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Australia's property industry
Creating for Generations

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Property Council Submission to the Expert Panel for the Implementation Review of the South Australian Planning System

Dear Members of the Panel,

Thank you for the opportunity extended to the Property Council of Australia to provide a submission to the Expert Panel for the Implementation Review of the South Australian Planning System.

Property employs more people in South Australia than manufacturing and mining combined. With almost 300 member organisations in South Australia, the Property Council represents one of the largest economic footprints of any sector in the state economy. Naturally therefore our members have a large interest in a robust planning system that produces positive social and economic outcomes for South Australians.

Our submission provides a detailed response to the discussion papers. We have structured the responses according to the themes raised by the papers using a numerical reference system for ease of document navigation and reference in any further discussion. In addition, we have provided feedback on miscellaneous items outside of the scope of the discussion papers yet of relevance to the overall functioning of the planning system.

We look forward to providing our deputation to the panel and engaging in the process.

Yours sincerely

Bryan Moulds | Interim SA Executive Director

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Response to Discussion Paper 1 – Planning, Development and Infrastructure Act 2016 Reform Options Overview

Public notification and appeal rights

1. There are no applications currently not notified that we feel should be notified.

2. There are development types subjected to (or not exempted from) public notice described in Table 5 of the Code which lack obvious logic. However, as a general proposition there are no glaring classes of applications currently notified that should not be notified. The Property Council of Australia supports the established approach whereby developments that are clearly contemplated under the terms of the relevant zone or sub-zone should not undergo public notification and that only limited notification occur for developments that exceed the bounds of Code policy expectations.

3. It is rare that the public notification process adds any meaningful input to the assessment of developments that exceed a TNV or DTS standard. The utility of notification in those circumstances is not obvious. For example, say residential development in residential zones is generally not notified albeit some developments will be notified where they exceed TNV or DTS standards such as setback distances or height.

4. There are no particular difficulties experienced as a consequence of the notification requirements (that is, the triggers to notification) in the Code. We repeat the general observation that the setting of triggers for notification in the case of an exceedance of a TNV or a DTS standard (generally being a numerical trigger to notification) simply lacks evident utility. While there may be an argument that a development that exceeds the particular prescribed height might invoke outrage, the submissions received from outraged members of the public does not of itself contribute meaningfully to the assessment process. The assessment of a building that exceeds the TNV for height for instance is rarely aided by the views of local residents (however well-informed) on the topic. Inevitably that assessment will be contextual and related to a range of design and architectural factors.

5. *A more efficient planning review (appeal) mechanism would be desirable.*

6. In particular, the present appeal process in the Environment, Resources and Development Court is plagued by needless technicality and delay. This occurs in merit appeals by developers and even where a developer and the relevant authority wish to consent to the settlement of an appeal.

7. The published judgements from the court over the last 4 years (2019 to September 2022) show that the court has delivered under 20 planning appeal judgements each year. The total number of matters lodged in the court in each year is not published but from the court file numbering system it is evident that there are fewer than 200 actions filed in the court each year over that period. Of those actions some are enforcement matters, some are third-party appeals and some

are procedural or technical challenges in addition to pure merit appeals by the applicant against a planning decision.

	2019	2020	2021	2022 (as at 7.9.22)
Total Planning Matters Decided	17	17	18	7
Proportion Involving Third Party	3 (17.6%)	8 (47.1%)	8 (44.4%)	5 (71.4%)

8. Despite the relatively low numbers of matters that proceed to a trial, the court is remarkably slow. The judgements published by the court record the date of hearing and the date that judgement is delivered giving the amount of time taken for matters to be considered (judgement days). The average number of judgement days for each member of the Court for the last five years is tabled below. These periods in some instances exceed the time taken by a relevant authority to assess an application bearing in mind that by the time it reaches the Court, the application has already been assessed once by the relevant authority. This delay is not necessary, and the process could be expedited.

Judgment delivery time (ex-criminal matters/non-final decisions)

	2019			2020			2021			2022 (as at 24.3.22)		
	Lowest	Highest	Average	Lowest	Highest	Average	Lowest	Highest	Average	Lowest	Highest	Average
Commissioner	15	39	26.6	2	111	54.6	2	182	63.75	57	57	57
Commissioner	2	64	29	Same day	230	60.1	1	217	146.8	-	-	-
Judge	Same Day	43	25.25	27	164	76.8	17	116	73.5	198	198	198
Commissioner	-	-	-	-	-	-	-	-	-	80	80	80

9. The appeal process for a merit planning appeal generally involves the following steps

   9.1. Refusal decision by the relevant authority;

   9.2. Appeal filed by the developer;

   9.3. Appeal referred to a conciliation conference four weeks after the notice of appeal is filed;

   9.4. If any person applies to be joined to the appeal, that usually occurs before the conciliation conference and a hearing is listed immediately before the conference date and time;

   9.5. Joinder decisions are usually (but not always) made within 10-30 minutes of the short hearing and the matter proceeds to conference with or without the joinder applicants depending on the decision on the joinder application.

   9.6. A settlement proposal may be put by the developer to the relevant authority at any time after the refusal and the appeal is lodged. In the case of a CAP or SCAP that is presented at

the next relevant meeting of the relevant authority which may be anything from 2 to 6 weeks (due to meeting scheduling);

9.7. If a settlement is reached the documents describing the application and minutes of order are prepared between the parties and given to the Court;

9.8. Depending on the scheduling of the conciliation conference and the relevant meeting of the relevant authority, the conference may need to be adjourned to align with the meeting date of the relevant authority.

9.9. The court will review the documents and often seek to change the wording of conditions otherwise agreed between the parties sometimes further delaying the grant of settlement orders by several days (an even several weeks);

9.10. If no settlement is reached, the conference is closed and the matter is referred to a directions hearing, usually 1-3 weeks after the conference;

9.11. At the directions hearing, the Court will usually attempt to identify the steps for the matter to take and set a timetable for any amendments or further application documents to be filed, any legal or procedural arguments to be heard, the exchange and filing of expert witness statements and a date for the trial.

9.12. The trial date will depend on the availability of the Court, parties and witnesses. Longer trials before a Full Bench (a judge and two Commissioners) are generally listed further away than shorter trials before a Commissioner sitting alone. A Commissioner only trial of a day or two can often be listed within 5-8 weeks of the directions hearing, whereas Full bench trials are often 2-3 months after the directions hearing.

9.13. After the trial the Court reserves its decision (as shown in the judgment days table above).

10. Appeals are (despite section 205(2) of the PDI Act), needlessly traversing irrelevant or uncontroversial issues and do not focus on the issues that ought to be in contention. There is a greater need for the Court to be focused on identifying and resolving real disputes and issues rather than forcing the parties to engage in all-out reassessments of every issue. In part this is because a relevant authority that has refused an application may (opportunistically) wish to apply a shotgun approach to defending its decision. Similarly, an applicant may apply a shotgun approach to covering all potential issues that it is concerned might be raised by the relevant authority or the Court in the course of trial. This anxiety by both parties leads to considerable extra time taken in hearings, considerable extra issues addressed by the parties and their witnesses in evidence and unnecessary analysis by the Court.

