



**National  
Trust**

## **SUBMISSION TO THE EXPERT PANEL FOR PLANNING SYSTEM IMPLEMENTATION REVIEW**

**By email:** DTI.PlanningReview@sa.gov.au

The National Trust of South Australia (NTSA) is the state's leading community-based heritage conservation organisation, with more than 6,000 members and volunteers across the state. For more than 60 years the Trust has played a vital role in preserving South Australia's heritage, working with government, council and communities across the state.

We have participated in the state's planning 'reform' process for more than a decade. We welcome the new Government initiating a review of the planning system introduced in 2021, but note the circumscribed scope of the current review.

We offer the following observations on some of the points raised in the discussion papers for the panel's consideration.

### ***Character and Heritage***

One of the key purposes of the National Trust is promoting the preservation of historic places and material fabric. We have never been convinced that character controls are useful tools in relation to material heritage. Once historic fabric is lost, it can never be replaced. For that reason, there is no such thing as 'a replacement building' for a demolished heritage structure.

The Planning and Design Code systematically dismantled and diminished heritage protections carefully developed over decades, despite widespread objections during the Code development process. We note the recognition of a few of the retrograde impacts of the Code in the Commission's proposals for a 'reform package'.

The three 'prongs' reflect just a few of the ways in which the Planning and Design Code has undermined heritage protections in the state.

In relation to Prong 1, we have no objection to strengthening demolition controls in Character Areas. However, Character Areas with no existing heritage fabric should not be rebadged as Historic Areas.

Prong 2: We have no objection to the updates, but believe that the further designation of 'representative buildings' and declaration of new Historic Areas are more deserving of financial support. The process for nominating new 'representative buildings' needs to be

simplified and better spelled out. Arbitrary ministerial vetoes on nominated places, as happened in the last two decades, should be severely limited. Numerous councils nurture bitter memories of conducting costly heritage surveys, only to have their nominations refused without community consultation or debate.

Prong 3. We favour 'tougher demolition controls'. However, this proposal is not tough. It is a throwback to the decades in which a development approval conferred a right of demolition even when the owner never seriously contemplated building the approved replacement. For example, the nineteenth-century Criterion Hotel opposite the Adelaide Town Hall was demolished in 2006 by a developer who was granted approval for a design put forward purely for the purpose of gaining permission to demolish. The real object was to facilitate construction of an adjacent building on Waymouth Street. At a public meeting the architect of the hypothetical building frankly acknowledged the subterfuge. The site then remained vacant for many years – a gaping hole in the streetscape testifying to the loophole in the planning system. More recently, historic villas at the north end of Hutt Street, were demolished on the basis of a never-to be built 'replacement building'; the site looks like it will be staying empty for years to come.

Examples of tougher demolition controls favoured by the National Trust – proven to work in Australia and overseas – include:

- Preference for retention of all exterior historic fabric built prior to 1922. This includes most of the buildings that make Adelaide unique. In later eras industrial building technology brought a sameness to cities, not just in Australia but across the globe. The preference for retention would mean that development approval is easier and quicker where historic fabric remains in place.
- A substantial deposit to be held in trust by the government until construction of a replacement building is underway.
- Requiring replacements for designated historic buildings not to exceed the physical envelope of the demolished structures. This would deter people from demolishing perfectly good buildings purely for the purpose of realising increased revenue from the site.
- Substantial penalties for owners who deliberately let historic properties run down, hoping to circumvent heritage protection on the ground of structural defects, alleged 'uneconomic' rehabilitation, or uninhabitability. Examples of such 'demolition by neglect' abound, particularly in areas where real estate is pricey.

The limited parameters of the current review mean that many of the issues around the treatment of heritage within the planning system raised in numerous previous submissions and Parliamentary reviews and inquiries are not being addressed.

We note that in 2014 the original Expert Panel on Planning Reform made nine recommendations in respect of heritage in the new planning system. Eight years on none of those recommendations have been implemented. This is a serious indictment of the policy making processes over that time and the extraordinary squandering of public resources and community effort.

Until there is a comprehensive review with genuine public engagement, the degradation of the states built heritage through the operation of the planning system will continue.

