30 January 2023

Mr John Stimson
Presiding Member, Expert Panel
Planning System Implementation Review
By email to DTI.PlanningReview@sa.gov.au

Dear Mr Stimson

SA PLANNING SYSTEM IMPLEMENTATION REVIEW

Thank you for the opportunity to provide input into the review of South Australia's planning system, as far as it relates to the Expert Panel's ("the Panel") scope.

The City of Mitcham has made several submissions in relation to planning reform prior to and post implementation – from both a Council endorsed position and practitioner perspective. These submissions have addressed a range of key aspects of the planning system, including matters that the Panel is currently considering.

The timing of the review and Council's meeting schedule has unfortunately not aligned and therefore it has not been possible for the newly elected Council to formally endorse this submission. Therefore, the comments provided herein are made by council staff with informal feedback received from Council Members.

City of Mitcham has considered the guiding questions posed by the Panel, with responses to these included in our submission**.** Of note, these guiding questions generally align with issues and opportunities that the City of Mitcham has raised prior to and after implementation of the new planning system.

We acknowledge this review is occurring some 18 months after implementation of the new system and that parts of the system are yet to play out in full, however we are supportive of the Panel's review of the system's implementation to date. The following comprises a snapshot of the issues raised within our submission.

System Issues

- Recommendations for development types which should trigger public notification due to impacts on residents.
- The need for greater audit and accountability for all practitioners using the system, in particular private planning / building certifiers.
- Feedback on the "deemed consent" process and its practical application.
- Recommendations relating to council undertaking public works in heritage areas, which can be complicated and burdened by the planning process. There should be greater trust in local government embedded in the system.

Street Address:
131 Belair Road
Torrens Park SA 5062

Postal Address:
PO Box 21
Mitcham Shopping Centre
Torrens Park SA 5062

Phone: (08) 8372 8888
Fax: (08) 8372 8101
mitcham@mitchamcouncil.sa.gov.au
www.mitchamcouncil.sa.gov.au

System Innovation

- Support for the introduction for enhanced technologies such as 3D modelling and augmented reality for larger scale developments
- Support for introducing more user-friendly mobile application of the e-planning system including PlanSA website, mapping (SAPPA), and the portal
- Support for more automation of front end checking of documentation to avoid cost of planners spending significant time checking lodged documents for errors / inconsistencies – enabling more time on actual assessment.

Key Policy Issues

- Maintaining our existing stance on the need for improved design led policies to support higher quality infill development generally
- Recommendations for improvements to Water Sensitive Urban Design techniques in the Code
- Recommendations to better address issues with yields and overdevelopment of residential infill sites
- Reinforcing existing feedback in relation to a range of matters concerning tree canopy loss / retention such as the significant / regulated tree laws, urban tree off-set scheme, public and private tree management, and issues with interdependencies and inconsistency between planning assessment, native vegetation, and bushfire management.
- Feedback regarding opportunities to improve proposed new policies relating to assessment of development in both 'character' and 'heritage' contexts.

Our submission has been prepared through workshops with input from a range of staff from across the City of Mitcham to ensure that the submission reflects all areas of council business which play a role or are influenced by the planning system.

The City of Mitcham's approach to planning reform and change has been a collaborative process with previous Ministers, the Government and the State Planning Commission. We look forward to continuing our collaborative relationship with the Government following the conclusion of this review and would welcome the opportunity to participate in further dialogue or engagement processes that may arise.

Should you require any further information please don't hesitate to contact me on [redacted] or via email to [redacted] or Alex Mackenzie on [redacted].

Yours faithfully

[redacted]

Craig Harrison
GENERAL MANAGER DEVELOPMENT AND COMMUNITY SAFETY

Enc. SA Planning System Implementation Review Submission

CITY OF MITCHAM

MITCHAM

SOUTH AUSTRALIA'S PLANNING SYSTEM

IMPLEMENTATION REVIEW

SUBMISSION TO THE

EXPERT PANEL

CONTENTS

Response to Guiding Questions Additional Matters for Consideration

- *The information and feedback contained in this submission principally relates to those aspects of the planning system which under review that are considered directly relevant to the City of Mitcham and our experiences to date with the new planning system.*

- *There are additional matters which are related to (but sit outside the focus of) the Panel's scope that are considered worthy of further exploration by the Panel. Comments on these matters are also included below.*

- *We acknowledge that this review is occurring some 18 months post implementation of the new planning system and that some parts of the system are yet to play out in full, however support the Panel's review of the system's implementation to date.*

PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT

Public Notifications & Appeals

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

The primary objective of public notification in the planning system is to "*allow neighbours and other interested parties to be notified about a development that affects them, so that they have an opportunity to comment*[1]". With this comes a reasonable expectation that a representor's comments have the potential to influence the outcome of a development application. While representations can often result in proposals being adjusted to appease concerns of neighbours, it is unusual for representations to be the sole reason for an application's refusal.

It is critical to be mindful of the purpose of public notification, and the community's expectations of it, when determining what forms of development should or should not be notified. On this basis, we consider the following additional forms of development should be publicly notified:

- Decks based on potential overlooking impacts, particularly in an urban (or suburban) environment, and the effect this has on privacy and general amenity of affected neighbours. While there are DTS requirements set to limit the public notification of decks, the criteria does not create good planning outcomes, and results in development which is not designed for the physical characteristics of each site. Applicants/Owners are often reliant on landscaping on adjoining allotments to justify privacy, with neighbours often opposed to the use of their landscaping for retention of privacy to their allotment, which creates a burden on them which they often do not support. Notification allows this information to be shared and considered. It would also be beneficial for guidelines on decks to be developed to assist applicants understand required considerations in terms of decks, including mitigation of overlooking.

- Circumstances where the overall height of a building (ie footing height plus wall height) exceeds the numerical trigger for public notification (for example, a dwelling with a combined footing plus wall height of more than 3 metres). There are regularly occasions where a dwelling's wall height on its own does not exceed the trigger, but when combined with a substantial footing, it does. This is currently not captured but has the potential to detrimentally impact the amenity of a neighbouring property, particularly in urban and suburban environments.

- Development that is impactful on neighbouring properties, but not necessarily located on a boundary. An example of this includes built form extending alongside a substantial proportion of a property's boundary but is insufficiently set back from the boundary or designed to mitigate any amenity impact for adjoining neighbours.

- At the interface between non-residential and residential land uses, development on the non-residential

[1] PlanSA website, "Public Notification and referrals", plan.sa.gov.au/development_applications/getting_approval/how_applications_are_assessed/public_notification, 8 November 2022

allotment regularly impacts on the amenity of adjoining residential property, despite not triggering the public notification process.

It should also be recognised that planning professionals are capable of identifying and understanding the impact that a development might have on the amenity of immediately adjoining or nearby neighbours and including this in the overall assessment of the development. There are some types of development that are currently publicly notified where the process is of limited, if any, benefit to the overall assessment process. These include:

- Cut retaining wall and fencing on a boundary where there is no direct impact on the neighbouring property (i.e., the impact is completely internal to the development site and the fencing on the neighbouring property does not exceed 2.1m);
- Length of fencing on a boundary (leaving only height as a trigger for public notification);
- All fencing where a copy of the Fencing Act Agreement between neighbours is provided with the development application;
- Building height (if the definition suggested below is accepted) where development on sloping sites is designed to accommodate the topography (e.g., split level) is resulting in the public consultation of these well designed and technically single storey dwellings. The definition should be defined as being the height of a building from existing or finished ground level, whichever is the lower, in a vertical line, directly above (or similar wording that achieves the intended outcome).

Feedback on this topic provided by a variety of stakeholders during the recent Miscellaneous Technical Enhancements Code Amendment could also be referred to as part of the current review by the Panel.
The primary difficulty experienced in regard to the notification requirements (in terms of systems) has been with regard to the inability to stop the public notification process (clock) partway through to make a correction or amendment – it is understood that this issue has recently been rectified through PLUS' system enhancement rollout.

It is also suggested that further thought is needed in regard to ensuring that public notification undertaken is commensurate with the likely degree of impact of the development subject to the notification. For example, in a residential context, development on a boundary which triggers public notification process by virtue of its height or length, is highly likely to impact the immediately adjoining neighbour, but is unlikely to have impacts on the broader locality. Notifying all properties within 60 metres of the development in such circumstances is considered excessive and does not accord with the fundamental purpose of public notification.

There is potential for a further category of public notification to be established in circumstances where development that triggers public notification and only affects adjoining properties. In such cases, only to those affected properties would be notified, rather than all properties within 60 metres.

Consideration has been given to the option of alternative review mechanism. The current review system is thought to be working reasonably well and there is not a perceived need for an additional review layer or replacement of the ERD Court system. It would, however, be beneficial if the ERD Court system/processes/documents could be integrated with the portal to streamline processes and create efficiencies (such as access to documents).

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

There is a perception that only planning certifiers assess applications for planning consent and only building certifiers assess applications for building consent, however this is not reflective of how the system operates at the moment, in part due to the Development Act (ResCode) carryover into the new system.

It is not reasonable to expect building and planning professionals to have expert knowledge of the other's professional requirements and nuances. There would be significant benefit in adjusting the system so that planning and building professionals only assess their respective consent types.

Such benefits could include:

- alignment with the intended operation of the Accredited Professionals Scheme;
- better ability to interpret policy or standards, resulting in greater consistency and accuracy in assessments and decision-making;
- reduction in the occurrence of errors, such as those outlined in the Discussion Paper;
- greater awareness of updates to legislation and standards required to be considered in an assessment;
- improved timeframes where errors made do not require rectification.

