MOUNT BARKER
DISTRICT COUNCIL

Reference: DOC/22/152196

17 January 2023

Mr John Stimson
Presiding Member
Expert Panel
GPO BOX 1815
ADELAIDE SA 5001

Dear Mr. Stimson

RE: Mount Barker District Council Submission on the Planning System Implementation Review

I write in response to the three discussion papers released by the expert panel and more broadly the implantation of the Planning, Development and Infrastructure Act 2016 (PDI Act) and the Planning and Development Code (the Code).

I would like to thank the expert panel for the opportunity to raise ongoing concerns that Council has with the operation and implementation of the Code and the PDI Act. In providing this response, I would highlight the submission from the Local Government Association of South Australia specifically the discussion surrounding infrastructure framework (page 36), developer contributions (page 37) and the proper use of the Planning and Development Fund and Open Space (pages 36-37).

In regards to issues that affect the Mount Barker District Council, I would bring to attention the following sections within our response:

- Infrastructure Schemes
- Tree Protection
- The interaction between Native Vegetation and Regulated Trees
- Urban Canopy
- Public notification of rural developments

The funding for, and timely provision of, infrastructure is an important issue that Council has previously raised with multiple Government Departments and various Ministers over the years. Unfortunately, this has not resolved the issue of the timely provision of a connector road (Heysen Boulevard), new schools or other vital infrastructure. Council continues to advocate that this vital infrastructure requires a

whole of Government approach to ensure that it is properly planned and funded and provided in a timely manner.

In conclusion, I would like to reiterate that Council remains committed to working with the State Planning Commission and the Planning Land Use Services Team to ensure that the PDI Act and Code provide a system that delivers best practice outcomes for all South Australians.

Please do not hesitate to contact me or Maddie Walker, Manager Community Planning and Wellbeing on 8391 7244 or email mwalker@mountbarker.sa.gov.au should you require any further information.

Yours sincerely,

Marc Voortman
General Manager Planning and Community

CC:

- Hon Dan Cregan MP
- Hon David Speirs MP
- Josh Teague MP
- Local Government Association
- Southern Hills Local Government Association
- Urban Development Institute Australia SA

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PLANNING SYSTEM IMPLEMENTATION REVIEW SUBMISSION

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Planning and Design Code Reform Options – Discussion Paper

Character and Heritage	
Topic / Question	**Comment**
New Policy Approach – Accurate mapping	(Page 17) - There appears to be no simple method for correct mistakes in the mapping/listing (i.e. incorrect street address, location, description, etc).
New Policy Approach – Historic Area Statements	(Page 17) - These statements are stripped down versions of Desired Character Statements that were previously contained within the Development Plan. During the conversion to the Code important information was lost. Furthermore the information contained within these statement varies between Councils, despite the Code attempting to standardize them.
Design Guidelines	(Pages 20 & 21) - The Style identification advisory guidelines, which assist applicants and designers to identify places that display historic themes and characteristics, contain very few non-metropolitan examples of historic buildings. Metropolitan examples of historic buildings are different from rural/regional examples as they contain different building materials, were constructed with a higher budget and performed different functions within the community. As such, this lack of non-metropolitan examples unfairly raises the bar for historic buildings which can lead to the increased demolition of regional and rural historic buildings.
SPC Proposal – Character Area Statements	(Page 23) While the Mount Barker District Council does not have any Character Areas we are supportive of reviewing and updating our Historic Area Statements to ensure that they accurately reflect the historic character of the area(s), the buildings contained within and the desire of the community to protect the remaining heritage fabric and uses.
Character and Heritage Policy	
Question 1 - In relation to prong two (2) pertaining to character area statements, in the	Support – While Council doesn't have any character areas we would consider reviewing and potentially updating our Historic Area Statements.