11. *Clearer guidance on the role of the Court and greater intervention and direction by the Court at the outset in the conduct of these matters could reduce cost and expedite the process. Schedule 5, clause 42 of the Act permits the Governor to make relevant regulations to this effect.*

12. In some instances, the Court has declined to give effect to a settlement that the parties have reached because it did not like the design of the development that had been endorsed by the relevant authority. This causes needless delay. In the context of the tens of thousands of applications processed by relevant authorities each year the Court seems to be needlessly

scrutinising the relatively few matters that come before it for settlement. This is particularly the case where the parties could, as an alternative, simply re-lodge the application in its agreed form and the relevant authority would approve it as it is. The intervention by the court is perplexing.

13. Similarly, where parties as of right to an action have reached a settlement, applications for joinder by the former category 2 representors, or under the Code, performance assessed public notified persons, causes further needless delay. The relatively open approach to joinder of third parties particular those who have no independent third-party right of appeal is at odds with the public notice and third-party appeal system.

14. The recent decision of the Supreme Court in *21-25 South Esplanade Pty Ltd* is subject to further appeal to the Court of Appeal therefore the extent which it will provide some protection against needless intervention by third-party objectors remains to be seen. In any event it is a decision that relates to the former Development Act scheme, and it remains to be seen whether, if upheld by the Court of Appeal, the principle will apply to applications under the PDI Act. *Reform to expressly prevent this form of intervention by third parties is desirable.*

Alternate review?

15. It is difficult to have an alternative review process to the present appeal regime. Reviews by CAP of assessment manager decisions (although relatively few) are relatively ineffective. Similarly, reviews by the State Planning Commission of decisions of the SCAP are so far of limited number but apparently limited utility. Planning Commission decisions are (with respect) a slightly higher calibre of review than those by CAPs of assessment managers.

16. An inherent difficulty with reviews of assessment managers is that often the existing relationship between the CAP and the assessment manager is not conducive to independent, unbiased fearless review. There are numerous instances of the assessment manager writing a report to the CAP justifying his or her decision and then appearing before the CAP to advocate in favour of his or her decision. This even occurs to the exclusion of the applicant with Council Assessment Panels in particular not understanding the rules of procedural fairness and the need to permit an applicant the same opportunity. In any event the review by a CAP of the assessment manager is not far removed from "Caesar judging Caesar".

17. A system that appoints some other external third party to review a planning decision might, in theory, lead to expedited assessment, however it is very much contingent upon the independent person having the relevant qualifications and experience to be able to undertake the assessment. It is also important that the relevant reviewer has sufficient independence. Those features are exactly why Courts exist. To establish some other regime when the court system is already in place would be ineffective (to the extent that it failed to include the features of expertise, independence and due process) or would require duplication of the court system.

18. *The Property Council of Australia supports a more streamlined and effective review mechanism but asserts that this can be best achieved by improving the pathways of appeal and review to the Environment Court. Expediting the process of the Court to ensure that decisions are addressed with*

the appropriate level of detail and scrutiny but with due expedition (depending on the issues and circumstances) is achievable.

Expedited review matters

19. There are certain elements of the planning system that would benefit from rapid review processes some of which are discussed below. Delay is weaponised by relevant authorities with these decisions in particular. *Therefore, a particularly expeditious means to resolve them in the assessment and land division processes is desirable. In particular decisions about*

    19.1. *land management agreements (e.g., whether or not they ought to be entered into as part of a development proposal);*

    19.2. *the verification of an application (e.g., until an application is verified the deemed consent process and the timeframes under the act are not treated);*

    19.3. *decisions by a Council to accept the vesting of a reserve under section 102(1)(c)(iv);*

    19.4. *decisions by the SPC to issue a section 138 certificate.*

20. The restricted development pathway appeal process is limited in that a refusal to proceed by SCAP can be reviewed by the State Planning Commission but if the Planning Commission refuses to permit the application to proceed there is no further right of appeal. However, if the application is assessed but refused there is a right of appeal. *Given the lack of utility in reviews by authorities of their delegates it would be preferable if a right of appeal existed for <u>all</u> elements of the restricted assessment process.*

Accredited professionals

21. The Property Council of Australia does not suggest that only planning certifiers should assess applications for planning consent and that only building certifiers should assess applications for building consent. The system should focus not on particular segregations relating to who can assess what but instead on identifying the necessary qualifications and criteria for the appointment of accredited professionals without any particular boundary (other than qualifications and experience). *Having set the qualifications then only appoint those who meet those qualifications for the relevant forms of assessment.*

22. The system is relatively new albeit some elements carry over from the former Development Act regime. There is merit in letting the system mature before much further reform.

23. *There is certainly merit in a more rigorous process of training, audit and enforcement of the qualifications, standards and approach to assessment. That said the same rigour and scrutiny could be applied to assessment managers and council assessment panels!*

Impact assessed (declared) development

24. The number of major developments that undergo an impact assessed regime is relatively few but can be of substantial significance to the State. It is important that the regime for the assessing such applications is not itself a barrier to investment and progress in the State. At the same time, it is important that applications are properly assessed.

25. *Any whole of government assessment process must therefore ensure that the regime is expedited so that the involvement of multiple agencies does not needlessly complicate or delay the assessment.* Having a strong coordinating authority (in the nature of the former Coordinator-General) to ensure that only relevant issues are (explored and that issues raised by agencies for proponents to consider or address are necessary and do not send proponents scurrying for months to justify or assess issues that are not critical to the decision pathway) becomes more important with a whole government approach. So long as that strong and focused coordinating function is enhanced then an expedited whole of government approach is worthwhile.

Infrastructure schemes

26. The essential requirements in Part 13 of the Act for infrastructure schemes are generally sound. While untested, it appears to strike an appropriate balance between the means for determining the need for and scope of infrastructure and an imposed means of funding by charge or contribution for various forms of infrastructure. The major barriers to establishing schemes seem to be that:

    26.1. There have been few projects since the basic schemes came into operation that have warranted the use of the scheme. Therefore, the sheer demand for the use of this mechanism has not arisen with great frequency.

    26.2. Schemes are not well understood within the development industry. While at very broad level there is some knowledge of the existence of schemes, their complexity and relative novelty (the legislation for basic schemes has only been in operation since 2017 and for general schemes is not yet in operation) means that the development industry (that is developers, landowners and their relevant consultants) is not intimately familiar with the potential that schemes provide. The lack of any examples or operation of schemes is a substantial factor to this lack of real first-hand understanding.

    26.3. The Department has been focused over the last five years on the somewhat protracted implementation of the PDI Act and the rollout of the Code. The sheer workload of implementing those substantial elements of the reform package have meant that no substantive bandwidth was dedicated to infrastructure schemes.

    26.4. The Department does not presently have the capacity or the culture to develop schemes. It is necessary to have (within the Department) a proper understanding of the way in which schemes can be deployed and the way in which rezoning can be expedited by the use of schemes (particularly to avoid of the need to negotiate deeds

with local government authorities and the inherent delay and obstacles that this produces).

26.5. Schemes could be more actively promoted by the Department as a solution to those inherent infrastructure delivery and funding challenges but the culture in the Department surrounding code amendments has not yet developed to the point where schemes are being put forward for that purpose. This requires both culture and capacity within the Department to be able to identify and articulate (both internally and externally) this part of the code amendment process and more broadly the way in which schemes can and should be used. That capacity and culture then extends to actually devising and delivering schemes as a matter of detail.