It is acknowledged that this may impact the availability of work for private building professionals, but consider the overall benefits outweigh this drawback.

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

This is supported in that it would ensure that all Ministers are made aware of development proposals of state significance, allowing for early intervention or influence if necessary and avoiding sole responsibility for decision-making being with the Minister for Planning. It would also contribute to transparency and accountability in Government decision-making and avoid perceived (or real) conflicts of interest which may influence decisions.

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

Heritage and planning have historically been closely linked in both policy and development assessment contexts. The advice of heritage experts forms a critical part in any process Council undertakes with respect of local and state heritage places in both a policy and development assessment context, including a new listing or delisting of a place or area, the demolition of a place (in part or full), or alterations to a place. Best outcomes for property owners and communities are achieved if planners and heritage experts work collaboratively.

The listing of heritage places or areas is typically at the instigation of a Council as a way of preserving the stories of the past for future generations. Typically, property owners are less likely to instigate heritage listing for their own property, or for an area, rather are more likely to instigate a delisting process.

If the heritage process (of listing or otherwise of a place or area) were to be managed entirely by heritage experts, without input from Council, there is concern there may be a risk of gradual loss of heritage within communities. This is particularly so if the department with the responsibility for undertaking the processes is under-resourced.

The requirement to achieve agreement of 51 per cent of landowners to undertake the heritage listing of an area is considered untenable and highly unlikely to be achieved – the removal of these provisions in the Act is supported.

There is certainly merit in achieving greater consistency across all council areas in the way that heritage matters are dealt with, and in the clear separation of heritage considerations from planning considerations in development assessment. However, assessment of development proposals that affect State and Local Heritage Places/Areas should remain with councils, with input from heritage experts, irrespective of how other matters relating to Local Heritage change.

These ideals could be achieved by other means such as:

- a formal referral process to HeritageSA or an alternate centralised Heritage Service, for all Local and State Heritage matters;
- establishment of a stream for Heritage Professionals within the Accredited Professionals Scheme to whom Councils can formally refer development applications, rather than HeritageSA; and
- require the provision of a heritage report prepared by a suitably qualified expert with a development application to address the proposal in the heritage context.

With respect to new local heritage listings (or delisting's) any process adopted should include an opportunity for councils to remain involved.

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

Deemed consent provisions (including Assessment Clocks) are considered a relatively blunt and ineffective tool which do not necessarily result in better planning outcomes.

The notion of Deemed Consents (DC) implies that the planning system is set up for quick decisions (either approval or refusal) rather than facilitating mediation or assisting applicants to achieve better development outcomes. There is generally a culture amongst planners and builders to seek to achieve the best development outcome, rather than issuing a refusal without entering into discussion with the applicant about how the proposal might be adjusted to achieve an approval.

With a perceived threat of a DC looming, planners may elect to make a quick decision, rather than work through and fully resolve the challenges of an application with an applicant. This approach will ultimately result in an increase in refusals, frustrated applicants, increase in fees payable and not necessarily better development outcomes.

Planners are also pushing for applications to be placed 'on hold' until the issues can be worked through, resulting in applications sitting in the portal in an area which is not active work in progress. This contributes to added difficulties in managing workloads and can result in substantially worse timeframe outcomes.

There is a risk that Council Assessment Panels or the court system will become congested with appeals

against refusals – resulting in greater delays to the development than if the planner and applicant had worked together in the first place. The feedback from Assessment Authorities is that 'deemed consents' are resulting in court action, which is, firstly, costing parties involved substantial costs and, secondly, is resulting in slower processing, due to having to resolve the deemed consent.

To facilitate greater opportunity for mediation between the Relevant Authority and the applicant, consideration could be given to providing an option in the ePlanning system for applicants to formally withhold their right to issue a deemed consent in favour of working with the Relevant Authority to resolve any challenges of the application (accepting that this may mean longer assessment times).

Often the reasons for delays to the assessment process relate to the planner trying to achieve the best development outcome, rather than being unreasonable or vexatious. In relation to the occasional delay of Development Approval being issued after receipt of planning and building consent (generally issued by private certifiers) this is often due to inconsistencies or inaccuracies in either of the consents being noted by Council. If a Council issues Development Approval with this knowledge, then there is a perception that they are perpetuating or endorsing the inconsistencies / inaccuracies.

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

There are a number of reasons that delays in the verification process occur.

The key reason for verification delays is when the information supplied is of poor quality or is insufficient to be able to undertake verification. One way to overcome this type of delay is the development of an easy-to-understand checklist / guideline for applicants that clearly describes the information required to be lodged, together with images to explain the different requirements are (e.g. site plan example) and the reason that they are required (ie what's their purpose in an assessment).

It has also been noted that when a verification is commenced but not completed, the application goes to a different tab and sometimes then gets lost or missed, which may lead to inadvertent delays. If the system could hold or identify incomplete verifications this may assist to reduce these delays.

From a building assessment perspective, delays in verification can result from multiple building elements in a single development application (eg dwelling, carport, garage, verandah, pool & safety fence). The verification requests the individual costs for each element which typically isn't provided with the submitted application. This prompts a request for the information from the applicant- in most cases this information is unknown and requires additional time to investigate. Consideration could be given to amending the application form to prompt this information being nominated by the applicant upfront.

Having to contact owners about the staging of consent/building also adds time to the process – the owner or applicant could nominate this at the time of lodgement to avoid needing to be revisited at verification stage.

There are other smaller delays that incrementally add time to processes, such as having to answer unnecessary questions for each application. For example, for each application the accredited professional has to nominate their level of accreditation – the system should be able to extract this information from

the account user's login and apply it automatically.

It is also noted that more complex applications take longer to verify. There is opportunity to set timeframes for verification that are commensurate with the complexity of the application with more complex applications having longer verification timeframes and less complex having shorter verification timeframes. There are already consequences on relevant authorities for delays in verification. Given that the vast majority of delays are beyond the control of the relevant authority, there is no need for any further consequences.

Other PDI Act Matters for Consideration

Crown Development

It is noted that Crown Developments sit outside of the ePlanning system which creates confusion for applicants. It is suggested that Crown Development applications are integrated within the ePlanning system to streamline processes and create efficiencies.

e-PLANNING AND WEBSITE

USER EXPERIENCE

Website Redesign
• Is the PlanSA website easy to use? • What improvements to the PlanSA website design would you make to enhance its useability?

There is a perception that unless someone is an active and frequent user of the PlanSA website, it is likely to be overwhelming and not easy to navigate. Substantial time is spent by council staff assisting customers to navigate the website and portal.

Anecdotally, we have received the following feedback from customers about the website/portal:

- it's difficult to find the relevant sections of the website needed;
- the lodgement register is not obvious;
- searching on the website is difficult (eg if a user enters "road" instead of "rd" there is no return for the search);
- there's too much planning jargon;
- customers are becoming increasingly nervous about clicking in links in emails or paying fees online, particularly in light of recent data breaches/hacks/scams.

The following suggestions are made to improve useability:

- on the landing page offer "what are you here for?" as a first step to guide users to the right area;
- key items should be obvious – front & centre;
- simplify the language used;
- improve intuitive search functions;
- provide tips for searching on the website;
- include a "relevant authority" page;
- in the lodgement register, include a column to identify why an application is (or is not) on public notification (could link to Table 5 in Planning & Design Code);
- provide automatic access to the portal to owners even if the application is lodged by a builder/designer

– with ability to upload documents;

- make the website mobile device user-friendly.

Mobile Application for Submission of Building Notifications and Inspections
• Would submitting building notifications via a mobile device make these processes more efficient? • Where relevant, would you use a mobile submission function, or are you more likely to continue to use a desktop?

Development of a mobile application which sits outside the ePlanning system but "talks" to it and accepts submissions of building notifications and inspections is strongly supported. Such an application would reduce workloads for council staff and create efficiencies in the system by reducing double-handling.
Such a mobile application could be extended to benefit other processes in the system, such as submission of sign-on-land notifications and statements regarding native vegetation.

Online Submission Forms
• Is there benefit to simplifying the submission process so that a PlanSA login is not required? • Does requiring the creation of a PlanSA login negatively impact user experience? • What challenges, if any, may result from an applicant not having a logon with PlanSA?

There is a need to reduce the number of steps in account creation to make it easier for users. Anecdotally, customers who are occasional or one-off users are reluctant to create a login.
One solution may be to create an option to select a "guest" login for those who do not want to create an account. There could potentially be automatic creation of an account for those who use the guest login, based on email recognition for returning users.

Having account login based on a user-name, rather than email address, is proving to be problematic with many customers forgetting their user-name. One solution may be to provide the option to login in via email address or user-name.

Increase Relevant Authority Data Management
• What would be the advantages of increasing relevant authorities' data management capabilities? • What concerns, if any, do you have about enabling relevant authorities to 'self-service' changes to development applications in the DAP?

The ability of relevant authority to make changes without having to request PLUS to make them is supported in that it will assist to reduce delays in processing applications.

It is suggested that this function should be limited to Council Assessment Managers only initially, rather than all relevant authorities, given the trust that has been established between councils and PLUS since the implementation of the new system. The ability to audit/track changes will safeguard any misuse of the new self-service abilities.

Inspection Clocks
• What are the advantages of introducing inspection clock functionality? • What concerns, if any, would you have about clock functionality linked to inspections? • What, if any, impact would enabling clock functionality on inspections be likely to have on relevant authorities and builders?