## *Trees*

Like many other conservation organisations and community members, the National Trust repeatedly drew attention to the deficiencies of the Planning and Design Code in respect to the protection of urban trees and the failure to address climate change in any significant way.

With regard to trees, we cannot too strongly emphasise the opportunity before us to change how we protect trees. Attitudes have shifted and it is incumbent on government to catch up.

The “one size fits all” approach currently in place doesn’t work and is politically challenging. With such disparate needs across Adelaide from one Council area to another, we recommend setting a base level of protections to meet the best practice seen interstate, as was promised at the State election, and then allowing Councils to meet the expectations of their local community above and beyond this, if there is the desire to do so, through vegetation overlays via code amendments, as occurs in Victoria.

The link below to the vegetation overlay in place in the City of Banyule in Victoria demonstrates with clarity what is protected, without grey areas, and thus provides wins for both community and development.

<https://planning-schemes.app.planning.vic.gov.au/BANYULE/ordinance/42.02>

We commend the Expert Review Panel for the breadth of the questions posed on trees. We draw the Panel’s attention to the list of ten priority recommendations co-published by the National Trust, as one of the partner organisations working with the Conservation Council of SA over the past three years on the protection and preservation of trees.

Many of the questions are covered within this document. In addition, we would like to highlight the following points from the list, not addressed through responses to the Panel’s questions.

1 - Implement new bushfire clearance allowances that reflect the Bushfire Attack Level rating for the property. Refer to Our most recent report [\*Tree Preservation and Bushfire Prevention: A Comparison of Australia’s Bushfire Clearance Exemptions\*](#) for further detail on this and other recommendations.

2 - Remove the ability to prune up to 30% of a regulated / significant tree without requiring council approval and implement a system that requires the use of the AS4373 Standard. For some trees, 105 is too much: others can cope with having up to 50% removed. The use of AS4374 allows for pruning as long as it is not detrimental to the health of the tree.

3 - Support Councils to increase the use of arborists to assess applications affecting significant trees and allow for streamlined approval processes for applications to remove regulated trees.

4 - Restore the requirement for the Department of Infrastructure and Transport and the Department of Education to publicly consult and gain planning approval to remove regulated trees. Government should lead by example. The DIT exemption results in destructive planning approaches and outcomes. The DECD exemption misses fantastic opportunities for

education about trees and about how we can live with them safely. Worse still, it often reinforces a perceived fear, not grounded in fact, that trees are inherently dangerous.

5 – Prevent the removal of protected trees until all relevant planning and development approvals have been granted. This would avoid situations such as we saw occur at Glenside where large numbers of significant and regulated trees were removed and the land sat empty for years and all of this with no plans in place. Retention of trees until development occurs would at least allow us the environmental benefits of them for that extended period of time.

Following are our responses to the questions posed by the Expert Review Panel.

### **Native Vegetation**

#### ***Question - What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?***

Certain native vegetation is covered by the regulatory schemes for native vegetation and planning. For trees in particular, these two sets of protections intersect where a tree meets the criteria for a regulated/significant tree prescribed by the PDI Regulations and is deemed native vegetation under the Native Vegetation Act (NVA). The interface between these two levels of protection is particularly complex when they overlap in areas covered by a Bushfire Hazards Overlay.

### **Native Vegetation, Regulated Trees and Bushfire Overlays**

The Native Vegetation Regulations (NVR) allow for removal of any vegetation within 10 metres of a building (including homes, sheds, carports and structures that have required council approval, such as a large chook house) to provide an 'asset protection zone', regardless of whether the **building** is covered by a Bushfire Hazards Overlay. Additional native vegetation (excluding large trees with a trunk circumference of 2m+ measured 1m above the ground) can be removed up to 20m from a **dwelling**. Therefore:

- Scenario 1 - tree meets criteria for regulated/significant tree prescribed by the Development Regulations 2008, and is deemed native vegetation under the Native Vegetation Act 1991. If the tree is more than 20 metres from a dwelling - development approval and native vegetation approval are both required.
- Scenario 2 - tree meets criteria for regulated/significant tree under the Development Act 1993, and is deemed native vegetation under the Native Vegetation Act 1991. If the tree is less than 20 metres from a dwelling - development approval is not required. Native vegetation approval is required.
- Scenario 3 - tree meets criteria for regulated/significant tree under the Development Act 1993, and is deemed native vegetation under the Native Vegetation Act 1991. If the tree is less than 10 metres from a dwelling - development approval is not required. Native vegetation approval is not required

