban heat then maybe canopy spread is most important. If it is biodiversity then type of species and range of species is important. Need to re-orientate the priority currently being offered to built form over the valued tree. Therefore, the distance rule should be removed and the onus shifted to providing buildings and swimming pools with adequate protection (whilst maintaining tree health) if a Regulated or Significant Tree is within the height/canopy width of the tree. The removal of the tree is a last resort after design considerations and a test of reasonable economic grounds for the decision.
3. Infill policy	
Crafted to meet 30 Year Plan objective, but concerns with diminishing trees/landscaping, surface permeability, car parking and quality design outcomes.	Support the general statement, with qualifiers about car parking. Applies only to Housing Diversity Neighbourhood Zone in City of Prospect. Note: Future Living Code Amendment (proposed).
Trees/Landscaping and surface run-off: Relevant policies include: - One tree per site policy - Soft landscaping minimum of between 10 to 25% per site with 30% in front yards - Rain water tanks plumbed to at least one toilet or water outlet - Not applied to Master planned sites.	These are important first steps, but it is setting a 'low bar' and needs to be updated and strengthened to better achieve desired strategic directions. Some benefits are achieved, but it misses the mark on urban biodiversity, reversing the loss of canopy cover and dealing with urban heat. Similar for soft landscaping and rain-water tanks which are good first steps, but set a 'low bar' on similar issues and surface water run-off. Master planned areas should have similar requirements as a minimum and not rely on them being incorporated by proponents at the planning stage.
Panel supports the current: - Car parking parameters and is not practical or advisable to increase the rates, but questions on-going use of on-site garages (for storage) and need to have one covered to	Agree with the intent, but no solutions are being provided by the Panel. This is a key educational focus point and information needs to be disseminated through targeted Guidelines and Fact Sheets to change perceptions and behaviours.

provide better design outcomes on small lots	
Panel wanting EV charging stations to be regulated as there is potential for adverse impacts in sensitive areas eg heritage buildings	Agree, in sensitive areas with Design Guidelines developed.
SPC provided design features for infill housing targeted at visual interest and articulation on front facades.	The selection of standard 'minimum 3 design features' is a good first step to avoid bland 'cooky cutter' designs, but it is considered to be both limiting and not sympathetic to contextual considerations. While not trying to install the same level of detail applied within a Character Area, policy needs capacity to respond to major design features/qualities within the locality which may not just be visual interest and articulation qualities.
Strategic planning and what is the role of local government through 30 Year Plan/Regional Plans? There has been limited activities on growth strategies, structure and concept plans in the transition to the Code.	Agree. Need to provide a 'hook' for local strategic planning to be present and relevant eg Regional Plans or Structure Plans within the Code. This cannot be adequately provided within the broad 30 Year Plan.