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current system, what is and is not working, and are there gaps and/or deficiencies?	In terms of deficiencies , Council notes there was little time provide to change Historic Character Area Statements from their Development Plan format to the new Code compliant format. This meant that detail was missed or excluded from these statements. Another concern at the time was that the Code policy (Performance Outcomes) to enforce and interpret these Statements was not yet finalized. This did not allow for a full understanding of how these Statements would be used in development assessment.
Question 2 - Noting the Panel's recommendations to the Minister on prongs one (1) and two (2) of the Commission's proposal, are there additional approaches available for enhancing character areas?	There needs to be an simple method to rectify mistakes in listings or changes to circumstances (i.e. total or partial demolition).
Question 3 - What are your views on introducing a development assessment pathway to only allow for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved?	Council has not previously required a replacement dwelling be submitted (or approved) prior to the demolition of a building in a Historic Area. A suggested approach would be to: • Ensure that appropriate criteria is in place to assess the demolition of buildings within a Historic or Character Area to minimise the loss of buildings which add to the area; • Increase the policy guidance for replacement dwellings within Historic and/or Character areas to ensure that replacement dwellings meet appropriate design standards; and • Consider (Statewide) design review for replacement dwellings in Historic and/or Character areas to provide consistent direction and advice on design standards.

Question 4 - What difficulties do you think this assessment pathway may pose? How could those difficulties be overcome?	Issues would include: • Relevant Authorities not having the on-site expertise to consider appropriate design criteria for replacement dwellings. This would mean that Relevant Authorities would need to hire consultants to provide this advice, costing time and money; • How do you force an applicant or property owner to construct the replacement dwelling? If the original building is demolished but no replacement dwelling is constructed what happens with the land? • How would a Relevant Authority deal with variations to the original replacement dwelling application? Could a series of variations fundamentally change the design of the replacement dwelling to one which would not have originally been approved?
Tree Policy	
Topic / Question	**Comment**
Urban Tree Canopy	Yet to be published report from Council – Land Cover Change and Tree Canopy Cover in Mount Barker 2008-2019 – this report seeks to quantify the change in canopy cover between 2008 and 2019 across the whole of the Mount Barker township. The data from the report will be used to explore drivers of land cover change across the area, establish a benchmark of tree canopy cover and identify opportunities for tree planting. For the purposes of considering urban canopy cover within residential areas, Zone 2 (the older growth area of Mount Barker) showed canopy cover at 22% - with a drop in coverage between 2008 and 2019 on private land and an increase on public land during the same time period.

	This shows that not requiring canopy cover on private land does not deliver the 30% target contained within the 30-year plan for Greater Adelaide. This reports suggests that if greenfield areas aren't considered then we will be creating urban heat islands of the future.
Native Vegetation	
Question 1 - What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?	Whilst positive gain has been made with the Native Vegetation Overlay, the persisting lack of legislative alignment between the PDI Act (and Code) and the Native Vegetation Act results in poor coordination and application of policy outcomes. The current situation promotes confusion and uncertainty for general application of both sets of legislation in a concurrent manner. In areas covered by the Hazards Bushfire (High Risk) and the Hazards Bushfire (Medium Risk) Overlays there is limited protection for urban trees due to operation of the PDI Act unassessed 'blanket' 20 metre clearance provision. Further confusing the issue is a lack of clarity between the interface of regulated tree protection/policy and native vegetation. In the legislative hierarchy of Acts the Native Veg Act sits above the PDI Act and covers the entire state except for inner metro Adelaide. Town planners, other council staff, arborists and property owners on occasions have thought because of this the PDI Act tree protection measures do not apply wherever the Native Veg Act applies. However, this is not the case and whilst the Native Vegetation Act is a 'higher Act' it does 'default' or allow the 'lesser PDI Act' the requirement to obtain approval for tree-damaging activity in relation to a Regulated tree that is also remnant. This applies irrespective of whether tree remove is permitted under the Native Vegetation Act.