26.6. With respect, the State Planning Commission has not and does not have membership with a profound understanding of infrastructure delivery.

27. *Accordingly, the Act itself does not require any further amendment nor are there any alternative mechanisms that ought to be adopted. The circumstances where deeds are preferable will inevitably arise and the deed mechanism is already in place. The gap is in ensuring that the development industry becomes more aware of the opportunity to utilise schemes, that the Department builds its culture and capacity to utilise schemes and develops the capacity to develop the detail of schemes in an expeditious manner particularly to facilitate code amendments. The appointments to the Commission should include persons with a proper understanding of the delivery of infrastructure.*

Local Heritage places

28. The PDI Act has substantially improved the local heritage place process by removing it from local government to the extent that the code amendment process is less driven by local government.

29. Inevitably local heritage is confused with matters of character. True heritage (that is, matters of true historic importance) are relatively rare and instead it is and continues to be a euphemism for character. To the extent that character of an area is important then it is appropriate that character matters reside within the planning realm.

30. Like many other things, planners are unqualified to properly assess local heritage and inevitably the assessment of that issue tends to be delegated to a council's local heritage adviser. The inherent risk of that system being self-perpetuating is obvious. In particular, local heritage advisers often have a self-interest in promoting the need for them alone to define the relevant heritage values or impact of a particular development in a particular area.

31. A system that creates independence in heritage assessments is therefore worthwhile so that the risk of self-interest is reduced. By having an independent entity to which heritage questions are referred (given that the planner or the planning authority is not equipped to make this assessment itself) therefore has some merit. Whether that entity is the State Heritage Council is another question. If the State Heritage Council was properly resourced and if it was comprised of properly qualified people with clear guidance on the criteria for assessment and commentary

relevant to the development assessment process then such a system could lead to more principle based, independent advice on local heritage issues.

32. The issue is finely balanced. Some councils and some heritage advisers are able to perform with sufficient rigour and diligence and properly apply a principled approach to the assessment of heritage matters. Some however are plainly plagued by a particular political view and/or a degree of self-interest and capture such that regardless of the merits, they will always take an antidevelopment or "preserve at all costs" approach. Likewise, simply referring all of this assessment to the Department of Environment and Water or the State Heritage Council may not of itself lead to particular improvement depending on the specification of the relevant criteria, the appointment of properly qualified people and adequate resources.

33. This is all founded on the existing list of Local Heritage Places which were simply swept in from the old regime. The integrity of that list is notoriously open to question. *A new system for assessing local heritage needs to follow a rigorous review of the existing database to remove the old and unwarranted entries.*

34. *Section 67(4) of the PDI Act (which requires that before the code is amended to designate an area as an area of heritage character or preservation that a threshold 51% of landowners consent) is important and should be commenced.* The notion that an area has a particular character which is the essence of this provision is plagued by problems. As a matter of policy, it is inherently subject to whims and fashion. It is rare that it is grounded in matters of true historic importance and instead seems to run in waves related to whether people have a particular liking for art deco, post-modern architecture early colonial architecture et cetera. While there may well be a place for character based policy, it ought to clear the threshold of at least local majority support if it is to be imposed on an existing area.

Deemed consents

35. The deemed consent provisions in section 125 of the PDI Act are broadly supported albeit they have several limitations.

36. Unless and until the application is verified, the formal clock does not run. The time by which the assessment is judged under Regulation 53 is set by Regulation 53(2) as being the day on which the authority provides the verification notice under Regulation 31(1). This is inherently problematic because if a relevant authority refuses to verify an application, then the deemed consent process has no foundation. *This can be overcome by amending Regulation 53(2) so that if the necessary elements of Regulation 31(1) are provided to be able to determine the factors listed in Regulation 31(1)(a) to (d) then the time automatically runs from five business days after the date that all of that material is lodged.*

37. The deemed consent process permits a relevant authority to appeal against a deemed consent in certain circumstances. *The Act should be amended so that there is an automatic costs rule whereby a relevant authority that institutes such proceedings is ordinarily obliged to pay the legal costs of the developer unless the court orders otherwise.* This will ensure that proceedings are not instituted by relevant authorities is merely for the purpose of leverage and that the authority

will need to carefully consider whether to institute proceedings and inflict needless further delay.

Verification

38. The reasons for delay in verification vary. Clearly there are instances where applications are deficient and require necessary information before verification can occur. Most experienced applicants and competent consultants understand the requirements of Regulation 31 and Schedule 8. There are less competent applicants or consultants who may struggle with these requirements and no amount of legislative reform can improve their performance.

39. The other major cause of delay is a misunderstanding by local government of the requirements of Regulation 31 and Schedule 8 and a pedantic adherence to every single conceivable item in Schedule 8 being provided (notwithstanding the express limited elements that are required by Regulation 31). This lack of understanding is quite probably the major driver to an overly officious approach.

40. There is also a subset within local government manipulating the verification process to prevent the clock from commencing under Regulation 53(2) so that the timeframes and workloads can be managed by effectively batting off applicants and deferring starting the stopwatch. *As discussed earlier, an amendment to Regulation 53(2) could put an end to that practice.*

41. Delay also occurs where there is disagreement between the applicant and the relevant council staff and SCAP about who is the relevant authority for matters where SCAP might be the relevant authority under the regulations or for restricted development (e.g. whether or not a particular proposal is restricted or not). The delay and dispute between authorities on this issue is problematic given that resort to the Environment Court for a speedy decision is (for the reasons set out above) presently difficult.

42. The consequences on the relevant authority for failing to verify an application should be that the applicant is entitled to institute proceedings in the Court and seek an order for costs and damages at a prescribed amount (in the nature of a liquidated damages rate per day). That, coupled with the suggested amendment to Regulation 53(2) would stamp out the mischievous practice adopted by some council staff.

43. There is merit in reviewing the scope of Schedule 8 given that it has now been in operation for some time. That more detailed review is meritorious albeit not really the critical issue given the terms of Regulation 31 and the necessary elements for verification.

Power of 'early' refusal (i.e. refusal without assessment)

44. Section 110 of the Act outlines the statutory process for the assessment of restricted development applications. Relevantly, it provides:

(1) *The Commission will determine, in relation to proposed development classified as restricted development, whether or not the development will be assessed and, if so, whether or not planning consent will be granted, and in doing so will act as the relevant authority*

…

(14) *The Commission, acting through its delegate under section 30(3), may refuse an application that relates to proposed development classified as restricted development without proceeding to make an assessment of the application.*

45. Sub-section (1) assigns procedural functions to the Commission for the purpose of restricted development assessment, the first of which is to determine whether a restricted development application will be assessed. Sub-section (14) then permits that function to be exercised by the Commission's delegate.

46. Section 110 provides no statutory criteria for the exercise of the 'early no' power, however, pursuant to section 109(1)(a)(i) the Commission ***must*** publish a practice direction "*with respect to…the circumstances under which the Commission **will** be prepared to assess restricted development*".

47. The effect of these two statutory provisions when read together[1] is that the statutory power to refuse an application pursuant to section 110(14) is *subject to* the provisions of the practice direction which must be published by the Commission. That is to say, if an application meets the circumstances specified in the practice direction for the purposes of section 109(1)(a)(i) of the Act, the power to refuse an application without assessment is not enlivened.