There are various issues with the above:

1-There are no protections for large native trees within 10 metres of a building. With the overlap of NV and Bushfire Hazard overlays, the 20-metre rule is frequently used to override

the NVR by 'accident', resulting in the removal of pre-European settlement trees for structures such as solar panels or because they make a mess. As a result, the NVR unintentionally lessens protection for regulated trees deemed as native vegetation.

2-The 10-metre rule (NVR) applies to buildings, whereas the 20-metre rule (PDC) applies to dwellings. This adds a further level of confusion for homeowners and often increases the amount of native vegetation that can be cleared. Additionally, the building or dwelling does not even need to be on the same property as the tree. A shed on a neighbour's property can be used as a reason to remove a tree, even though the neighbour wants it to remain. This rule is also mis-interpreted as allowing the removal of virtually anything within the 10-metre zone, whether for maintenance or not. While 10m from a building might make sense in rural areas, its application in the peri-urban areas is unwarranted. The capacity to remove a mature trees to protect small sheds is not justifiable.

3-Native vegetation protections only apply if the tree / vegetation is native to the local area and not planted. Difficult to prove, particularly in regard to large trees, this allows people to choose the exemption which works best for them.

4-There is no definition of maintenance in the context here of maintaining a building, leaving it open to misinterpretation.

5-Blanket clearance exemptions for large trees in bushfire prone areas send the message that trees near homes are inherently dangerous. Branches overhanging a home may drop embers onto the home, but such branches can be pruned for asset protection without tree removal being required.

There are two further problems with this exemption.

Firstly, big trees can reduce wind speed, slowing the fire. When we remove them, we remove this benefit provided by them.

Secondly, we often replace them with fine fuels planted right up to the house, which burn readily, taking the fire closer to the asset.

In an ember attack large trees can prevent embers from reaching the roof of a house. The NRM Fact Sheet, Native Trees in Burnt Areas, published in January 2020 asks:

*Are trees significant fuel for bushfires? In a bushfire, the most significant fuels are in fact 'fine fuels' such as grass, leaves, bark and twigs, that are less than 6 mm in diameter. Fine fuels catch fire easily when dry and 'carry' a fire. To reduce bushfire risks, it is important to manage debris and vegetation that makes up these fine fuels near your home and around other assets. In areas around assets, you may need to trim low branches as they can help connect fine fuels below a tree with the tree canopy. Any trees within 20 metres of your home should not overhang the house and it's recommended to have spaces between tree canopies. But remember trees are not your enemy. They can trap embers, reduce wind speeds and act as a radiant heat shield' (source: CFS booklet 'Your guide to bushfire safety').*

The NVR allow for removal of vegetation within 5 metres of a fence line. If the fence marks the boundary between two properties, the fire break cannot exceed a total of 5 metres. The intention is to allow farmers to maintain fuel breaks around their fences.

However, it is being used in metropolitan Adelaide to remove large trees without the need for approval to do so, in suburbs considered medium/high bushfire risk such as (in the

Mitcham Council area alone), Belair, Blackwood, Glenalta, Bellevue Heights, Craighburn Farm, Coromandel Valley, Eden Hills and Hawthorndene. There is nothing in place to ensure that clearance is to maintain a fuel break. Additionally, while the use of this rule is restricted to specific types of fences, the enforcement of this is nearly impossible.

We strongly recommend that this exemption apply only outside metropolitan Adelaide or to areas with an applicable primary production zoning, as occurs in Victoria.

Our most recent report [\*Tree Preservation and Bushfire Prevention: A Comparison of Australia's Bushfire Clearance Exemptions\*](#) published in conjunction with our partner organisations (Trees for Life, National Trust of SA, Nature Conservation Society of SA, AILA) and with the endorsement of the CFS and the Native Vegetation Branch, takes a deeper look at key issues in this area, proposing practical solutions to prevent the unnecessary loss of trees in bushfire prone areas and to better protect these areas.