	This situation applies where the PDI Act has declared areas for 'Regulated' and 'Significant Trees' (*significant trees* being a sub set of regulated trees for the purpose of the PDI Act). The Native Vegetation Regulations allowing tree removal cannot be used above the PDI Act tree protection measures where the PDI Act applies. For example, pursuant to section 27(1)(b) of the Native Vegetation Act and Schedule 1, clause 14 of the Native Vegetation Regulations 2017, native vegetation may be cleared within five (5) metres of a fence line in certain circumstances. This may be erroneously understood to include the removal of an otherwise Regulated remnant tree within a township boundary, Country living zone or any other area declared for Regulated Trees and thus requiring approval where applicable under the PDI Act.
Question 2 - Are there any other issues connecting native vegetation and planning policy?	The only synergy between the general application of both sets of 'tree removal rules' is the measurement of a two metre circumference at one metre above ground level. However, this can still cause confusion when both sets of rules are explained to general inquiries made by property owners, developers, town planners and arborists. The PDI Act permits clearance of any tree two metres in circumference or more measured at one metre above ground level within 20 metres of a dwelling footing in a medium to high bushfire risk area. The Native Vegetation Act permits clearance of any vegetation within 10 metres from a shed or within 20 metres from a dwelling including its attached ancillary structures (different to the PDI Act), unless it is a tree with a circumference measurement of two metres or more measured at one metre above ground level. Here it becomes protected

	from the point 10 metres out from the dwelling including its attached ancillary structures or ancillary sheds and beyond. This situation despite it being within an area declared for Regulated Trees and the 20 metre 'blanket' clearance provision associated with this. It appears confusing as: • Although the Native Vegetation Act sits above the PDI Act in this instance, the clearance exemptions under the Native Veg Regulations cannot be used to override the PDI Act Regulated Tree protection provisions in the areas designated for Regulated trees. However: • The PDI Act Regulated Tree protection provisions don't apply within 20 metres of a dwelling footing in a medium to high bushfire risk area. Further: • A remnant tree two metres or more in circumference measured at one metre above ground located between 10 and 20 metres from a dwelling is subject to Native Vegetation Act protection and cannot be cleared under the PDI Act 20 metre clearance exemption. Since its inception it is observed the 20 metre 'blanket' clearance provision under the current PDI Act does not appropriately address bushfire risk mitigation in balance with

	urban greening objectives. More importantly the intent of the provision to provide greater bushfire protection is not served by way of implying large canopy trees are a bush fire risk when quite the opposite is the case in an appropriately managed property as per CFS recommendations. The current 20 metre 'blanket' clearance provision in medium to high bushfire risk areas under the current PDI Act; • is not viewed as fit for purpose or serving the intent of bushfire risk mitigation; • creates mid-understanding of what is and what isn't a bushfire risk; • acts as de-facto direction from State Government to clear large, healthy low risk trees from urban properties which are not a bushfire risk in a bushfire prone area, for those thinking they are doing the right thing but are unwittingly destroying a positive asset to the immediate property and suburb; • promotes opportunistic removal of large, healthy low risk trees from urban properties which are not a bushfire risk in a bushfire prone area for those that know better and need the excuse for ill considered, non-assessed tree removal; • does not reflect the apparent intensions of the State Government and planning policy which is to retain and promote urban tree canopy; • is at odds with the Native Vegetation Act clearance parameters and causes confusion and difficult administration of the PDI and Native Vegetation Acts. Level 4 clearance requires consultation (undertaken by the Native Vegetation Council) even in situations where the development application may be exempt from notification under the Code.
Tree Canopy	