48. By these provisions the Act affords the Commission discretion to determine the circumstances under which it will proceed to assessment, but requires it to be transparent about what those circumstances are.

49. The evident purpose of such transparency is to allow prospective applicants to decide whether their application might merit assessment, and to determine what information need be provided. Additionally, the provisions ensure principled decision making on the part of the Commission or its delegate.

50. Any other reading of these provisions would undermine the very purpose and intent of section 109(1)(a)(i), because at most all that could be said about the practice direction was that it published the circumstances under which the Commission *might* be prepared to assess restricted development. This falls short of what is required by section 109(1)(a)(i).

Practice Direction 4

51. Practice direction 4 does not meet the requirements of section 109 of the Act. Clause 5 purports by its heading to address the requirements of section 109(1)(a)(i), however, the clause itself falls short of what is required by the Act.

[1] It is a fundamental principle of statutory interpretation that an Act must be read as a whole, and its provisions take their meaning from the statutory context in which they sit.

52. Clause 5(1) of Practice Direction 4 is in part a re-statement of section 110(14) of the Act. However, the bracketed words at the end of the clause cannot be valid for the reasons given above. Put simply, the Commission cannot exercise the power in section 110(14) where an application falls within the circumstances under which the Commission says it ***will*** assess an application (as it is required to publish in the practice direction).

53. Clause 5(1) is plainly invalid.

54. Clause 5(2) provides:

> The Commission may resolve to proceed to assess an application for restricted development in certain circumstances where all of the following are demonstrated to the satisfaction of the Commission:
>
> *(ii) the proposal provides a social, economic or environmental benefit to the current or future community; and*
>
> *(e) the development responds to a demonstrated need or demand for the proposed land use in the locality.*

55. It does not by its terms specify the circumstances under which the Commission ***will*** be prepared to assess restricted development. It falls short of this, merely purporting to specify circumstances where it "***may resolve*** *to proceed to assess an application for restricted development*".

56. In other words, it specifies circumstances in which the Commission *might* be prepared to assess restricted development, leaving uncertainty as to the circumstances in which it *will* assess it.

57. On a plain English reading of clause 5(2), the practice direction does not meet the requirement of section109(1)(a)(i) of the Act.

58. If clause 5(2) is invalidly made, there is no valid practice direction for the purpose of section 109(1)(a)(i).

59. Assuming for the sake of argument that clause 5, paragraphs (a) and (e) of clause 5(2) might be read as identifying the relevant circumstances under which the Commission *will* be prepared to assess restricted development is still problematic.

60. Clause 5(2) specifies that an application which demonstrates, *to the satisfaction of the Commission*, that the proposal provides either a social, economic, or environmental benefit to the current or future community and responds to a demonstrated need or demand for the proposed land use in the locality *will* be assessed by the Commission. This is hardly clear in that it requires an assessment to form an opinion about whether to undertake an assessment.

61. By its terms, clause 5(2) requires that the proposal demonstrate to the satisfaction of the Commission that the circumstances in paragraphs (a) and (e) are met. Those factors are themselves broad considerations of policy which could themselves be the subject of expansive and wide-ranging consideration. However, this kind of detailed assessment at the threshold stage to pass through to the assessment phase would be contrary to the very nature and purpose of the power to refuse an application without assessment.

62. The very point of the 'early no' is to avoid the need for assessment. Any level of detailed subjective consideration would frustrate the very purpose of an 'early no'. However, it is fundamental to the principles of administrative fairness that if there is to be no detailed assessment of the proposal, the threshold to safely pass through the 'early no' must be set very low.

63. A proposal should be regarded in its highest and most favourable light for the purposes of the threshold criteria. The Commission need only be satisfied that the proposal taken at its highest meets the requirements of paragraphs (a) and (e). *This Practice Direction should be re-written following proper consultation.*

Site contamination policy and PD14

64. The Property Council of Australia has made detailed submissions in the past to the Commission about Practice Direction 14 and the relevant Code provisions and regulations relating to site contamination. We do not repeat those submissions here. The suite of policies in the Code, the regulations and PD14 impose an unnecessary burden on applicants and relevant authorities in a needless manner.

65. That suite of policies (and PD 14 in particular) was not developed with proper consultation. The final version of this suite was never the subject of consultation with substantial changes made to earlier consultation versions without any opportunity of the public (or industry) to comment.

66. The Property Council of Australia urges reform on this topic which must be undertaken with proper and meaningful consultation with industry.

Response to Discussion Paper 2 – Planning and Design Code Reform Options

67. The following discussion provides a formal response to the Expert Panels Discussion Paper – Planning and Design Code Reform Options.

Character and Heritage

68. We understand the Commission is developing a character and historic area policy reform package for consideration by the Minister. This reform package addresses the following key areas:

    68.1.Elevating Character Areas to Historic Areas;

    68.2.Revising/updating Character Area Statements; and

    68.3. Introducing tougher demolition controls for Character Areas.

69. We understand that the Expert Panel has reviewed the policy reform package and in doing so, has expressed support for Items 1 and 2, but suggests further review of Item 3 relating to the introduction of stricter demolition controls.

70. The Property Council of Australia notes that despite the consultation process now being carried out via the release of this discussion paper, the Expert Panel has already expressed to the Commission its support for Items 1 and 3. This notwithstanding, the Property Council of Australia provides the following feedback on the each of the policy strategies currently being considered by the Expert Panel and the Commission.

Strategy 1 - Elevating Character Areas to Historic Areas

71. This strategy proposes a collaborative approach between the Department for Transport and Infrastructure and local government to support Council initiated Code Amendments which will look to convert existing Character Areas to Historic Areas.

72. A catalyst for this initiative is to establish demolition controls over buildings where such controls do not presently exist. That is, whereas an approval is presently not required to demolish non-heritage buildings situated within the Character Area, any building situated within a Historic Area (whether or not heritage listed or a Representative building) requires demolition approval.

73. The Property Council of Australia does not support the principle of elevating Character Areas to Historic Areas for the reasons expressed below.

74. As noted within the Discussion Paper, the Character Area Overlay (as distinct from the Historic Area Overly) is not a heritage overlay. Accordingly, the two Overlays are intended achieve fundamentally different policy outcomes. This is evident when one reviews the Desired Outcomes for each Overlay:

Character Area Overlay

DO 1: Valued streetscape characteristics and development patterns are reinforced through contextually responsive development, design and adaptive reuse that responds to the attributes expressed in the Character Area Statement.

Historic Area Overlay

DO 1: Historic themes and characteristics are reinforced through conservation and contextually responsive development, design and adaptive reuse that responds to existing coherent patterns of land division, site configuration, streetscapes, building siting and built scale, form and features as exhibited in the Historic Area and expressed in the Historic Area Statement.

75. The provisions of the Character Area Overlay seek to the preserve existing and valued character of streetscapes within a given locality. This valued or distinct character need not be limited to historic features or attributes, as clearly expressed within introductory to the Character Area Statement:

    "*The Character Area Overlay identifies localities that comprise valued character attributes. They can be characterised by a consistent rhythm of allotment patterns, building setting and spacing, landscape or natural features and the scale, proportion and form of buildings and their key elements.*"

76. The role of existing Character Area policy is to ensure development is considerate of the established and desired character of a locality, rather than to control the removal of buildings which do not have any heritage status.