### **Native Vegetation & Regulated Trees WITHOUT Bushfire Overlays**

The intersection of NV and RT without any Bushfire Hazard Overlays, whilst simpler, is still complex, especially for the average resident. Currently, if a large tree is exempt from one of these protections, the homeowner must still get approval under the second set of protections. However, many homeowners and 'arborists' are unaware of this, leading to the illegal removal of large trees that should be protected and of smaller trees that don't meet requirements to be classified as a regulated tree but are protected under native vegetation.

There are significant compliance issues with this as well, particularly in areas with higher residential densities. While Councils manage compliance for regulated trees, they have no jurisdiction over native vegetation.

#### ***Question - Are there any other issues connecting native vegetation and planning policy?***

Native vegetation can be removed to subdivide or build, with necessary approvals.

We anticipate this will have significant cumulative impacts if growth in subdivisions continues to rise. This should be of the utmost concern to our leaders.

As with the loss of regulated and significant trees due to sub-division the community expects strong leadership on this issue. Wholesale clearance before development should be prevented. Creative design based on retention should be an expectation, not the exception.

While the NVR does not allow the use of their clearance exemptions during a subdivision, it is possible to get around this by using an existing house on the block, or a house on an adjacent block to clear native vegetation before submitting an application for sub-division.

The blanket 10m asset protection zone under the NVR should be removed as it increases development costs in the peri-urban area without necessarily leading to better development outcomes or the retention of native vegetation. Currently, SEB offsets must be paid for any large trees within 10m of a new building, as once built that building would allow for the removal of those trees. This adds additional costs to the development process and often results in the trees being removed: you've paid for it, you may as well take it out.

We therefore recommend the removal of the blanket 10m asset protection zone under NVR.

## Tree Canopy

*Question - 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?*

We believe that a contribution to canopy is the responsibility of everyone who is fortunate enough to own land. Exceptions should be few and far between.

The cooling effects of canopy should be able to be enjoyed by everyone.

We recommend the application of the Urban Tree Canopy overlay requirements to renovations and extensions. Significant tree canopy loss occurs in established suburbs, such as Walkerville, as mature trees are removed for swimming pools & extensions to existing homes.

We recommend a requirement of at least one tree per dwelling in all developments, including master-planned / greenfield developments (where this would be in addition to existing provisions of public reserves and parks).

*Question - 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?*

A focus on a range of climate appropriate, preferably endemic species, could see a tree in every backyard forming invaluable biodiversity corridors, right across Adelaide. We know that with bio-diversity, it is a case of “build it and they will come”. Forestville Reserve, in the Unley Council area, is an excellent example of this. Community consultation on what to do with run-down basketball courts saw an overwhelming desire for open green space, with endemic species of trees and understorey. Fast –forward and the nesting boxes are full – birds, marsupials and boobook owls all call the reserve home and the creek is clean enough that frogs have moved in too, all in the midst of relatively dense housing. Whilst this is great news, the benefits don’t just stop at providing habitat for fauna; the locals value the reserve and make good use of it. Imagine the biodiversity benefits to be had if this could be replicated in all backyards. Large numbers of small patches of biodiversity can form a significant patchwork or corridor.

## Tree Protections

*Question - What are the implications of reducing the minimum circumference for regulated and significant tree protections?*

Reducing this would protect the next generation of our urban forest and bring us into line with interstate jurisdictions.

The following detail from *Urban Tree Protection in Australia* (Caddy-Retalic et al) summarises interstate protections.

**Table 8: Average minimum independent dimension protection thresholds**

State or territory	Minimum independent height protection threshold		Minimum independent circumference protection threshold		Minimum independent crown spread protection threshold	
	No. councils with threshold	Average threshold (m)	No. councils with threshold	Average threshold (cm)	No. councils with threshold	Average threshold (m)
ACT	1	12	0	-	0	-
NSW	28	4.24	22	58	14	3.50
NT	0	-	0	-	0	-
VIC	17	5.71	23	58	4	4.00
WA	6	3.33	5	44	3	3.00
<b>Total</b>	<b>52</b>	<b>6.32</b>	<b>50</b>	<b>53</b>	<b>21</b>	<b>3.5</b>
SA	Protection not used	-	Protection in use	200	Protection not used	-