Introducing inspection clock functionality to the ePlanning system is considered a positive step towards managing statistics.

The functionality should not be used as a "stick", rather a tool to help manage workloads and resourcing

and for reporting purposes and, as such, the statistics should be available to councils.

The functionality should not preclude inspections being undertaken beyond the nominated number of days (eg if two days are allowed and the work can be inspected on day four, the builder should not be allowed to refuse council opportunity to inspect).

Collection of Lodgement Fee at Submission
• Would you be supportive of the lodgement fee being paid on application, with planning consent fees to follow verification? • What challenges, if any, would arise as a consequence of 'locking in' the Code provisions at lodgement? How could those challenges be overcome?

Council already receives complaints from applicants about receiving multiple invoices for a single development application. The proposal could therefore further frustrate or confuse customers receiving and paying multiple invoices for the one application – particularly for occasional or one-off users of the system. This could be alleviated if it is made very clear in the system to applicants that they should expect to receive further invoices. There could be an indicative tracking timeline displayed to indicate to applicants the status of the application and what's coming next (in terms of process and fees).

Occasionally the verification process establishes that an application is unnecessary – if lodgement fees have been paid this could result in greater administrative burden in undertaking refunds.

There are few applications that are lodged with the correct information, or even plans that are reasonable, with the current process based on the reasonable provision of information. While it does create some confusion around when an application is formally lodged (particularly with applicants who use the system infrequently) this is really an opportunity for further education and understanding than being a challenge of the current system.

We also acknowledge that there are a number of applications which are lodged, such as 'tree damaging' applications, where during verification it is determined that the proposed works are not development, and no application is required. In these instances, a refund of the lodgement fee would have to be undertaken for these applications.

Combined Verification and Assessment Process
• What are the current system obstacles that prevent relevant authorities from making decisions on DTS and Performance Assessed applications quickly? • What would be the advantages of implementing a streamlined assessment process of this nature? • What, if any, impact would a streamlined assessment process have for non-council relevant authorities?

In some instances, the quality of plans and information received upon submission of a development application are insufficient to facilitate a combined verification and assessment process.

Otherwise, obstacles include some of the Code policy not being clear or accepted by developers (eg soft landscaping), the time spent with applicants to assist them to achieve a DTS pathway and manual inputs and editing required to produce assessment reports in the system.

Offering a combined verification and assessment process (which may prove easier with DTS applications initially) may result in planners being able to spend more time and effort into the meaningful assessment of more complex applications.

Automatic Issue of Decision Notification Form
• What are the advantages of the ePlanning system being able to automatically issue a Decision Notification Form? • What do you consider would be the key challenge of implementing an automatic system of this nature? • If this was to be implemented, should there be any limitations attached to the functionality (ie a timeframe for payment of fees or the determination will lapse)?

There is not enough information on how this would work. Currently there would be very few applications which would meet DTS requirements entirely, with most requiring some form of minor departure assessment. This possibly could work for minor domestic structures, such as garages, carports or verandahs in some zones.

Eastern States, particularly Queensland, have had a self-assessment system in place for applicants where they met similar tick box requirements to DTS. The feedback from years of this system, has not been positive, and has created a huge administrative burden on following up where applicants have undertaken wrong or misleading assessments. Why is the current system considered to be unreasonable, with 5 day assessment times?

Payment would have to be made upfront, with the best outcome of the current system meaning Relevant Authorities are not chasing payment.

Building Notification through PlanSA
• Would you be supportive of mandating building notifications be submitted through PlanSA? • What challenges, if any, would arise as a consequence of removing the ability for building notifications to be received by telephone or in writing to a relevant council? How could those challenges be overcome? • Would this amendment provide efficiencies to relevant authorities?

There are some customers (builders/architects) who prefer to pay a fee to Council than to undertake administration themselves. Mandating submission of building notifications via portal would help to change this culture and would reduce administrative workloads for relevant authorities.

To facilitate this shift, it is suggested that a mobile application could be developed to allow builders to upload notifications and notes of inspections while on-site. The mobile application could be rolled out and tested before removing the ability of submitting via multiple means (email, phone etc).

This step would create significant efficiencies for all relevant authorities, improve timeframes and provide for greater consistency across the board.

Removing Building Consent Verification
• Would you be supportive of removing the requirement to verify an application for building consent? • What challenges, if any, would arise as a consequence of removing building consent verification? How could these challenges be overcome?

Building consent verification has several functions some of which are reasonably complex and require a good knowledge base of the building assessment framework. While removing building consent verification may be achievable for small developments (such as simple Class 10s), the concept is not supported for more complex applications.

Building consent verification establishes processes, fees, referrals, development element/components, confirmation of nature of development and building class determination. Removing the need building consent verification would require upskilling of professionals to be able to verify both planning and building

concurrently, and potentially require Professional Accreditation for both planning and building.

Concurrent Planning and Building Assessment
• What would be the implications of enabling multiple consents to be assessed at the same time?

As an organisation, we had undertaken concurrent planning and building assessments under the former planning system when it was appropriate to do so. This process was contained to relatively straightforward applications unlikely to require amendment to plans and where both planning and building assessments were undertaken by Council.

Conceptually, we support concurrent planning and building consent in the current system. However, given these changes (importantly no required order of consent and private accredited professionals undertaking planning and building consents) we believe further consideration should be given to:

- applicants to be advised of the risks should they elect concurrent assessment – there is a possibility of delays in the assessment process and potentially additional financial cost if the planning assessment requires plan amendments which may have a flow-on effect to building/engineering plans, or for fees paid for building rules consent if planning consent is refused (it is noted that this risk exists currently to a degree, given there is no required order of consent);
- circumstances where two different private certification companies are engaged to undertake both planning and building consents, particularly in terms of communication between assessing officers;
- limiting the process to relatively straightforward applications (such as DTS) which are unlikely to require amendments to plans.

INNOVATION
Automatic Assessment Checks for DTS Applications
• What do you consider would be the key benefits of implementing an automatic system of this nature? • What do you consider would be the key challenges of implementing an automatic system of this nature? • Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?

There is opportunity for the system to do more at the front end of the lodgement process to assist in streamlining processes. For example, the system could include checklists (that are developed with branching or conditional logic) to be completed by an applicant that include specific questions that would filter applications to determine which, if any, consents are required. This would require a degree of trust in the applicant answering questions truthfully and may require a declaration to support this.

No two designs are the same, nor are the methods of illustrating them. There is a degree of concern that such a system may disadvantage those “mum and dad” applicants who are unable to source professional CAD drawings over those who are financially able to do so.

3D Modelling for Development Application Tracker and Public Notification
• What do you consider would be the key benefits of the e-Planning system being able to display 3D models of proposed developments? • Do you support requiring certain development applications to provide 3D modelling in the future? If not, why not? If yes, what types of applications would you support being required to provide 3D modelling? • Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?

While this technology would be beneficial, it is unlikely that many applicants undertaking typical suburban developments would be able to provide the necessary information (ie 3 D modelling data), particularly for smaller-scale development. It is also queried whether relevant data for adjacent properties would be available to assist in assessing impacts on the street setting.

It would, however, be of immediate value if the ePlanning system had the capability to integrate with 3D modelling programmes and data for those larger applications where an applicant has prepared 3D modelling. We have recently had an experience where an applicant prepared 3D modelling as part of their application but were unable to directly upload the data to the ePlanning system and instead had to upload it to a private YouTube site and share the link.

Typically, overshadowing plans are sufficient for planners to be able to assess impacts, however the 3D modelling may assist non-planners or building professionals understand a proposed development and has merit in a public notification context.

Augmented Reality Mobile Application
• Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?

Similar to 3D modelling, augmented reality technology is likely out of reach of applicants for typical smaller-scale suburban development, however, may play a beneficial role in larger-scale developments.

Accessibility through Mobile Applications
• Do you think there is benefit in the e-Planning system being mobile friendly, or do you think using it only on a computer is appropriate? • Would you be supportive of the Government investing in developing this technology so that the PlanSA website and the e-Planning system is functional on mobile?

Mobile accessibility of the e-Planning system – including the PlanSA website, mapping (SAPPA), and the portal is considered to be an immediate need and a higher priority than the other nominated innovation options. Ideally, an app that is linked to the ePlanning system would be developed that is able to facilitate use of the system in the field and would accept a range of different submissions and notifications (eg, building notifications, sign on land notifications, building inspections, etc). Such an app has the potential to create significant efficiencies for system users.

Other ePlanning System Matters For Consideration

Reporting Capabilities

Reporting is an important tool for councils to assess the ongoing performance of the department and manage resources accordingly. It enables the organisation to quickly identify and address emerging challenges or opportunities. Currently, reporting capabilities in the ePlanning system need significant improvement to support councils to undertake meaningful analysis.

Both our planning and building teams deal with ongoing reporting challenges, such as:

- Building Inspection reporting capabilities, particularly with respect to Practice Direction 9, are unreliable and leave councils unable to identify whether or not council is meeting its legislative requirements;
- Council had intended to promote the Expert Panel's review and consultation opportunities to applicants who had lodged applications in the past 12 months, however, the system was unable to provide a report that detailed applicants and their postal addresses to enable us to do so.

We understand that there has been a working group established with respect to the Building Inspection reporting, however, suggest that improving reporting capabilities (depth and breadth) needs to be a key priority for PLUS across the board.