77. Accordingly, elevating existing Character Areas to Historic Areas is nonsensical unless the locality contains historic value/significance.

78. The Property Council of Australia also expresses concern with the existing demolition controls which exist for all other buildings situated within Historic Areas. Presently, any building situated within the Historic Area Overlay is subject to demolition control. Schedule 4 clause 10 (1) and (2) of the Planning Development and Infrastructure (General) Regulations 2017 'Regulations' prescribes that demolition works are an exempt form of development, except in the following instances:

    (1) …

    (a) a local heritage place; or

    (b) a building in a zone, subzone or overlay identified under the Planning and Design Code for the purposes of this paragraph [the Code refers to the Historic Area Overlay)

    (2) The partial or total demolition of a building and associated structures if the building, or part of the building, has been destroyed or significantly damaged by a bushfire, other than in respect of a local heritage place or Historic Area Overlay in the Planning and Design Code.

79. Demolition controls should only apply to places with actual historic significance/value (i.e. local and state heritage places), demolition work which may materially impact heritage places and representative buildings which contribute to the historic character/qualities of an area. Any other building should not be subject to these controls.

80. Applying the above logic, the Historic Area Overlay should not dictate demolition controls. Rather such controls should be informed by the actual heritage value of a place (as determined by heritage listings).

81. Adopting this approach would achieve a more balanced outcome, preserving the intent of the Historic Area Overlay Desired Outcome to protect buildings which contribute to the historic themes and characteristics of a locality, whilst also protecting the rights of individual landowners to demolish buildings which do not have heritage value, or which do not contribute to the historic value of a locality.

Strategy 2 - Character Area Statement Updates

82. This strategy proposes to implement steps to support Councils in updated Character Area Statements (and Historic Area Statements) to address identified gaps or deficiencies. This might include updating themes of importance, incorporating additional design elements, and including illustrations where appropriate.

83. The Property Council of Australia supports this strategy which we note will provide additional guidance, clarity and certainty about the design of buildings proposed within Character Areas and Historic Areas.

Strategy 3 - Tougher demolition controls in Character Areas

84. Strategy 3 proposes to introduce a development assessment pathway that only allows for the demolition of buildings situated within a Character Area or Historic Area once a replacement building has been approved.

85. For the reasons expressed above, the Property Council of Australia does not support any initiative which imposes additional demolition controls to any non-heritage listed building situated within the Character Area Overlay. *The role of the Character Area Overlay is to appropriately guide the design of buildings (so as to ensure an existing character is preserved) rather than to control the demolition of existing buildings. Accordingly, demolition controls should not apply in this circumstance.*

86. This approach to demolition control is unnecessary as the policies for any replacement building would still need to be achieved. Any new build will be assessed against the policies that control the design within the parameters of the character area and achieve the same outcome. Accordingly, this form of demolition control is superfluous.

87. *Similarly, demolition controls for buildings situated within the Historic Area Overlay should only apply to heritage listed buildings or representative buildings, rather than any building situated within an Historic Area. Imposing a requirement for an applicant to commit to a replacement building prior to demolition of an existing non-heritage listed building is unnecessary.*

88. Existing demolition controls within the Historic Area Overlay (i.e. PO 7.1, 7.2 and 7.3) do not support the demolition of an existing heritage place where the building (or part thereof) displays historic attributes worthy of preservation. It therefore follows that if an application to demolish an existing heritage or representative building is approved, one could reasonably assume that the building does not display historic attributes worthy of preservation. Accordingly, introducing an additional control requiring applicants to first obtain consent for a new building is largely futile.

Other Heritage Matters

Application of State Heritage Guidelines

89. Heritage Standards are an assessment tool linked to the State Heritage Area Overlay. Heritage Standards provide principles and acceptable minimum standards for development proposals and form the basis of Heritage South Australia's decisions on proposed development referrals.

90. Whilst existing Heritage Guidelines are viewed as an important aspect of the assessment of development situated within a State Heritage Area, they are nonetheless 'guiding documents' rather than mandatory. Like any other provision within the Code, a departure from the provisions of the Heritage Guidelines should be assessed 'on merit' as a performance outcome recognizing that there may be instances where departures from the provisions from the Heritage Guidelines may be appropriate.

91. Additional guidance and clarity should be provided on the role of the Heritage Standards in the assessment of development proposals with a clear expression of how they are applied within the rules of interpretation. This could be achieved in a variety of ways, including by establishing a Practice Direction and/or through updates to Part 1 – Rules of Interpretation within the Planning and Design Code.

92. Heritage Statements should be embedded into the Code and identified through property searches via the portal and the South Australian Property Planning Atlas.

Tree Policy

93. The Property Council of Australia notes the additional research and investigations occurring as part of the State Planning Commissions' Open Space and Trees Project, including the 'Research Report' which compares South Australia's tree protections with those established in other Australian states and territories.

94. The Property Council of Australia acknowledges the initial findings of this report which suggests that the tree protection controls within South Australia are less stringent when compared with other States (such as those evident within New South Wales, Victoria and Western Australia).

Notwithstanding, the Property Council of Australia also notes that tree-protection measures embedded in legislation is just one aspect of a broader greening strategy, which includes planning policy relating to the protection and management of valued trees, tree planting and replacement initiatives and offset schemes.

95. Accordingly, the 'jurisdictional comparison' with other states on tree protection measures should be considered within the context of the South Australia's broader strategic response to tree protection. To this end, the Property Council of Australia supports further work in this area and welcomes the opportunity to provide separate feedback once all research has been completed and the findings of the Open Space and Tree Project are known (i.e., Part 3 of the Open Space and Trees Project).

96. The Property Council of Australia also acknowledges and concurs with the initial view of the Panel that the policy requirements set out in the Code are too early in their implementation to enable a comprehensive assessment of their effectiveness.

Native Vegetation

97. The Property Council of Australia agrees with the Expert Panel that the introduction of the Native Vegetation Overlay and the State Significant Native Overlay has successfully strengthened the nexus between the planning assessment process and the Native Vegetation Act. Notwithstanding, an applicant is still required to undergo a separate assessment and approval process under the Native Vegetation Act to remove native vegetation, following the formal referral process under the Planning and Design Code. This creates an unnecessary 'double up' in the assessment process for the removal of native vegetation which in turn leads to an avoidable protraction in project delivery timeframes, as well as increased confusion for applicants whom may assume they have approval to removal tree(s) following the issuing of a planning consent. The opportunity exists to streamline the assessment and approval process for the removal of native vegetation. That is, the referral process under the Planning and Design Code should serve as a 'one stop shop' in the assessment and decision-making process for the removal of native vegetation. An amendment to the Native Vegetation Regulations could exempt from the need for approval under the Native Vegetation Act clearance approved under the PDI Act where an application was referred to the NVC under the PDI Act process. This s effectively the mechanism for the EPA Licensing.