Question 1 - 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?	Ensuring that at least 1 tree is planted per new dwelling will improve the amenity of these future neighbourhoods, meet the canopy cover targets in the 30 year plan for Greater Adelaide. As shown in the Council research (Land Cover Change and Tree Canopy Cover Report) relying on street trees and planting within reserves will not produce the desired outcomes (i.e. liveable neighbourhoods, reduction in urban heat, canopy cover, etc.). Any requirement for trees planted on private land would need to be in addition to developers providing a minimum of 1 street tree per frontage when designing a subdivision. Additionally requirements for street trees should be in the prescribed requirements for subdivision (regulations 80-85). However when medium to high density dwellings are developed, which provide small yards, there would need to be an exemption given or the ability to pay into the urban tree canopy fund as there is typically is no room to plant a tree.
Question 2 - 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?	Any tree planted is preferable to no tree planted, however consideration for the location of the tree should be given to the location of services (waste water/septic tanks and rear of allotment drainage).
Tree Protections	
Question 1 - What are the implications of reducing the minimum circumference for regulated and significant tree protections?	This will likely capture more appropriate smaller established trees for consideration to be retained on development sites or just saved from ill-considered removal on established properties. There are times when there is a perfectly suited tree ready to value add and be a part of a new development but it is removed because there is nothing in place to trigger realisation the tree maybe valuable and worthy of retention. Legislation would be

	beneficial if it can provide a rethinking of the value of smaller minimum circumference trees.
Question 2 - What are the implications of introducing a height protection threshold, to assist in meeting canopy targets?	Height protection threshold is seen as potentially problematic, as it implies that trees below a certain height are not valuable or worthy of retention. The main issue will be how do you measure tree height without specialised equipment? Currently you can measure a significant and/or regulated tree just using a tape measure. This need for specialised equipment can lead to situations where the height of the tree is guessed or incorrectly measured. How would tree height protect trees if the Regulations still provide for a removal of 30% of the crown of the tree? Could a tree be pruned, without requiring consent, to reduce its height to be below the regulated/significant height requirement?
Question 3 - What are the implications of introducing a crown spread protection, to assist in meeting canopy targets?	Crown spread protection could be enforceable and certainly would assist meeting canopy targets. As with the height protection question the technique for measuring the crown spread needs to be simple enough to allow the community to undertake the measure. Further consideration would need to be given to ensuring that pruning the canopy does not lead to situations where the tree is no longer protected. Alternatively, crown spread protection for existing protected trees is a great idea to avoid trees being overly modified to the point of providing greatly reduced to limited environmental service to the surroundings.
Question 4 - What are the implications of introducing species-based tree protections?	The current legislation, allowing for the protection of only two species of trees, limits the collective canopy growth targets. There needs to be an acceptance of different species in the landscape as protection of tree canopy benefits biodiversity, urban cooling and amenity despite the differences between species.

	An alternate solution could be that every tree species is protected with a list of exemptions for pest species.
Distance from Development	
Question 1 - 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?	Consideration will need to be given to the effects of tree roots on footings, however this can be dealt with by allowing for trees to be removed when they pose a risk to the structural stability of dwellings. This will necessitate the use of engineering reports to justify the removal of the tree (as opposed to arborist reports which consider the health and structural form of the tree). Exemptions will still need to be in place for the removal of trees (including native vegetation) within areas of high and medium bushfire areas. Implications of reducing the distance would be many appropriate valuable trees retained where fitting.
Question 2 - 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)?	The reasons for removal are already extensive; covering: • Tree Health • Public safety • Damage to private property There aren't any other circumstances that aren't listed where a tree should be removed.
Urban Tree Canopy Off-set Scheme	
Question 1 - What are the implications of increasing the fee for payment into the Off-set scheme?	Currently it costs Council a minimum of $500 plus GST to buy a 45 litre container sized tree, install it and provide 3 years establishment maintenance. Increasing the fee for the Off-set scheme will see improved outcomes as Council are able to buy larger trees (rather than seedlings) and water the tree for a longer period.