Inspection Process Improvement

It is suggested that inspection process improvements are required to enable an individual officer and/or their manager to view the inspection list assigned (ie inspection in-progress dashboard) and any follow up inspections (inspection follow-up dashboard). There would be further benefit in being able to filter this information by building class (eg 1A, 10B, swimming pool etc) and to provide clock functionality that monitors timeframes for rectification work and alerts to assigned officers.

Statement of Compliance for Swimming Pools

A statement of compliance for swimming pools is considered unnecessary. The requirement for the SOC has created confusion and unnecessary workloads in chasing up these documents. There is no requirement as councils inspect 100% of swimming pools.

PLANNING AND DESIGN CODE

INFILL DEVELOPMENT

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

In the context of the City of Mitcham, the experience of infill development is predominantly smaller scale with one into two land divisions being the most common density increase. Nevertheless, this type of infill does not come without its challenges and does have incremental impacts. Some of the main concerns relating to infill development for the City of Mitcham include:

- ***water sensitive urban design*** (WSUD) policies – WSUD provisions in the Code are considered insufficient and significantly less than under the previous planning system for City of Mitcham. The previous requirements in place were based on evidence and data in respect of the additional roof runoff impact and the capacity of council's existing stormwater system. The cost of upgrading stormwater infrastructure to accommodate current development potential, together with reduced requirements for onsite stormwater management and the increasing incidence of significant rainfall events, is cost prohibitive.

  Suggestions for consideration include:

  - increase the requirement for onsite stormwater retention and detention for all residential development and set the quantitative requirements for roof runoff to reflect actual stormwater

infrastructure capacity;

- apply requirements for onsite stormwater management to all residential development, not just new dwellings. This includes applying overlays to zones which are currently exempt from some requirements, such as the Urban Neighbourhood Zone;
- explore options to enable alternative methods of onsite stormwater management, such as permeable paving, rather than hard stand, and soakage trenches or rain gardens. There may be a mechanism within the planning system to incentivise these methods;
- establish an off-set scheme for development contribution where sufficient on-site stormwater retention/detention is not provided as part of a development. The off-set scheme could be used to upgrade stormwater infrastructure capacity where the cumulative impact of infill development (and dwelling additions) is overwhelming existing systems (it is noted that the Panel has also posed questions regarding off-set schemes under the PDI Act Discussion Paper);
- introduce mandatory contribution schemes for all new development over a particular scale – potentially based on building footprint size, site coverage ratio or where new allotments are created.

- ***overdevelopment*** of infill allotments is not uncommon, despite policies in the Code which ostensibly seek to prevent this. Applicants frequently maximise yields and test the limits of policies, rather than adopt an approach that results in a reduced yield with better built form and liveability outcomes. Despite the Planning & Design Code being the "single rule book" for the State, it is noted that interpretation and application of the policies varies between council areas and between individuals.

  Suggestions for consideration include:

  - where a land division application results in new allotments being created, there would be benefit in the applicant providing a three dimensional building envelope to set the parameters of a building, such as the building's footprint and height. This would assist to ensure that siting and design policies (amongst others) are appropriately responded to by the proposal, resulting in better built form and liveability outcomes.
  - The development (and potentially inclusion in the Planning and Design Code) of in-depth guidelines aimed at a practitioner level and a builder/developer level to guide policy interpretation would assist to achieve better built form outcomes.
  - ODASA prepared "Design Guidelines – Design Quality and Housing Choice" (circa 2017), which includes Performance Outcomes, Design Suggestions and Design Solutions, is a helpful guide for new development that would be of significant benefit to a range of planning system users.

- ***dwelling additions*** do not trigger stormwater management or urban tree canopy policies. In our experience, dwelling additions can be substantial (sometimes comparable to a new dwelling) and warrant such additional policies that address the potential impacts of the development.

  Suggestions for consideration include:

  - apply requirements for onsite stormwater management and urban tree canopy provision to all residential development, not just new dwellings, based on the size of the development and proportion of site coverage.

- ***Stormwater management and urban tree canopy overlays*** do not currently apply to all zones that anticipate residential development, such as Urban Neighbourhood Zone. There would be substantial benefit in extending the requirements of these overlays to development within such zones.

  Suggestions for consideration include:

  - Extending application of the Stormwater Management Overlay and Urban Tree Canopy Overlay to other zones that anticipate residential development, including Urban Neighbourhood Zone.

- ***site coverage*** in the Code is silent on the cumulative effect of development on overall site coverage. For example, ancillary development – is the 60sqm floor area allowance for a single ancillary building or the total of all ancillary buildings on the site?

  Suggestions for consideration include:

  - provide greater clarity in the Code to avoid site coverage "creep" which erodes the proportion of open space and soft landscaping provision available on a site.

- ***driveway crossovers*** associated with infill development impact on pedestrian safety and reduce on-street parking opportunities. Additionally, the required minimum distance of 6m from an intersection for a driveway associated with Accepted Development proposals of carports and outbuildings is considered insufficient for some roads (eg collector roads) and poses a safety risk.

  Suggestions for consideration include:

  - policy in the Code that encourages or facilitates group dwelling developments to provide only a single driveway to preserve pedestrian safety, on-street parking and protect the streetscape;
  - require driveway crossovers to be located a distance from an intersection that is commensurate with the road type in the road hierarchy.

- ***semi-detached*** dwellings often have no meaningful attachment either in a construction sense or in terms of design outcome. Part (b) of the land use definition – "*comprising 1 of 2 dwellings erected side by side, joined together and forming, by themselves, a single building*" is open to interpretation.

  Suggestions for consideration include:

  - develop additional policy or refine the definition to guide the appearance of semi-detached dwellings.

There has been valuable research undertaken in respect to alternative forms of infill development. However, it is likely that for these forms of development to be accepted and adopted as a mainstream option, there needs to be real-world examples to demonstrate to the community that it can work.

It is important to understand the factors that are driving (or preventing) alternate housing models. Achieving good outcomes in a concentrated area can help to demonstrate to the market, developers and the community how it can work and the benefits of such development. Renewal SA development at Bowden is a good example of this approach.

Suggestions for consideration include:

- establish policies within the Code to facilitate alternative infill development types;
- create a Developer Credit Scheme to encourage site amalgamation and better integrated outcomes which result in reduced development impacts;
- establish mechanisms such as an Alternate Housing Scheme to match potential purchasers with alternative products and incentivise developers to provide such housing products.

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

Well-presented and considered structure plans are the best tool in spatially applying the alignment of regional plans and how the policies in the Code are applied. They are clear interpretation of the spatial delivery of policies where Code policies struggle to deliver clarity in local context.

Stronger policy intent provided in Zones and overlays, which supports the appropriate provision of land uses in appropriate locations.

Design outcomes are really challenging to achieve in a number of locations under the current policy within the Code. Design standards and improved policies would assist in greater clarity and alignment between strategic planning and implementation at development assessment.

Retail analysis studies should be required at development application stage, to justify the tenancy mix or uses proposed. Council has recently undertaken work which has resulted in increased Activity Centre areas, but has resulted in poor tenancy outcomes, with lack of consideration for the local need.

TREES

The system dealing with native vegetation and regulated trees is somewhat difficult to understand and navigate for the non-expert. The interplay between the different pieces of legislation and exemptions under each are often difficult to interpret and need to be better aligned so as not to conflict or cause uncertainty. There are also challenges resulting from the overlap and interdependency of roles and responsibilities across government agencies in terms of development assessment. Moreover, the objectives of the relevant acts would appear to be at odds – tension exists between orderly and economic development sought by the PDI Act and the preservation and enhancement of native vegetation sought by the Native Vegetation Act, together with bushfire risk and public safety and the rules that apply to vegetation removal in that context.

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

While the Planning and Design Code has certainly strengthened the relationship between the Native Vegetation Act and the PDI Act, there remain opportunities to reinforce and support the policy outcomes sought by the Code. Some of these opportunities, however, sit outside of the planning system and require a collaborative and holistic approach that addresses the nexus between native vegetation, planning and bushfire.

There is a significant community knowledge gap in terms of native vegetation and the responsibilities of landowners in relation to it. Important first steps include improved community understanding on which geographic areas are affected by the rules, clarity around what the term “native vegetation” includes and what permits, or approvals (if any) are required to undertake removal.

It is suggested that a collaborative effort between the various organisations is required in this regard and could include actions such as:

- amending the Section 7 search criteria to identify if a property is located in an affected area (would

require amendment to legislation);

- sending information packs to new owners in affected areas;
- holding community information sessions;
- developing and distributing a guide similar to the recently published Green Adelaide Garden Guide for Native Vegetation, Bushfire & Regulated/Significant Trees to help explain and provide examples;
- develop mapping of the different areas of native vegetation that the Code identifies at PO1.2 – eg wildlife habitat and movement corridors, significant and vulnerable areas – and create overlays on SAPPA to clearly depict this information.

These first steps are important, because often activity affecting native vegetation occurs in the absence of a development application and therefore councils have limited visibility or influence. If, however, changes to the PDI Act result in more trees being classified as regulated based on circumference, then this may be alleviated to a degree.

In relation to aspects of the planning system that may benefit from further consideration include:

- Native Vegetation Declaration - Where a development is located within areas covered by the Native Vegetation overlay, applicants can sign a declaration to state that they are not clearing any native vegetation. It is asserted that without expert advice this would be incredibly difficult for an applicant to answer correctly. Declarations lodged frequently require further enquiry by the assessing officer and there have been numerous examples of applicants making incorrect declarations.