98. The Native Vegetation Overlay applies to both regional and metropolitan areas of South Australia and can therefore have significant implications for applicants (particularly in instances where the Native Vegetation Overlay and Regulated and Significant Tree Overlays apply). The existing policy provisions within the Native Vegetation Overlay have effectively placed a greater onus the applicant to identify native vegetation situated on land earmarked for future development. Similarly, an application referred to the Native Vegetation Council must also be accompanied by a Native Vegetation Report prepared by an accredited consultant. Whilst policy within the Code also provides the option for an applicant to declare that an application does not involve the clearance of native vegetation, most applicants do not possess the necessary expertise to confidently make this declaration and applicants have little option but to engage native vegetation consults to identify the presence (or otherwise) of native vegetation

and potential clearance levels. The requirements for an applicant to identify the presence of native vegetation is often costly and can result in protracted project delivery timeframes.

99. The Property Council of Australia supports the suggestion made by the Expert Panel for additional investigations/studies to be performed to identify the existence of native vegetation on private land. The identification of areas/sites with native vegetation could also be included as a 'layer' on SAPPA.

Tree Canopy

100. The Property Council of Australia is generally supportive of existing tree planting initiatives (such as existing policy within the Urban Tree Canopy Overlay) being extended to also apply to master planned/greenfield developments.

101. However, such initiatives should provide greater flexibility for the location of tree plantings. In the context of greenfield and master planned developments, there is the opportunity for planting initiatives to be in the form of coordinated street tree plantings.

Tree Protections

102. A jurisdictional comparison on tree protection measures should include a comprehensive review of broader 'greening strategies' adopted by each State (including policy to manage tree removal and replanting schemes). Without this review it is difficult to provide meaningful comment on tightening existing legislative controls over regulated and significant trees.

103. The Property Council of Australia does not support any reduction in the circumference measurement for regulated and significant trees.

104. The Property Council of Australia notes that tightening existing tree protection controls will likely have profound and far-reaching implications, impacting property values, further constraining the development potential of land and more generally, impacting existing landowner rights to remove trees on private land, including in circumstances where there are genuine safety concerns.

105. The jurisdictional comparison has also identified variations in the methods used to identify protected trees, including protections based on tree height and canopy measurements, as well as protections according to species type. The existing circumference measurement test is appropriate and should be retained for the following reasons:

    105.1. When compared with other methods (such as the height method), a circumference measurement is easier to make;

    105.2. There is less error in performing a circumference measurement when compared with a height or canopy spread measurement; and

105.3. When compared with other methods (particularly the species-based method where an arborist may need to be engaged to determine a tree species) a circumference measurement can generally be made at no expense to landowners.

Tree Protection and Distances from Swimming Pools and Dwellings

106. Excluding Willow Myrtles and Eucalypts (of any genus) existing tree protection measures do not apply to trees within 10 metres of a dwelling or swimming pool.

107. These particular exemptions were established to address safety and property damage concerns arising from the proximity of large trees to dwellings and swimming pools (both considered to be substantial buildings/structures of value). Any legislative reform which tightens these controls carries with it an increase in risk to private safety and property damage. The Property Council of Australia does not support any change to this existing legislative control to reduce the threshold trigger for trees within 10 metres of dwellings and pools without further review and compelling justification for this change.

108. The Property Council of Australia also notes the suggestion put forward by the Expert Panel to revise the tree exemption criteria (for example, by introducing additional tests to be satisfied to demonstrate a risk to safety and/or threat to property). Such additional tests are better addressed via an amendment to policy within the Regulated and Significant Tree Overlay as additional reasons/justifications in support of tree removal.

Local Tree Offset Schemes

109. The Property Council of Australia supports the ongoing use of local Urban Tree Funds as an appropriate alternative to onsite replanting, particularly on constrained sites where there may be insufficient space for additional tree plantings. Urban tree funds also provide the opportunity for replanting to occur in a more strategic manner, and in more appropriate locations, such as in public reserves, road reserves (i.e. street tree plantings) and other areas where replanting initiatives have the potential to provide greater benefit to the local community.

110. The Property Council of Australia supports a review of the prescribed planting cost to ensure payments cover the cost to purchase, plant and maintain a tree for a prescribed period. However, the methodology (cost breakdown) for any adjustment to the prescribed fee should be the subject of further consultation (noting the impact on applicants to result from any increase in expense).

111. The cost to pay into Urban Tree Funds should also be standardized across all jurisdictions as there is no obvious justification to support any variation in fees. That is, the cost to plant and maintain a tree in one jurisdiction should not differ to the cost to plant and maintain a tree in another jurisdiction.

112. Noting the importance of the Urban Tree Fund in addressing declining tree canopy, greater transparency on the use of funds for the purposes of replanting is also recommended.

Relevant authorities responsible for managing the use of funds should publish on the portal on a quarterly basis the monies received and spent. In accordance with good governance practices, offset schemes should also be supported by policy outlining how and when funds associated with offset schemes will be used.

113. The Property Council of Australia views the Urban Tree Fund as an important aspect of South Australia's broader greening strategy and most notably, the role of Fund in maintaining or increasing tree cover across the State. Greening strategies should focus on planting initiatives in appropriate locations, in lieu of stricter controls on the preservation of larger and potentially dangerous trees located in inappropriate locations (such as rear yards of private properties in high-risk areas).

Public Realm Planting and the Planning and Development Fund

114. The Property Council of Australia supports greater flexibility concerning the use of money paid into the Planning and Development Fund, and in particular the use of such funds to support tree planting initiatives at state and local levels.

115. Replanting within public spaces will have a greater benefit to local communities (as opposed to tree plantings in private land), and if done correctly can play a pivotal role in positively contributing to public amenity, place making, addressing urban heat load impacts and a decline in tree canopy. A shift in focus toward public realm plantings enables local authorities to strategically select the location of tree plantings with due consideration to safety considerations, the function and useability of the space where planting occurs, and areas where replanting may provide the greatest benefit to the local community.

Urban Infill Policy

116. In addition to zone, sub-zone and site/locality specific policy (i.e. Technical Numerical Variations), policy designed to manage infill development is evident in the following Overlay and General Development Policies:

Overlays

- Stormwater Management Overlay; and
- Urban Tree Canopy Overlay;

General Development Policies

- Design in Urban Areas; and
- Transport, Access and Parking.

117. Recent implementation of Code (Phase 2, March 2021) together with construction delays experienced during COVID-19 peak periods has meant that the full effect of the Code is yet to materialise, particularly the effectiveness of contemporary design policy within the Code.

On this basis, the Property Council of Australia supports the approach recommended by the Expert Panel to delay any fundamental change in design policy within the Code pending a more comprehensive analysis of the design provisions for infill development.

118. In addition, any analysis into the effectiveness of design policy within the Code should also consider the design quality of 'as constructed' dwellings (for example, via a case study analysis). This is because the quantitative criteria expressed within DPF/DTS provisions are just one way of achieving the corresponding qualitative criteria expressed in Performance Outcomes. Accordingly, a design analysis which focuses solely on the application and performance of the quantitative (DPF/DTS) criteria contained within the Code may not be accurate reflection on the effectiveness of the Code policy.

119. Notwithstanding the above, the Property Council of Australia supports the establishment of supporting documentation to guide good design outcomes. However, until a comprehensive review of existing design policy is completed, any change to existing design policy within the Code would be premature. The Property Council of Australia also notes the recent Code Amendment which allows for the establishment of Design Review Panels. The intent of this Code Amendment is to also facilitate high quality design outcomes via voluntary design review process.