While size metrics tend to be correlated - taller trees tend to have larger trunk diameters and crown spreads - some species or growth forms may not meet a single size threshold, even if they reach advanced age. For example, grey box (*Eucalyptus microcarpa*) trees in Adelaide rarely reach the 3m trunk circumference required to be classed as Significant, even when over a century old.<sup>1</sup>

The above protections in place interstate do not hinder development. Reducing the minimum shows that all trees make or have the potential to make, an important contribution to canopy across a capital city.

In South Australia, significant numbers of species never gain protection under the 2 metre “rule”, because of our harsh climate. A reduction in the minimum circumference would protect these too.

As Adelaide’s development pattern makes blocks smaller and smaller & homes become bigger, there is often insufficient room for a tree that will gain any more stature than a shrub. Additionally, there is an exemption in the tree regulations &PDC stating that a tree is protected unless development that is “reasonable or expected” could otherwise not go ahead.

We should not allow the removal of valuable trees for poor quality development. Any developments requiring the removal of a tree / trees should be of the best quality possible.

New developments in Brisbane are required to set aside 15% of the total land size to plant large subtropical trees that will not be overshadowed or planted over pipes or underground car parks. We understand this is a mandatory requirement *without* exemptions of any kind

<sup>1</sup> Urban Tree Protection in Australia: Review of Regulatory Matters. Belder, Delaporte & Caddy-Retalic



and applaud both the nature of this change and the use of climate appropriate endemic species.

(ABC News: <https://www.abc.net.au/news/2022-12-07/brisbane-deep-planting-subtropical-trees/101743810#:~:text=New%20developments%20in%20Brisbane%20will,pipes%20or%20underground%20car%20parks.>)

We recommend that you:  
reduce the trunk size required for protection to 50cm.  
introduce canopy and height as additional protections.

***Question - What are the implications of introducing a height protection threshold, to assist in meeting canopy targets?***

This has the potential to encourage the selection of canopy providing species over other smaller species.  
Interstate jurisdictions prefer height over trunk circumference as the criterion for protecting trees: development is not impeded.

***Question - What are the implications of introducing a crown spread protection, to assist in meeting canopy targets?***

South Australia aims to increase tree canopy cover (30 Year Plan for Greater Adelaide), yet canopy cover is not assessed as part of an application to remove a tree.

The State government could support councils to achieve their canopy goals through PDC overlays that apply a greater weighting to canopy-providing trees in areas of low canopy cover, recognizing the relatively important role played by such trees.

Councils such as Playford, where canopy is below 10%, would be able to meet the expectations of their local community and more vigorously protect existing canopy. Under the 30 Year Plan for Greater Adelaide, if you have 10% canopy and meet the goal of a 20% increase, you still only have 12% canopy, condemning people living in these LGAs to a lesser quality of life: equity of access is important.

***Question - What are the implications of introducing species-based tree protections?***

Species-based protections are fraught with danger and have seen significant numbers of trees removed across Adelaide. The splitting of Eucalypts (into Eucalypts, Angophoras and Corymbias) has seen otherwise healthy trees removed: successive governments have failed to amend regulations to recognise this (taxonomic) change.

Additionally, as was highlighted by a recent court case, there is no guarantee of accurate identification, even when using an experienced arborist. Additionally, the blanket removal of protections on weed species, without consideration of context (location) should also be reconsidered. Weed species can be useful, often hardy, trees in the right context.

## Distance from Development

*Question - Currently you can remove a protected tree (excluding *Agonis flexuosa* (Willow Myrtle) or *Eucalyptus* (any tree of the genus) if it is within ten (10) metres of a dwelling or swimming pool. What are the implications of reducing this distance?*

The following slide courtesy of Dr Stefan Caddy-Retalic (University of Adelaide) illustrates clearly the differences between South Australian regulation and the protections afforded by our interstate counterparts.

## Regulatory protections: distance exemptions



Additionally, the 10m rule applies even if the structure and tree are on different blocks of land, owned by different people. This loophole should be removed. Victorian law, for instance, requires the written consent of the neighbour for this to occur.