  To overcome this occurrence, it is suggested that:

  - the Native Vegetation Council (NVC) could undertake verification as part of a development application process (although it is noted that this would have resource implications for the NVC and potentially delays to the application timeframes);
  - Schedule 8 could be amended to require applicants to provide evidence and/or other information in support of a native vegetation declaration.
- Land division – land division in areas affected by Native Vegetation Overlay (and often concurrently Hazard (Bushfire) Overlay) is seemingly at odds with the notion of preserving and enhancing native vegetation, given that it ultimately results in additional access points, built form and fence lines all of which have rights in terms of vegetation clearance.

  It is suggested that stronger policy (and potentially amendment to Schedule 8 requiring evidence from a suitably qualified expert) is needed to prevent cumulative loss of native vegetation as a result of new development occurring subsequent to a land division in these areas.
- Permits / Consents - there is still a degree of duplication in relation to permits / consents. This continues to present a challenge for applicants and decision makers.

  Further consideration should be given to the possibility of a single consent where native vegetation matters arise through the planning process and can be appropriately managed through that process.

Anecdotally, there is a paucity of expert knowledge relating to native vegetation and in particular what constitutes native vegetation. There is a tendency only to consider larger trees, but consideration also needs to be made of understorey vegetation including grasses, flowers, etc. The definition of "native vegetation" in itself is convoluted and may warrant consideration. This could potentially form part of the considerations of the impending Parliamentary Review into the Adelaide's Urban Forest.

This shortfall of expertise is experienced across the industry , and needs addressing to be able to manage native vegetation appropriately.

Council has previously made a submission to the Natural Resources Committee on the review of the Native Vegetation Act, a copy of which is attached (*) to this submission for reference. The concerns and

opportunities raised in the submission remain relevant, and pertain to aspects of legislation, bushfire protection areas, council & government agency works and the Planning and Design Code, and similarly are raised in the current submission

Bushfire management is frequently benchmarked against Canberra and it is suggested that there may be benefit in benchmarking how Canberra (or other jurisdictions) manage the challenge of native vegetation and regulated trees in the planning system.

Council has recently approached the Minister Close (as Minister for Climate, Environment and Water) regarding the potential to authorise Council staff under the Native Vegetation Act, with the particular purpose of assisting to prevent or limit unauthorised clearance of native vegetation. This approach has received Ministerial in-principle support, however the scope and practicalities of such an agreement are yet to be discussed.

While Council is very open to working collaboratively with Government agencies, it does come with a significant resource cost to Council. Without financial or in-kind support from the State Government, it may be beyond Council's means to facilitate such an arrangement in the longer-term.

We also note the extensive work undertaken by the Conservation Council SA in relation to tree protection laws/policy and tree management in bushfire prone areas[2] which proposes mechanisms to address both tree canopy retention/protection and increase. We note in particular the proposed solution for undertaking assessment of development and vegetation removal in bushfire prone areas and encourage the panel to give this consideration as a means for clearance exemptions to be more responsive to the site/ context.

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

In principle there is support for this proposal, however, it may be dependent upon the geographic and topographic area in which the development is located.

For example, in some areas early bushfire risk planning needs to be undertaken at the masterplan stage (in affected areas) to ensure that appropriate species of trees are planted in appropriate locations to minimise potential future risk to dwellings, whilst also ensuring the longevity of the trees for the benefit of the community.

While we believe that improving tree canopy coverage on private land by way of retaining existing and planting new trees is imperative to reversing the current trend of canopy loss, there needs to be some consideration for the context of the site and be a performance based assessment, rather than a fixed number.

The current methodology seems to penalise those with larger allotments – they bear the brunt of providing

[2] Conservation Council SA, https://www.conservationsa.org.au/tree_resources, 17/1/23

- *What's Happening to Adelaide's Trees? (2020)*
- *A Call to Action (2021)*
- *Comparison of Australia's Tree Laws (2021)*
- *Comparison of Australia's Capital Cities Tree Laws (2022)*
- *A Comparison of Australia's Bushfire Clearance Exemptions (2022)*

private canopy cover with developers of smaller allotments more likely to utilise exemptions and pay into off-set funds.

If this policy was introduced, it should not be limited to the rear yard. Often on smaller allotments, other infrastructure (e.g. garden sheds, rainwater tanks etc) occupies a substantial portion of the rear yard. Planting in the front yard should be an option for landowners whether located in a master planned development or not.

There is an opportunity in appropriately located master planned developments to consider the inclusion of an easements to the rear of allotments for the purposes of tree canopy cover – e.g. a 2m strip either side of a boundary preserved and planted with trees to achieve canopy cover on private land.

As previously noted, it would be of benefit to extend urban tree canopy policies to include dwelling additions, not only new dwellings, in residential zones. Dwelling additions are frequently substantial in terms of floor area and site coverage and warrant such additional policies that address the potential impacts of the development.

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

Improving tree canopy coverage on private land by way of retaining existing trees is imperative to reversing the current trend of canopy loss. However, it is suggested that there also needs to be consideration for the context of the site and broader locality, and be a performance based assessment supported by sound policy, rather than a decision based on a fixed number only.

Removal of protected trees should be carefully considered in the context of managing urban growth and development with protection of the urban tree canopy, recognising that individual landowners must be afforded opportunity and due process to apply to do so.

To help achieve that balance, review of tree protection rules and regulations needs to be made holistically and consider a range of interacting quantitative and qualitative aspects, including:-

- Protection hierarchy classification – currently regulated and significant;
- Numerical criteria – trunk circumference, tree height, crown spread;
- Species criteria;
- Qualitative criteria – eg, important visual contribution to local character and amenity, indigenous to the local area, important habitat, wildlife corridor, biodiversity, notable visual element to the landscape, scientific, social, historic, environmental;
- Exemptions criteria – if any;
- Tree protection and preservation measures undertaken to avoid the removal of a protected tree;
- The intent of a zone and how balancing tensions between urban growth and development and tree canopy preservation/enhancement might be achieved within certain contexts – eg, avoiding a one-size-fits all approach for all Neighbourhood-type zones.

We encourage the panel to consider how existing important trees can best be protected via a holistic system addressed by both legislation and policy. We suggest the following matters are worthy of further exploration:-

- consider the application and relevance of the current categories of protected trees (regulated and significant) and explore the distinction between the two categories, noting the recognised importance and emphasis of tree canopy cover in an urban environment.
- retain the qualitative criteria in the Planning & Design Code to provide the context for performance-based assessments of protected tree removal applications.
- revise the existing and consider additional policy relating to these qualitative measures, such as:-
    - Scientific value (genetic value, seed source/propagation stock, rare or localised species, remnant vegetation, outstanding species example);
    - Social (associated with indigenous cultural activities and heritage, important landmark, community association);
    - Historic (commemorative planting, associated with important events or people, part of historic place/area);
    - Environmental (contribution to canopy coverage).
- consider existing quantitative protection measures and explore opportunities to expand quantitative measures (eg reducing trunk circumference, introducing height or canopy spread measures).
- in regard to species that are either specifically protected or exempted, it is suggested that:-
    - Willow Myrtle be removed from the exemptions at Regulation 3F(4)(a);
    - the list of species in Regulation 3F(4)(a) is supplemented with other commonly valued trees which are not in the Eucalyptus genus, for example Angophora and Corymbia;
    - the list of exempt species in Regulation 3F(4)(b) is reviewed and potentially reduced;
    - DTS/DPF 1.1 of the Urban Tree Canopy Overlay should specify that new trees to be planted are not a species identified in Regulation 3F(4)(b) of the Planning Development and Infrastructure (General) Regulations 2017;
    - cross-checks be made to ensure that the list of exempt species in Regulation 3F(4)(b) and the Green Adelaide Garden Guide do not contradict one another (ie, ensure the Garden Guide does not encourage the planting of trees that are listed as exempt species in the Regulations).
- require applicants to demonstrate by providing evidence that the tree is causing structural damage to a dwelling, irrespective of distance or species.
- require applicants to demonstrate that they have undertaken all other options to remedy any structural damage and prevent reoccurrence (eg root barriers, major pruning of defective limbs, cable & brace, ongoing routine care – water, nutrients, mulch, prune) before approval for removal of a protected tree is considered.
- explore the removal of distance-based exemptions, on the basis that there is a strong legislative and policy framework to support a performance-based assessment approach.
- consider mechanisms to ensure that if distance-based exemptions are retained, then the exemptions do not apply to trees in proximity to dwellings that are intended to be demolished.
- if distance-based exemptions are retained, consider whether removal of protected trees in proximity to swimming pools should continue to be exempt as a matter of course (anecdotally, there have been examples of defunct swimming pools being used to achieve the exemption clause).

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

As noted above, consideration of removal of distance based exemptions should be explored further, and consideration given to legislation and policy that supports a performance based assessment approach. The ability to remove a protected tree in proximity to a dwelling should be a performance measure, not a fixed (and, at times, arbitrary) numerical measurement. Moreover the provision should not apply to trees in proximity to dwellings that are intended to be demolished. The City of Mitcham has, on numerous occasions, experienced landowners using the exemption clause to remove a tree in proximity to a dwelling which is then demolished fairly promptly thereafter.

An applicant should be required to demonstrate by providing evidence that the tree is causing structural damage to a dwelling (or structure of value) irrespective of distance or species.

Furthermore, applicants should be required to demonstrate that they have undertaken all other options to remedy any structural damage and prevent reoccurrence (eg root barriers, major pruning of defective limbs, cable & brace, ongoing routine care – water, nutrients, mulch, prune) before approval for removal of a protected tree is considered. Where all of these have been explored and exhausted, only then should removal be considered an appropriate course of action.