120. The Property Council of Australia also supports the suggestion made by the Expert Panel for investigating the opportunity to further diversify the types of dwellings contemplated by the Code. Such a strategy would align with the State's strategic direction of support housing diversity (consistent with the changing demographics and household structures) as well as housing affordability.

121. However, whereas the Expert Panel suggests that such investigations could be initiated via advisory material under section 66(5) of the Act, such investigations should be driven by the State via a Ministerial initiated Code Amendment. This is because any advisory guidelines prepared under section 66(5) would likely have little effect without supportive policy within the Code.

Parking Rates

122. Any investigation into parking rates (as prescribed by the Code) should be considered in the context of the broader strategic targets contained within the 30 Year Plan for Greater Adelaide (as well as other State level strategic documents) to reduce private motor vehicle usage, encourage the use of more sustainable transport options (including high frequency public transport), and to create walkable neighbourhoods through higher density residential development established in proximity to high frequency public transport and activity centres.

123. Modified (reduced) parking rates for 'Designated Areas' is just one example of a contemporary policy response intended to encourage the use of high frequency public transport. *Whilst the Property Council of Australia strongly supports the principle and function of 'Designated Areas', an opportunity exists to expand (and modify) the eligibility criteria for*

'Designated Areas' to further encourage the uptake of sustainable transport options. These ideas are summarized below:

123.1. Designated Areas to include land in proximity to the CBD and employment centres: The Property Council of Australia supports the idea expressed by the Expert Panel of applying different (and presumably reduced) parking rates to areas in proximity to the Central Business District and employment centres (such as activity centres). This could be achieved by expanding the eligibility criteria for 'Designated Areas' to include these circumstances.

123.2. Designated Areas to include all zones: Within the Code, a designated area only applies to those zones listed within Table 2 – Off-Street Car Parking Requirements in Designated Areas. Rather than confining 'Designated Areas' to particular zones, Designed Areas are better determined by the class of development and its proximity to high frequency public transport, the CBD or employment centres where convenient, sustainable and alternative forms of transport are available. For example, residential areas situated within a General Neighbourhood Zone could also be classed as a 'Designated Area' where the particular area is situated in proximity to high frequency public areas.

123.3. Amending conditions relating to high-frequency public transport in Designated Areas: For bus services, the eligibility criteria for a 'Designated Area' require that a public transit route is "serviced every 15 minutes between 7:30am and 6:30pm Monday to Friday and every 30 minutes at night, Saturday, Sunday and public holidays until 10pm)". In our experience, the existing eligibility criteria are too onerous and restrictive, as various high frequency public transit services only operate throughout the week, and not on weekends. The eligibility criteria for high frequency public transit routes should exclude weekends, particularly noting that most commuter activity would occur throughout the working week (Mondays to Fridays) rather than on weekends.

Identification of high-frequency transport routes and stations (SAPPA and SA Portal Amendments)

124. At present, high-frequency public transport routes (or Go Zones) can only be located by performing the laborious and time-consuming exercise of manually reviewing various websites (including Google Maps and public transport timetables located on the Adelaide Metro website) to determine the location of high frequency transport routes relative to particular sites.

125. This data could be placed in layers on SAPPA identifying high-frequency public transport routes, interchanges, tram and rail stations which meet the eligibility criteria for 'Designated Areas', together with all allotments within prescribed distances of these transport routes. This change would also enable 'Designated Areas' to be displayed on Code extracts available via the SA Planning Portal.

EV Charging Stations

126. For the avoidance of doubt EV charging infrastructure should be expressly excluded from the definition of 'development' by Regulation.

127. The Property Council of Australia acknowledges the increasingly important role of electric vehicles. In addition to such legislative amendments, the Property Council of Australia also supports amendments to the Code in the form of dedicated planning policy to guide the design of EV charging stations (that occur with "development"), and which provides for a streamlined assessment process via the 'Deemed to Satisfy' assessment pathway.

128. In our experience, the rollout of EV charging stations is largely driven by the private sector, incentivized by revenue generated by third-party advertising displays attached to charging stations. Recognising the important role of third-party advertising in the delivery of EV infrastructure, policy within the Code should facilitate, and guide (rather than discourage) third-party advertising associated within EV Charging infrastructure. We note that a similar approach has been used to guide the design of third-party advertising attached to bus shelters.

Car Parking Off-Set Schemes (Parking Funds)

129. The Property Council of Australia supports the establishment of parking funds as an appropriate alternative solution to the provision of onsite carparking. In this regard, parking funds are of particular benefit for constrained sites where achieving the parking rates prescribed by the Code may not be easily achieved.

130. The Property Council of Australia also supports a review into the function and use parking funds and the suggestion made by the Expert Panel for greater flexibility for how the parking fund may be used, including for the purpose of providing active transport infrastructure such as separated bike lanes, improved footpaths/shared path upgrades, as well as improvements to existing public transport infrastructure and other initiatives intended to encourage the use of more sustainable transport options. Ultimately however, the use of parking funds should always be for their intended objective, which is to offset the shortfall of onsite parking for private developments. *Therefore, any review of parking off-set schemes should consider the effectiveness of the existing governance framework for ensuring the objectives of the scheme is achieved.* For example, it is possible for schemes to established by local authorities without any clear indication on how or when money paid in funds will be used. This may result in money being paid into the funds, but not being invested in parking infrastructure for prolonged periods. In such instances the objective of the established scheme would not be achieved.

131. *Our view that offset schemes should be supported by an appropriate governance framework and accompanying guidelines (such as a Practice Direction) which (amongst other things) outlines obligations and responsibilities concerning the use of funds, as well as regular reporting on how funds are being used.*

132. New definition for "Urban Areas" – provide clarity around when the Design or Design in Urban Areas provisions apply to All Other Code Assessed Development.

Response to Discussion Paper 3 – Proposed Reform to the e-Planning System and the PlanSA Website

User Experience

Website Re-Design

133. Generally, the Website is easy to use, however we note that this is typically because it is frequently used by practitioners who need to access details. The Website does not need a rebuild but would warrant from refined improvements, noting comments below. The Website and more specifically access to the Code and SAPPA needs to be Mobile Friendly.

134. The Website should:

    134.1. include Rollover menus which identify the sub menus without clicking on the primary menu item.

    134.2. include short cut links to SAPPA, Browsing the Code and Lodging and Application.

    134.3. be more User Friendly on Mobile Apps, specifically to access the browse the Code and SAPPA.

    134.4. provide improved search functionality when browsing the Code.

    134.5. provide mobile application for submission of building notifications and inspections

    134.6. enable submitting building notifications and inspections via a mobile device.

135. Where relevant, would you use a mobile submission function or are you more likely to continue to use a desktop?

    No comment.

Online Submission Forms

136. There is benefit to simplifying the submission process so that a PlanSA login is not required.

137. Requiring the creation of a PlanSA login negatively impacts user experience.

138. The challenges, that result from an applicant not having a logon with PlanSA include that clients, Property Owners and Applicants often want access to their application information and may only be a user of the system once. Working through and obtaining a PlanSA login is results in additional time that applicants and property owners are not interested in pursuing.