Furthermore, the structure within 10m of the tree does not need to be in usable condition to allow removal in these circumstances.

The video below details the removal of a significant tree through a developer working his way around current tree protections and has caused outrage across Adelaide:

<https://www.facebook.com/SaveOurTreesSA/videos/436311058577505>

Blanket exemptions fail to give the results we deserve.

*Question - 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)?*

We should ensure that trees planted close to homes are appropriate for the soil and the location and that homes built near existing trees are engineered to cope with the proximity

of the tree. The system currently allows for trees to be removed if they are doing damage to a structure of value. Nothing needs to change if the focus continues to be on protecting structures of value. Consideration could be given to providing trees with a greater level of protection in this situation, as homes are built closer to existing trees.

## Urban Tree Canopy Offset Scheme

### *Question - What are the implications of increasing the fee for payment into the Off-set scheme?*

Should the fee be increased, then significantly more compliance work should be undertaken. Perhaps an increase to the fee could include an amount set aside for ensuring compliance? Currently, nothing is done to ensure that trees planted to meet the requirements of the Urban Tree Canopy overlay are established. It could be argued that the offset scheme should be abolished and greater priority given to mandating the planting & maintenance of trees on development sites. Increases in the offset fee will either push more homeowners to retain or plant a tree or alternatively, see developers pay the fee and pass the cost on to the purchaser, enabling people to choose between a cheaper home with canopy or a more expensive home without.

Offsets should always be the last resort when we look for levers to pull and effect a certain outcome; yet here they appear to be the first preference. We recommend that they are increased to reflect the true value of trees as community assets and to the extent where they make removal of the tree and payment of the offset the less appealing option.

### *Question - 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?*

Mitcham Council has found that it costs them approximately \$3000 to get a tree planted and to the point where it is considered to be established (purchase of tree, site preparation, planting & watering for the first three years), yet the offset can be as little as \$300.

Councils opposed the introduction of the offset scheme, as did community groups and individuals. The State Planning Commission could not say how much of Adelaide was covered by the relevant zones and soil types. Mitcham Council has worked through soil samples from engineering reports and believes that some 75% of the Council area is covered by the soil types alone. The implications of this are significant.

Understanding that costs associated with planting trees will vary from one Council area to another, we see this as an opportunity, rather than a problem. It is a great opportunity to also ensure that the cost payable is calculated so it reflects the need of that community for canopy. Where canopy is lowest the fees could be greater thus providing for a greater number of trees to be planted.

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

The low costs currently associated with these off-set fees do not reflect the value of the trees to the community. It is taken for granted that if someone wants to remove a protected tree, they are pretty well guaranteed to be able to do so.

The contribution of our regulated and significant trees to canopy cover, to our skyline and to the establishment of the next generations of our urban forest is significant and should be recognised. Offset fees should be set with this in mind.

## **Public Realm Tree Planting**

*Question - Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?* With the break-down of land ownership in SA being 80:20 private: public, we don't have the same kind of buffer that interstate jurisdictions do, yet they still have stronger protections for trees on private land than what we do.

Sydney, Melbourne and Perth all have significantly more green public space than Adelaide, but the myth of being surrounded by a belt of park lands persists and we still allow the removal of significant numbers of trees from private land, every year, to the extent that we are seeing a net loss of some 75,000 trees every year. Even worse, whilst the myth of the green park lands perseveres, successive governments continue to see it as free land and have no hesitation in excising parts of it for further built development.

We need a two-fold approach that appropriately values existing trees on private land and mandates the planting of more trees to create the canopy that we will need even more desperately in the future.

Additionally, we would like to emphasise the unique opportunity that the State government has to make a pivotal change in how we protect trees. The community attitude to trees has already shifted and it is high time that the protections afforded them by regulations and implements such as the PDC catch up.

Seeing protections applied in a one size fits all approach isn't working and to a certain extent is politically challenging. We know that what works in a leafy eastern suburb doesn't necessarily work in a northern or western suburb where loss of tree canopy is not the issue, so much as not having the canopy to lose in the first place.