Should numerical based exemptions remain in future, we encourage consideration of whether removal of protected trees in proximity to swimming pools continue to be exempt as a matter of course. Anecdotally, there have been examples of defunct swimming pools being used to achieve the exemption clause.

Urban Tree Canopy Offset Scheme / Regulated & Significant Tree Fund
• What are the implications of increasing the fee for payment into the Off-set scheme? • If the fee was increased, what are your thoughts about aligning the fee with the actual cost to a council of delivering (and maintaining) a tree, noting that this would result in differing costs in different locations? • What are the implications of increasing the off-set fees for the removal or regulated or significant trees?

It is understood that there has not been a significant number of payments made to the Urban Tree Canopy Offset Scheme (UTCOS) in lieu of planting trees. In the experience of the City of Mitcham, most affected applicants are proposing to plant the required number of new trees or are requesting it be made a Reserved Matter until such time as there is a better understanding of the soil type of the site (at building consent stage).

While this is a positive outcome, it must be noted that the council is not resourced to be able to undertake "tree compliance" across the council area to ensure that the replacement trees are in fact planted or the ongoing maintenance of the trees. Aerial photography and LIDAR imaging will ultimately provide a degree of insight as to whether tree planting is being undertaken in accordance with approvals, but this is a long-term proposition.

Nevertheless, we strongly support the fee payment being substantially increased to reflect the actual lifetime cost to council of planting and maintaining trees which can run into thousands of dollars per tree. Increasing the fee also demonstrates to the community that we place a value on trees and may encourage

applicants to elect to retain or plant trees.

This would be a positive implication in term of improving tree canopy cover in the public realm – however the difficulty is that tree canopy loss is overwhelmingly from private land and numerous councils, including the City of Mitcham, are running out of space in the public realm to plant trees. On this note, we advocate for flexibility within the Urban Tree Canopy Overlay Scheme so that the fund's purpose extends to supporting and maintaining the health of existing trees to ensure their longevity (for example tree inlets or other stormwater augmentation) as well as planting new trees.

The lifetime cost of a tree will vary, depending on a number of factors, including the species of tree and where it is located – even within individual council areas this varies widely. We support the fees being contextual, noting that if different fees were to be applied between council areas, there would need to be some evidence to support this approach.

With respect to replacement planting to compensate the removal of regulated or significant trees, we make the following comments:-

- there is a relationship between site coverage, soft landscaping and tree provision. Under current policy, it is almost impossible to achieve the replacement tree criteria in the urban and suburban context and so is frequently more acceptable to the applicant to pay a small (replacement) fee into the tree fund. This approach does not assist to improve canopy cover on private land.

  Consideration should be given to whether there is merit in removing or reducing these criteria so that applicants contribute at least something to canopy cover on private land, rather than nothing?
- similarly to the UTCOS commented on above, it is considered important that the fee in lieu of planting for removal of significant or regulated trees is commensurate with the lifetime cost of the tree to council.
- greater encouragement or incentive to the landowners to retain large trees may alleviate the rate of loss of tree canopy coverage on private land.

Consideration could be given to developing a scheme that provides developers with certain dispensations if the proposal achieves a particular level of environmental performance (over and above what is required by the Building Code) which might include retention of large trees.

There is also significant opportunity for financial or in-kind subsidy to be made to owners of regulated and significant trees that make a valuable contribution to the urban canopy coverage. Such a subsidy would assist owners to manage and maintain these trees that inherently provide benefit to the wider community.

Public Realm Tree Planting
• Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?

There is an overwhelming need for governments and the community collectively to value trees for their social, environmental and economic benefits. Partnerships between and investment by all levels of government – federal, state and local – is necessary to achieve this. Favouring grant applications contribute towards tree canopy coverage is a tangible way to demonstrate the value and benefits of trees.

On face value, therefore, it would seem appropriate to give greater weighting to projects that result in increased tree canopy coverage. However, it should also be acknowledged that some council areas have greater opportunity to increase tree canopy coverage than others. Those council areas already making significant contributions to tree canopy coverage and who have limited room to include more in funding proposals, should not necessarily be penalised. Perhaps the weighting should be balanced by consideration of the area's baseline canopy coverage.

It is suggested that the Planning and Development Fund could allocate funds to innovative projects that seek to retain and protect large trees that contribute to canopy cover on both public and private land, given the broader community benefit large trees provide irrespective of location. This would also support the notion of trees having inherent value.

Other Tree-Related Matters for Consideration

Bushfire

There is a need to strike a better balance between the retention of native vegetation with the risks to life and property that may occur in the event of bushfires. Bushfire protection areas play an important role in managing risk, however there is currently a gap in this interplay as not all trees in bushfire protection areas necessarily constitute or increase bushfire risk.

The parameters for removal of trees within bushfire protection areas are also convoluted as it introduces the need to obtain approval from the Country Fire Service for clearance of 'large trees', as defined in the Act located between 10-20 metres from a dwelling.

It is also suggested that the landowner has a responsibility to manage their property in order to reduce risk in the event of a bushfire – simply removing trees from a property will not achieve that outcome. In fact, there is evidence to suggest that trees located at a suitable distance from a dwelling can shield against wind, absorb radiant heat and filter embers and other debris in a bushfire event[3].

The following opportunities exist to address the above:

- coordination of requirements related to the clearance of 'large trees' of regulated and significant size within bushfire protection areas;
- consideration as to whether the definition of 'building' should be more clearly defined and whether it is the intent of the Act that clearance can occur in proximity to what could be quite minor structures;
- the 'as of right' clearance around existing dwellings is worthy of consideration. In a similar manner to examples of regulated and significant tree removal noted previously, we have seen a number of instances of vegetation clearance occurring while a dwelling remains on the land, only for the use of that land to change shortly thereafter (often to a commercial or business activity).

  It is suggested that removal of trees under bushfire provisions should be performance or risk based, not "as of right", for this reason, but also because not all trees in proximity to dwellings or structures pose an increased risk in the event of a bushfire.
- Consider introducing a requirement that before removal of trees is considered, the landowner must make reasonable efforts to protect their assets by other means such as sprinkler installation, regular maintenance and pruning of trees, maintenance of grasses and understorey vegetation, provision of adequate water supply for fire fighting purposes etc. Only once a landowner has exhausted all other means should tree removal be considered for bushfire protection reasons.
- A collaborative approach between agencies will be required to deliver community education programmes to support these opportunities.

Risk & Insurance Availability

It has come to our attention that, since recent storm events and the ensuing damage, insurance companies are now asking prospective customers two specific questions relating to trees:

- is there a tree located within 10 metres of the dwelling/building?

[3] CSIRO website "Bushfire Best Practice Guide", https://research.csiro.au/bushfire/landscaping/trees/, 17 November 2022

- is the tree more than 8 metres tall?

If answered in the affirmative, insurance companies are advising that they are unable to offer insurance or are only able to offer limited coverage (ie excluding damage from trees).

This is a matter for consideration in the context of planning reforms and serves to highlight the competing tensions that frequently exist between economics and the environment.

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

Carparking is a perpetual matter that councils interact with regularly from both strategic and operational perspectives. Council regularly receives reports of difficulties in respect of on-street parking which seem to be exacerbated in several key circumstances:

- at the interface between residential areas and non-residential areas;
- around schools, kindergartens and aged care facilities;
- in bushfire risk areas;
- in areas that have experienced significant infill development.

Reported difficulties primarily include:

- waste trucks being unable to safely manoeuvre around cars parked on-street;
- lack of parking availability for visitors, health-care workers and in-home care providers;
- commercial vehicles undertaking delivery on & off-loading and waste collection on the street, rather than on-site.

Typically, drivers of these difficulties include:

- tension between garaging for cars and storage – typical sized garages are not necessarily used for larger vehicles (eg the Australian Standard garage is sufficient to accommodate a medium sized sedan, but not the larger 4WD vehicles/SUVs that are now commonplace). Compounding this is a typical lack of storage within the dwelling or elsewhere on site (eg garden shed). This results in vehicles being parked in driveways, with additional vehicles associated with the dwellings being parked on-street.
- Multiple car ownership – In the City of Mitcham 61% of dwellings have two or more vehicles[4]. There has been a 17.6% increase between 2016 and 2021 in dwellings that have three or more vehicles[5]. Our predominant demographic is 15-19 and 45-49 years[6] with 35.1% of households comprising couples with

[4] City of Mitcham Number of cars per household, ABS Census Data https://profile.id.com.au/mitcham/car-ownership, 7 December 2022

[5] City of Mitcham Number of cars per household, ABS Census Data https://profile.id.com.au/mitcham/car-ownership, 7 December 2022

[6] City of Mitcham Age-sex pyramid, ABS Census Data, https://profile.id.com.au/mitcham/age-sex-pyramid, 7 December 2022

children[7] – conceivably mum, dad and teenagers all with cars. Multiple car ownership with insufficient space to accommodate parking, vehicles are regularly being parked on-street.

The above two points could be alleviated by reviewing the minimum requirements of garage sizes and ensuring that sufficient storage space be incorporated into the design of the dwelling or within the garage – these matters could be dealt with by amendments to the Planning and Design Code.

- Smaller carparking areas associated with non-residential land uses have a flow-on effect in that waste and deliveries are unable to be accommodated on site and occur in the street which impacts traffic flow and congestion.

A review of non-residential rates should be undertaken to ensure development provides sufficient area for core functions to occur without impacting traffic and on-street parking in the locality.