	Just like grants, the funds should be tracked by the scheme to prove results. Local government accounts systems will need to accommodate a statutory preserved fund account and get used to not dissolving funds every financial year.
Question 2 - 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?	Fees received need to be commensurate with actual costs of establishing new trees or commensurate with the financial value of the tree/s removed.
Question 3 - What are the implications of increasing the off-set fees for the removal or regulated or significant trees?	The Native Vegetation Significant Environmental Benefit (SEB) payment is set at a level that discourages the broad scale removal of trees. If the PDI Act mirrored this for regulated or significant trees then this would push applicants towards retaining mature trees and amend their development plans. Tree off-set fees would need to relate to the urban environmental value of the tree, for which there has been research previously produced. It wouldn't be hard to align an urban tree potentially to be removed with actual $ value to the property and community and this would be the payable fee prior to approval for removal is issued.
Public Realm Tree Planting	
Question 1 - Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?	Yes. In the Mount Barker growth area, Council attempts to have one street tree per allotment (or frontage) however this is not always possible so some allotments miss out. Mount Barker District Council does not recommend any one species over another but realises the greater diversity, the better for urban forest resilience. Developers are

	encouraged to use a greater variety and discouraged from specifying the same usual tree species over and over again. Mount Barker District Council uses the digital web based software program Forestree and currently has recorded 19,704 tree locations with 6,200 of these being park trees. It is estimated there is around double this number left to input into the inventory. Plus the growth area to input also. Of the data recorded so far of 19,704 tree sites this consists of 479 different tree species. Increased Family, Genus and Species diversity is something all LGA's and any Greening Adelaide program, plan or strategy should seek to roll out.
Infill Policy	
Topic / Question	**Comment**
Design Guidelines	
Question 1 - Do you think the existing design guidelines for infill development are sufficient? Why or why not?	Infill policies should not be a one size fits all approach. Growth Councils do not require the same impetus for infill development as inner metro Councils do. However, we both share many of the same residential zones. We support the LGA's call for the principles of the Design Guidelines – Design Quality and Housing Choice Guidelines (prepared by the Office for Design + Architecture) to be imbedded within the Code and specifically within infill policy (Design in Urban Areas module). It is recommended the Expert Panel review those dwellings that have been approved as Deemed to Satisfy applications and consider if they meet the principles of the above Guideline.
Question 2 - Do you think there would be benefit in exploring alternative forms of infill	As mentioned above consideration of the forms of infill needs to be on a location basis rather than a zone basis. The type and form of infill development that may work in a

development? If not, why not? If yes, what types of infill development do you think would be suitable in South Australia?	Housing Diversity Neighbourhood Zone in Morphetville will not necessarily work in the same zone in Nairne.
Strategic Planning	
Question 1 - What are the best mechanisms for ensuring good strategic alignment between regional plans and how the policies of the Code are applied spatially?	Prior to the Code being implemented we could ensure that there was alignment between the 30 year plan for Greater Adelaide, Council's strategic vision and the Development Plan. However, the Code has replaced the Development Plan(s) and standardized planning policy across the State. This has led to a situation where planning policy that had been developed in partnership with communities, government agencies and the Minister has been lost. As such we are unsure if the current Code aligns with the 30 year plan or Councils own strategic directions. To ensure that there is alignment a review of the Code against the provisions of the 30 year plan for Greater Adelaide (and its successor) and each Council's strategic directions/goals should be undertaken. The findings of this review should then be communicated to the public to ensure that they understand the directions and goals that are envisaged within these plans.
Question 2 - What should the different roles and responsibilities of State and local government and the private sector be in undertaking strategic planning?	Local Government are best placed to engage with the community to discuss the future of their towns and suburbs and neighbourhoods at a local level. Local Governments are first port of call for the public seeking help with local issues (stormwater, car parking, development) and as such have a keen knowledge of public opinion.