Minimum standards right across the state and then government support through approving code amendments put forward by local councils would be an effective tool. Protections put in place by Councils interstate are all there to meet community expectations. Code amendments such as vegetation overlays are a simple yet effective tool that can tailor the approach council by council – indeed suburb by suburb, if that level of detail is required.

The following link will take you to the vegetation overlay in place in the City of Banyule. Reading through the detail you will see that there is absolute clarity about what is protected,

making the system workable for all and with grey areas removed, providing wins for community and development.

<https://planning-schemes.app.planning.vic.gov.au/BANYULE/ordinance/42.02>

Finally, we have key recommendations, not covered by the questions of the Expert review Panel. We recommend that the Minister;

1 - Implement new bushfire clearance allowances that reflect the Bushfire Attack Level rating for the property. Refer to Our most recent report [Tree Preservation and Bushfire Prevention: A Comparison of Australia's Bushfire Clearance Exemptions](#) for further detail on this and other recommendations.

2 - Remove the ability to prune up to 30% of a regulated / significant tree without requiring council approval and implement a system that requires the use of the AS4373 Standard. For some trees, 105 is too much: others can cope with having up to 50% removed. The use of AS4374 allows for pruning as long as it is not detrimental to the health of the tree.

3 - Support Councils to increase the use of arborists to assess applications affecting significant trees and allow for streamlined approval processes for applications to remove regulated trees.

4 - Restore the requirement for the Department of Infrastructure and Transport and the Department of Education to publicly consult and gain planning approval to remove regulated trees. Community members believe that government should lead by example. Furthermore, the DIT exemption allows for lazy, uncreative planning approaches and outcomes. The DECD exemption misses fantastic opportunities for education about trees, education that reaches across a significant proportion of our community.

5 - The removal of protected trees should not be allowed until all relevant planning and development approvals have been granted. It is not uncommon to see trees removed, planning consent not granted and the block on-sold. This can go on for years. If, ultimately the tree(s) were removed, at least the community would have had the environmental benefits of them for that extended period of time.

## Local heritage in the Planning, Development and Infrastructure Act

As many people have argued over the past decade including the original Expert Panel report and in numerous submissions and parliamentary inquiries, all heritage listing should be handled under a single Heritage Act. Similarly local heritage listing decisions should be made by local people (through their Councils.) The National Trust did Australia's [largest ever survey of community views](#) on this matter in 2016 and the results were conclusive, local heritage decisions should be managed locally, by people with expertise in heritage.

With regard to the questions posed in the PDI Act discussion paper:

- 1- Bringing all heritage matters under a single piece of Heritage legislation would meet public expectations and lead to better decision making and outcomes.

2- Sections 67(4) and 67(5) of the PDI Act should be repealed.

We would also remind the government of its election commitment to ensure that any proposed demolition of State Heritage sites be subject to full public consultation.

Because of the strong public interest in all heritage places (including contributory items/representative buildings) all decisions affecting them should be fully transparent and not hidden in secretive committees and opaque development approval processes. The community expects no less and the government could save itself a lot of grief if it embraced such transparency in respect of these buildings, which represent little more than 3% of all buildings in the state.

Let's take heritage protection seriously, instead of looking for ways to subvert and undermine it.

### **Loss of public rights and access to information**

Finally, the most significant and far-reaching issues arising from the new planning system -the loss of community rights to participate in decision making and lack of access to information- are not addressed in the discussion papers. These issues go much further than design tweaks to the planning portal. The Planning, Development and infrastructure Act 2016 has established a planning system which significantly diminishes the rights of the public to know about and to participate in decisions that affect them. The public participation provisions in the PDI Act were prepared on the basis that the community should be involved at the policy creation stage and should not then need to be involved in the development assessment stage. This is a fundamentally flawed concept which totally ignores human nature and seems to be based on a completely false assumption that public participation in the planning and development of the state is detrimental to good development. There was never any evidence produced to support this view and it is contrary to the situation which applies in the planning and development systems established elsewhere in Australia and other countries overseas.

Public confidence in the planning system cannot be restored while these fundamental flaws remain unacknowledged and unaddressed.

Thank you for taking the time to consider our submission.



Dr Darren Peacock  
Chief Executive Officer

16 December 2022