- Where substantial infill development has occurred, the smaller allotment widths combined with on-street parking, waste trucks are regularly experiencing difficulties in safely collecting bins. In some areas, special alternative arrangements between residents and council have been made to enable safe collection to occur.

  Consideration of on-site waste-storage and collection points needs to be included at the smaller-scale residential development level, as well as larger-scale, with consideration given to other infrastructure (e.g. street trees) and on-street carparking that may impact collection.
- Lack of sufficient school "kiss'n'drop" areas to allow for safe embarking/disembarking within the school's site frequently exacerbates carparking challenges in streets surrounding schools, particularly at peak times.

It is understood that carparking rates in the Planning and Design Code are based on RTA UNSW data which has not been reviewed since 2014 and which are perhaps not reflective of the requirements of metropolitan Adelaide. It is suggested that local data collection should be undertaken with rates for metropolitan Adelaide developed for different land use types and for different geographic areas which could be managed using TNVs in the Code.

As noted above, multiple car ownership is common, and the rate of car ownership is not changing in metropolitan Adelaide generally. There is a fundamental cultural shift in society required to move away from car ownership and towards alternative modes transport becoming the norm. Public transport in Adelaide is currently not sufficient to support this shift or to enable a reduction in carparking.

We therefore do not support a move to provide parking dispensation based on proximity to public transport. We strongly suggest that there should not be any dispensation in locations where there is already a high demand and identified conflict – eg near schools, shops etc.

It is suggested that development outcomes could benefit from inclusion of policy in the Planning and Design Code around qualitative parking requirements, not simply quantifiable requirements.

It should be recognised that the 2021 Census and resulting ABS data was significantly skewed by COVID lockdowns with a significantly high proportion of people working from home. It is therefore not an accurate reflection of pre or post COVID trends and it is inappropriate to base carparking rates on this data.

It is considered appropriate to require at least one undercover carparking space to be provided with a new dwelling proposal. The primary reason being that if not addressed in the initial dwelling proposal, theoretically the proposal may leave insufficient width between the dwelling and boundary line to accommodate a covered carparking space post-development.

[7] City of Mitcham Household Type, ABS Census Data, https://profile.id.com.au/mitcham/households, 7 December 2022

This would then result in applications for carports forward of the dwelling, a less than ideal built form and streetscape outcome, which the Planning and Design current speaks against. An alternative may be to require that dwelling proposals provide sufficient space to accommodate a covered carparking space if one is not included in the initial proposal.

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

Design guidelines may provide benefit to both residents and councils in that it would provide around this element of a proposal. It is highly recommended that if design guidelines are developed, they limit the use of garages exclusively for vehicle storage (not general storage) to avoid spill-over parking in the street. They should also take into consideration emerging trends or industries (eg gig economy, hire e-scooters/e-bike parking, vehicle sharing) that need to be accommodated in commercial or larger scale residential developments.

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

There needs to be a balance struck between encouraging and facilitating the uptake of electric vehicles and having a degree of control over the potential impacts that related EV infrastructure may have in particular contexts.

EV charging stations (EVCS), and potentially other renewable energy infrastructure such as community batteries and virtual power plants, should be identified as forms of development with supporting policies. However, consideration should be given to introducing exemptions under Schedule 4 of the PDI Regulations to enable their installation without requiring development approval.

Circumstances where it is important that a degree of control is retained over EVCS so as to mitigate and manage any planning impacts might include where the proposed EVCS:

- is located in a State or Local heritage places or areas;
- incorporates third party signage, illumination or fencing (or other associated elements);
- is greater than a nominated physical size;
- is bi-directional (i.e. feeds energy back into the grid).

Otherwise, in a residential context, dwellings typically located in the urban and suburban areas (eg detached, semi-detached, row) should be able to incorporate fast charge (3 phase 7kW) EVCS without requiring approval given the relatively limited impact on neighbouring properties or streetscape.

Consideration should be given to requiring new commercial or multi-storey residential developments to incorporate EVCS infrastructure with a proportion of total carparks being allocated to electric vehicles (similar to disability parking requirements). Such EVCS infrastructure should have a minimum standard charging rate (ie >7kW). It has been suggested that one method to determine the proportion of carparks allocated to electric vehicles in a scheme should be reflective of the proportion of new car sales being

electric vehicles, however this may change relatively frequently so may not be practical.

Given the technology is still relatively new and evolving, SA Power Networks should be consulted to identify any perceived technical challenges or further limitations required as the investment in EVCS grows exponentially in the future.

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

Payments made into carparking funds should be used within the locality that they are obtained from as this is typically where the carparking demand and resultant deficit will be.

The preference is to ensure that proposals provide sufficient parking and that shortfalls are not experienced as it is queried whether any funding received would ever be sufficient to develop anything as substantial as provision of carparking. It may be better to use funds for innovations to maximise efficiencies in the use/compliance of existing on-street/off-street spaces that already exist.

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

It is noted that there are already Australian Road Standards, and it is queried whether Commission prepared local road design standards would be applied only for new roads in subdivisions/master planned developments. Councils have asset management responsibilities to their communities, and it is considered that undertaking an exercise such as this would be complicated and potentially problematic.

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

Generally, Character Area Statements provide adequate guidance in the assessment of a development proposal. However, there are matters that strongly contribute to the character of an area, such as fencing and landscaping, that are not controlled by development processes as they are either exempted or not development per se and are therefore outside of a council's control.

There have been recent experiences in the City of Mitcham where front fences (which are exempted from requiring approval under the Development Regulations) have been erected whose styles, materials and heights, entirely contradict the Character Area Statement position on fences. Such fences have a significantly detrimental impact on the overall streetscape and character of the area and will arguably remain in situ for many years. The risk is that the cumulative effect may eventually erode the area's character over time.

It is suggested fencing within a Character Area Overlay should not be exempt under Schedule 4(4)(d) and that there should be similar provisions for fences in the Character Area Overlay as exist for the Historic Area

Overlay (Schedule 4(4)(d)(ii) and (iia)).

With regard to the concept of introducing a development assessment pathway to only allow for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved, we make the following comments:

- at first glance, it is a positive step in that existing dwellings are retained until such time that new dwellings are approved and provides incentive for applicants to design appropriate developments and support the concept in-principle;
- an applicant is not bound to act on a development approval and we wonder what the mechanism will be to bind the demolition and new building and to enforce completion of a proposal in full;
- there is a perception within the community that this pathway will result in a relevant authority having greater control over whether or not demolition occurs. Without any additional demolition "test" in the Character Area Overlay (as per the Historic Area Overlay) in reality there is little additional control than already exists. Perhaps community expectations in this regard need to be managed;
- if the primary objective of the concept is to ensure that new (replacement) development is suitable in character areas, then strengthening relationships between Character Area Statements, design guidelines and Code policies may help to achieve better built form outcomes.

Other Character & Heritage Matters for Consideration

State Heritage Area – Colonel Light Gardens

It is acknowledged that the following comments overlap the topics that the Panel is reviewing of the PDI Act and Heritage matters. City of Mitcham has recently reviewed development triggers for council works in the public realm within Colonel Light Gardens, in the context of its state heritage status. We believe there may be some benefit in minor amendments to Schedule 5 Clause 2 of the PDI Regulations and to the notion of "like for like" for the replacement of minor urban elements in the public realm.

Playground Equipment

Schedule 5 Clause 2(1) provides exemption from the definition of development for playground equipment on or in a recreation area. The definition of playground equipment in this context is limited to traditional equipment such as see-saws, slippery dips, climbing frames and the like. In contrast to this, Schedule 4 Clause 1(f) contemplates not only traditional types of playground equipment, but also other exercise or recreation equipment in a recreation area.

It is suggested that Schedule 5 Clause 2(1) include "other exercise or recreation equipment" in addition to "playground equipment" so that more contemporary forms of equipment commonly found in recreation areas are included in the exemption in State Heritage Areas.

Minor Assets within the Public Realm

From time-to-time, Council installs new or replaces existing urban element assets such as picnic tables, bench seating, drinking fountains etc in recreation areas within Colonel Light Gardens. This is not captured within Schedule 5 and therefore such acts and activities require development approval.
Council also has occasion to replace existing street furniture assets, such as bench seating, at the end of the asset life. While the repair or maintenance of street furniture is included within Schedule 5, replacement of existing street furniture is not, and therefore requires development approval.

The requirement to seek development approval in such circumstances as these is considered impractical and creates unwarranted delays in asset delivery programmes – particularly where Council has a catalogue of approved urban elements and technical specifications for use in the Area. Requiring development

approval in such circumstances does not necessarily facilitate better outcomes for the public realm.

The "Replacement Building" concept now sits within the zone provisions of the Planning & Design Code. But for the State Heritage Area overlay this concept would have the effect of classifying the "like for like" replacement of minor structures in the public realm (such as park benches or picnic tables) as "DTS development" thereby requiring planning consent to be granted.

We suggest:

- Schedule 5 Clause 2 be expanded to include a new sub-clause to include the placement, replacement, installation, construction, reconstruction, alteration, repair or maintenance of minor urban elements in a recreation area;
- Schedule 5 Clause 2(2) be extended to include "replacement" as well as repair and maintenance in regard to existing street furniture;
- consideration be given to the notion of "like for like" to be incorporated into the Code or Schedule 5 for the management by Council of urban elements in the public realm where a catalogue of urban elements and/or technical specifications has been developed for use in the Area.

<u>"Materially Affects" Test</u>

During the transition from the Development Act & Regulations to the PDI Act & Regulations, there was a subtle (but important) inclusion to the wording of the council works exemptions from the definition of development.