Relevant Authority Data Management

139. *The Property Council of Australia raises significant concerns with unvetted capability being provided to relevant authorities to enable staff to manage, alter or change data. While it is recognised that system failures can create delays and frustration, the ability of a relevant authority to 'Data Manage' within the portal raises concerns noting Property Council of Australia members currently experience circumstances where application timeframes, requests for additional information, and applications being placed on hold are occurring contrary to the responsibilities of the relevant authority under the PDI Act.*

140. *Any changes to the portal that facilitate a relevant authority to manage data would unfortunately need to be controlled and the Property Council of Australia are not prepared to support any increase that may provide a relevant authority with the ability to circumvent the power of the PDI Act that might otherwise be managed through the portal.*

141. The specific data which might be able to be changed by the relevant authority needs to be specified in order for the Property Council of Australia to make a more informed comment about whether there is any support for greater power for data management by the relevant authority. At face value, no power should be given.

Inspection Clocks

142. What are the advantages of introducing inspection clock functionality?

No comment.

143. What concerns, if any, would you have about clock functionality linked to inspections?

No comment.

144. What, if any, impact would enabling clock functionality on inspections be likely to have on relevant authorities and builders?

No comment.

Collection of lodgement fee at submission

145. The Property Council of Australia supports a lodgement fee being paid on submission of an application on the portal providing that this locks in the relevant provision of the Code at that time.

146. Locking in the code on submission does not provide a challenge but an advantage, where, delays or inappropriate requests for information as opposed to 'Documentation' are experienced through the verification process. Delays in the verification process may have significant implications on the assessment of an application in the event that significant policy change occurs in the Code which might affect an application that has been prepared and submitted to the portal under the Code in force at the time of upload to the portal.

Combined Verification and Assessment Processes

147. What are the current system obstacles that prevent relevant authorities from making decisions on DTS and Performance Assessed applications quickly?

No comment.

148. What would be the advantages of implementing a streamlined assessment process of this nature?

No comment.

149. What, if any, impact would a streamlined assessment process have for non-council relevant authorities?

No comment.

Automatic Issue of Decision Notification Form

150. The e-Planning system should be able to automatically issue a Decision Notification Form. Further work is required on the scope and detail of such a response. Conceptually, it might be used for final development approval, deemed consent, certain classes of development etc. Further research and consultation on this theme is warranted.

Building Notification through PlanSA

151. Would you be supportive of mandating building notifications be submitted through PlanSA?

No comment.

152. 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?

No comment.

153. Would this amendment provide efficiencies to relevant authorities?

No comment.

154. Would you be supportive of removing the requirement to verify an application for building consent?

No comment.

155. What challenges, if any, would arise as a consequence of removing building consent verification? How could those challenges be overcome?

No comment.

Concurrent Planning and Building Assessment

156. The Property Council of Australia supports the portal providing the opportunity to facilitate concurrent assessment consistent with the intent of the PDI Act.

Automatic Assessment Checks for DTS Applications

157. Implementing automated checks for DTS applications has the potential to provide time and resourcing benefits for applicants and relevant authorities. It is a good idea.

158. Noting in the discussion paper that there appears to be technology to undertake these assessments, the key challenges would relate to the upfront input of data into the portal and the potential need for human verification of that data prior to an automated system check.

159. The Property Council of Australia supports investment where such investment expedites regulatory time frames and certainty of decision-making processes. Accordingly, the Property Council of Australia supports investment for this purpose providing that resources are maintained within the other critical roles including Performance Assessment, Impact Assessment, and Code Amendment functions of the department.

3D Modelling for Development Application Tracker and Public Notification

160. The benefits of the e-Planning system being able to display 3D models of proposed developments are fairly limited if there are any.

161. Additional application requirements the increase to cost burden associated with lodging an application is not supported. While many projects are now designed as a 3D Model from scratch, this is not consistent across the industry and would result in unnecessary cost burdens for practitioners and applicants should this be considered a mandatory requirement. This should remain a voluntary option for applicants.

162. The Property Council of Australia does not support the Government investing in developing this technology so that it may integrate with the e-Planning system if it resulted in a mandatory requirement for applicants to submit applications as a 3D model. The burden does not meet the very limited benefits that might exist.

Augmented Reality Mobile Application

163. This would be a waste of time and effort.

Accessibility through Mobile Applications

164. The e-Planning system should be more mobile friendly. The increase in the use of mobile applications has resulted in discussions beyond the desktop or office and the need to access the e-Planning System, including the Code and SAPPA remotely while away from a computer. A Mobile Based app for access to both SAPPA and the Code will enhance the success and use of the digital e-planning platform and should have been considered a mandatory requirement from the inception of e-Planning.

165. The Government should invest in developing this technology so that the PlanSA website and the e-Planning system is functional on mobile. This would be the highest priority for Government investment in improvements to the e-Planning system.

Improved Visibility of the Assessment Clock

166. The assessment clock is currently not visible once you are within an application and is only visible in the application list format.

167. Improvements to the Assessment clock functionality so that it is visible within the application screen would be a significant benefit and provide transparency to the assessment timeframe.

168. This should also include the start date, end date and days remaining for statutory referrals and public notification in a one stop assessment clock dashboard within the application page on the Portal.

169. The full Statutory Referral report from an Agency should be made available on the portal rather than just the summary.

Conditions / Reserved Matters

170. The portal does not currently provide appropriate online mechanisms for the applicant to upload information to address reserved matters. Improved functionality for applicants to upload documents to address Conditions of Consent and Reserved Matters is required.

Applicant data management

171. Applicants require access to update contact details for the Applicant and or Contact person through the course of the assessment as this may change at different stages of the application.

Application should be Listed by Applicant not Owner

172. Applications listed in the Portal should be referenced by Applicant not Owner as is currently the case.

Applications should appear in the Application Register at time of upload to portal

173. This matter can reasonably be addressed through the recommendations dealing with payment of a lodgement fee at time of upload to the portal.

List of Restricted Development Required in Code Summary

174. Listing "Restricted Development" on the Code Summary view for a Site is a critical necessity and should be one of the highest priorities for the department to address in the reform options in the e-Planning System.

Shared Access to applications across Project Team

175. It is often necessary for a project team to have shared access to an application. The current online access arrangements are limited and clumsy often requiring the contact person to transfer access to another party rather than providing shared access between and Planning and Building professional.

Code mechanics in the E-Planning System

176. There is a need for easily accessible "point in time" versions of the Code as it relates to specific properties i.e. so stakeholders can determine which policies applied to an address at a specific time (currently no way to determine this as historical datasets from SAPPA are not publicly available).

177. It should also be possible to generate an extract of a historic version of the Code in the same way you can for the current Code (rather than manually extracting pages). This could be implemented with a historical SAPPA dataset such that the historical extract is linked to the property on SAPPA.

178. PDF Extracts should include snapshots from SAPPA to show spatial application of policies. This is useful where land is located in two zones for example.

179. Applicants should be able to apply for variations to/extensions of time of pre-portal applications without effectively creating a new development application on the portal.

180. When submitting an application on the portal, it should be possible to add/remove elements of development in review of the application. Currently, once you select an element of development, the system will not allow you to remove it.

181. You should be able to submit further documents on your application on the PlanSA portal without there being an 'action required' on the application. This has happened a few times where we have wanted to provide supplementary materials and there is no way of doing it other than emailing the relevant authority.