Car Parking Policy	
Topic / Question	**Comment**
Code Policy	
Question 1 - What are the specific car parking challenges that you are experiencing in your locality? Is this street specific and if so, can you please advise what street and suburb.	We note that people don't always use their garages for undercover car parking but for storage purposes instead. Mandating parking requirements can therefore be difficult as it is up to user choice as to how these spaces are used. To assist with car parking and manoeuvring consideration should be given to indented parking directly adjacent medium and high density development. This is best contemplated at the land division stage which would necessitate a change to the prescribed requirements in Regulations 80-85.
Question 2 - Should car parking rates be spatially applied based on proximity to the CBD, employment centres and/or public transport corridors? If not, why not? If yes, how do you think this could be effectively applied?	What is meant by CBD and employment centres? Is the CBD the Adelaide CBD or is it the CBD of Mount Barker? Are employment centres shopping centres or are they major industrial developments? Any spatial application will need to balance distance to employment centres/CBD against the location, frequency and quality of public transport and active transport. In the Mount Barker District Council area the frequency and locality of public transport is not sufficient to give discounts to car parking rates, as the existing service levels cannot make up for a shortfall in car parks.
Question 3 - Should the Code offer greater car parking rate dispensation based on proximity to public transport or employment centres? If not, why not? If yes, what level of dispensation do you think is appropriate?	In the Mount Barker District Council area the frequency and locality of public transport is not sufficient to give discounts to car parking rates, as the existing service levels cannot make up for a shortfall in car parks.

Question 4 - What are the implications of reviewing carparking rates against contemporary data (2021 Census and ABS data), with a focus on only meeting average expected demand rather than peak demand?	The 2021 Census has heavily affected by the Covid19 pandemic so consideration of these effects on public transport, work from home, etc. should be taken into account when using and relying on this data.
Question 5 - Is it still necessary for the Code to seek the provision of at least one (1) covered carpark when two (2) on-site car parks are required?	Yes. Public transport and active transport (walking, biking, scooter) links in growth areas are not yet sufficiently developed to allow for fewer car trips or a decline in car ownership. Therefore, in these areas the dominant form of transport will be private cars until service levels catch up.
Design Guidelines	
Question 6 - What are the implications of developing a design guideline or fact sheet related to off-street car parking?	We would support design guidelines within medium and high density locations NCC min lengths and widths.
Electric Vehicles	
Question 7 - EV charging stations are not specifically identified as a form of development in the PDI Act. Should this change, or should the installation of EV charging stations remain unregulated, thereby allowing installation in any location?	EV charging stations could be considered a form of development in larger commercial developments (petrol station, shopping centre, multi-tenancy bulky goods, car parking) where multiple charging points are provided.
Question 8 - If EV charging stations became a form a development, there are currently no dedicated policies within the Code that seek to guide the design of residential or commercial car parking arrangements in relation to EV charging infrastructure. Should dedicated	Yes

policies be developed to guide the design of EV charging infrastructure?	
Car Parking Off-Set Schemes	
Question 9 - What are the implications of car parking fund being used for projects other than centrally located car parking in Activity Centres (such as a retail precinct)?	Do not support. Being in a growth area any future Activity Centre will need to supply sufficient car parks to support the development and should not rely on the car parking fund to offset.
Question 10 - What types of projects and/or initiatives would you support the car parking funds being used for, if not only for the establishment of centrally located car parking?	Car parking towers, at grade car parks, purchase of property for car parking by Council or public transport facilities.
Commission Prepared Design Standards	
Question 11 - Do you think there would be benefit from the Commission preparing local road Design Standards?	This may be beneficial subject to the specific detail of the guideline and how it is implemented. The design and function of laneway roads will need careful consideration to balance the needs of residents versus the movement of vehicles, urban canopy cover and the provision of aboveground and underground services.

Planning, Development & Infrastructure Act 2016 Reform Options – Discussion Paper

General comments	
Topic / Question	**Comment**
Accredited professionals – complaints/investigations	Complaints reporting process and the need for Councils to undertake all of the investigation on behalf of the Accreditation Authority, including providing statutory declarations.
Accredited professionals – CPD requirements	Requiring that Accredited Professionals who hold both a Level 1 and Level 2 Accreditation undertake the CPD requirements for both levels is onerous and redundant. Level 2 professionals make decisions as part of a CAP whereas Level 1 professionals make independent decisions and face higher levels of scrutiny (i.e. their decisions can be appealed to CAP's and the ERD Court which they (personally) must defend.
Infrastructure Schemes	Currently Infrastructure Deeds are used by Council – however these legal documents take significant resources (legal, technical, planning, engineering, etc) and time to establish. Deeds also require the Council seal to be affixed to them making any amendments or substantial variations time consuming. Lastly Deeds need to be tied to the land via an LMA.
Location of Heritage in PDI Act	There needs to be the ability to quickly and easily remove heritage items from the Code / Register when there is clear evidence that they have been demolished.