Development Regulations

- *Reg 8 Exclusions from the definition of development in the Colonel Light Gardens State Heritage Area referenced Schedule 3A.*
- *Clause 2 of Schedule 3A dealt with Council works. Within clause 2(3) of Schedule 3A "the replacement, construction, reconstruction, alteration, repair or maintenance by a council of a road, drain or pipe" was excluded from the definition of development.*

PDI (General) Regulations

- *Reg 3D Exclusions from the definition of development in State heritage areas generally references Schedule 5. An act or activity within the State Heritage Area Overlay under the Code if in Schedule 5 is declared not to constitute development.*
- *Clause 2 of Schedule 5 now deals with council works. The clause is in near identical terms to the equivalent clause in the Development Regulations with one important addition to clause 2(3) relating to roads etc. It now reads "the replacement, construction, reconstruction, alteration, repair or maintenance by the council of a road, drain or pipe* ***that does not materially affect the heritage value of the place****".*

The result of course is the inclusion of the additional words impose a limitation on the exclusion; such that if a proposed road alteration was to "materially affect the heritage value of the place", the Council could not then take the benefit of the exemption. Practically speaking, rather than having a strict exclusion from the definition of development (as we took to be the case previously), we must now consider that test up front. Notwithstanding these issues are already considered to ensure we act appropriately within in a heritage conservation context, it now appears the test is inextricably linked to council works, which was not previously the case.

We are also bound by similar tests under the Heritage Places Act which compel us to operate and perform works in the State Heritage Area appropriately. This change to the wording creates duplication around Council's obligations under the two pieces of legislation and would appear to add a layer of subjective

opinion to the process. In the absence of definitive guidance on how to determine whether an act or activity "materially affects the heritage value of the place", Council's opinion in this regard may differ from a concerned citizen's opinion – this may ultimately lead to Council's opinion being tested in the courts, resulting in unnecessary delays in Council's provision of infrastructure.

We suggest that the words "*that does not materially affect the heritage value of the place*" be removed from Schedule 5 Clause 2(3) to avoid duplication of obligation and remove opportunity for vexatious challenges resulting from a difference of opinion.

Alternatively, the words "in the Council's opinion" could be added so as to provide clarity as to who the decision-maker is in regard to whether or not the heritage value of the place is materially affected. If neither of these suggestions are considered appropriate to adopt, then we suggest that a clear definition of "materially affects" is provided within a Practice Direction to provide guidance and clarity to both practitioners and the community.

The City of Mitcham has recently developed *Heritage Guidelines for the Public Realm in Colonel Light Gardens* in conjunction with the community and heritage experts. This document provides clear, detailed and comprehensive guidelines for infrastructure work in the public realm and has received the support of renowned heritage expert Robert Freestone and HeritageSA. It supports the the suggested changes herein and provides assurance as to the ongoing management and conservation of the heritage values of Colonel Light Gardens.

<u>Statutory Referrals to HeritageSA</u>

There may be opportunity to review the requirements for statutory referrals to the Minister for Environment & Water (HeritageSA) for minor development within a State Heritage Area (eg front fencing, minor outbuildings), where such minor development meets all the required criteria in the new Heritage Standards for Colonel Light Gardens.

Such development would, of course, still be subject to a planning assessment which would take into consideration the Heritage Standards. Allowing some forms of minor development to bypass the referral process would have benefit to both the community, in terms of fees and application timeframes, and to the referral body (HeritageSA) who would be able to concentrate resources on more complex referrals.

We suggest that the concept of some minor forms of development (which would not materially impact the heritage values of the Area) not be subject to the statutory referral process be explored further.

2 July 2021

Parliamentary Officer
Natural Resources Committee
Sent by email: NRC.Assembly@parliament.sa.gov.au

To the Parliamentary Officer,

Natural Resources Committee - Review of the Native Vegetation Act 1991

Thank you for opportunity to provide feedback on the current operation of the Native Vegetation Act (the Act) and its role in managing indigenous plant species within the State. The City of Mitcham recognises the importance of protecting, retaining and restoring areas of native vegetation of the Adelaide and Mount Lofty Ranges.

The Mitcham Hills comprises public open space and suburban residential areas containing substantial vegetation recognised by the Act. In addition to works undertaken within our open space and road reserves, there is significant urban / suburban development on private land, as well as requirements for vegetation management in bushfire protection areas. Balancing these collective factors, against the objectives and complexity of current Native Vegetation legislation, often proves challenging.

In short, Council's currently interacts with native vegetation and the provisions of the Native Vegetation Act in the following ways:

- Assisting with a volume of community queries related to the clearance of native vegetation on private land
- The preparation of Bushfire Management Plans
- Management of significant areas of vegetation in the public realm, including Council's open space, trails and road reserves
- Considerable investment into vegetation management involving clearance and removal of pest species (woody weed, olive trees etc) for the purpose of bushfire protection and to assist regeneration and preservation of native vegetation; and
- Through the planning assessment process where development impacts on recognised native vegetation.

It is with this context in mind that we provide the following feedback:

Functionality of the Act

The current Native Vegetation legislation is complicated, particularly for the local community to understand. In most cases an accredited consultant must be engaged to confirm if they are in fact undertaking native vegetation clearance, whether it is appropriate and what approvals are required.

A further challenge of the current legislation is its blanket application to the management of native vegetation across the State. There would be a benefit to a more bespoke approach by recognising different characteristics that exist in both a rural, peri-urban and suburban context.

There are currently exemptions within the *Native Vegetation Regulations 2017* that allow for the clearance of vegetation within 10 metres of a building and within 5 metres of a fence line. This cumulative effect of small- scale clearance occurring on sites within the Mitcham hills undertaken without the need for approval under the Act but will have unintentional long-term impacts on native vegetation loss within the State.

The following opportunities exist to address the above:

- Contemporise the Act in terms of its content and where it interacts with other legislation particularly in relation to its definitions and processes
- Consideration of weighting systems for vegetation clearance within different contextual settings i.e. rural, peri-urban and suburban requirements.
- Embedding practice directions as an instrument of the the Act. Practice directions could assist by more clearly outlining procedural requirements and be more reactive to emerging issues.

Bushfire Protection Areas

There is a need to strike a better balance between the retention of native vegetation with the risks to life and property that may occur in the event of bushfires. Bushfire protection areas play an important role in managing risk, however there is currently a gap in this interplay as not all trees in bushfire protection areas necessarily constitute or increase bushfire risk.

The parameters for removal of trees within bushfire protection areas are also convoluted as it introduces the need to obtain approval from the Country Fire Service for clearance of 'large trees', as defined in the Act located between 10-20 metres from a dwelling.

The following opportunities exist to address the above:

- Coordination of requirements related to the clearance of 'large trees' of regulated and significant size within bushfire protection areas.
- Consideration as to whether the definition of 'building' should be more clearly defined and whether it is the intent of the Act that clearance can occur in proximity to what could be quite minor structures.
- The 'as of right' clearance around existing dwellings is of interest, and we have seen a number of examples of vegetation clearance occurring while a dwelling remains on the land, only to see the use of that land change shortly after (often to a commercial or business activity). This needs further consideration.

Council Works

The City of Mitcham's predominate environment within the Hills Face Zone is Greybox Grassy Woodland. Development of footpaths and trails within road reserves require clearance applications under the Regulations and as a result can require considerably more lead in work, time and cost.

The following opportunities exist to address the above:

- Consideration given to implementing a contemporary 'self-assessment model' for certain proponents such as State agencies, infrastructure providers and Local Government where works are being undertaken in accordance with an approved management plan.
- Simplifying low level clearances in the same way, either through self-assessment of with the assistance of an accredited native vegetation specialist, provided an appropriate scheme is in place to ensure accountability in decision making.

Planning and Design Code

It is acknowledged the Planning and Design Code (the Code), as an instrument of the *Planning, Development and Infrastructure Act 2016* (PDI Act) has strengthened the relationship between the two pieces of legislation. This has been achieved through the recognition of accredited consultant reports within the Development Assessment process and consistent policy and spatial mapping. This approach also encourages applicants to engage with the NVC early in the development process.

Whilst there have been improvements, the following opportunities exist to strengthen the policy outcomes sought by the Code:

- Improved education and clarity regarding what vegetation is considered native. Applications lodged within areas covered by the Native Vegetation overlay can sign a declaration to state that they are not clearing any native vegetation.
- Without expert advice this would be incredibly difficult for an applicant to answer correctly, and there have already been many examples of applicants making incorrect declarations.
- While the connections between planning and native vegetation processes are improved, there is still a degree of duplication in relation to consents / approvals. This continues to present a challenge for applicants and decision makers. Further consideration should be given to the possibility of a single consent where native vegetation matters arise through the planning process and can be appropriately managed through that process.

Native Vegetation Council

Council would like to take this opportunity to recognise the contribution and guidance provided by the Native Vegetation Council in their role as an independent body established under the Act. It is understood that some recommendations made above may have resourcing implications on both the Department and the Native Vegetation Council that should be further investigated.

Should the committee be of the mind to make recommendations for legislative reform, the City of Mitcham would welcome opportunities to participate further. Any changes to the Act should of course be appropriately supported through the right level of engagement, public consultation, and training.

Thank you for the opportunity to provide feedback. We look forward to hearing the outcomes. In the meantime, please contact Alex Mackenzie or Mason Willis on 8372 8888 if you have any queries in regard to this matter.

Yours Sincerely

Alex Mackenzie
Manager Development Services

Mason Willis
Manager Open Space