Public notifications and appeal rights	
Topic / Question	**Comment**
Public notification and appeals	
Question 1 - What type of applications are currently not notified that you think should be notified?	We have no additional categories of development should be notified.
Question 2 - What type of applications are currently notified that you think should not be notified?	Boundary walls for expected forms of development (sheds, garages, dwellings) should only be notified to those affected neighbours. There is no reason that a neighbor across the street needs to be notified about a development across the road where the element requiring the notification does not affect them or their property.
Question 3 - What, if any, difficulties have you experienced as a consequence of the notification requirements in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.	Rural industrial applications (piggeries, dairies, feed mills, concrete batching plants, etc.) that are notified do not require a sign to be placed on the land. Instead only notify neighbours within 60 metres of the development. Typically these forms of development have impacts well outside of a 60 metre radius (noise, dust, smell, smoke, vibration, etc.) as evidenced by the need for EPA referrals. For this reason, the notification radius should be increased to 500 metres or the equivalent EPA standard for noise disturbance. Increasing the notification will allow nearby residents who may be affected by the development to be informed of the proposal and to provide comment. Alternatively developments that are considered acts of environmental significance could require additional notification in accordance with EPA separation requirements for the proposed activity. Environmental significance could be defined as: either from Part 9 Referrals (EPA) or as per Schedule 9 – table part 9 of the PDI Regulations.

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<td>Question 4 - What, if any, difficulties have you experienced as a consequence of the pathways for appeal in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.</td>
<td>Due to how the Emerging Activity Centre Subzone is applied in the Council and the definition of an activity centre many forms of development of development require notification. This then grants opportunities for people to comment on applications and/or appeal the decision of the Assessment Manager to the CAP.

The minor test in the procedural matters table (see below) should be reviewed given the scope of the type of development that this can be applied to (See Wait v City of Holdfast Bay 2021 SAERDC). Given the issues raised in this case, the minor test should simply be from a planning perspective as to whether the Relevant Authority considers that the neighbours are unreasonably affected and not whether or not the structure or building itself is minor building work. Essentially the only consideration should a planning consideration.

<table>
<tr><th>Class of Development

(Column A)</th></tr>
<tr><td>1. Development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.</td></tr>
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<td>Question 5 - Is an alternative planning review mechanism required? If so, what might that mechanism be (i.e. merit or process driven) and</td>
<td>The current process to review decisions either through an appeal to the CAP or the ERD Court is sufficient. However, the current Court process needs to be reviewed to speed up appeals.</td>
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what principles should be considered in establishing that process (i.e. cost)?	
Accredited Professionals	
Question 6 - Is there an expectation that only planning certifiers assess applications for planning consent and only building certifiers assess applications for building consent?	Yes As the discussion papers outline South Australia is the only state that allows private certifiers to issue planning consents. Council is currently dealing with a situation where a private building certifier has decided that a swimming pool is accepted development for the purposes of planning consent and has then issued building rules consent. However, it appears the certifier has not considered the impact of the pool on a nearby significant tree (tree damaging activity), the tree is also covered by the native vegetation overlay and the subject of an LMA (to Council). As the above example illustrates private building certifiers are not best placed to decide whether a proposal is accepted development as there can be multiple extenuating circumstances that would change the consideration of the planning consent.
Question 7 - What would be the implications of only planning certifiers issuing planning consent?	As the above example shows a planning expert should be better placed to consider other planning related matters (significant trees in this case) that may change the consideration of the proposal.
Question 8 - Would there be any adverse effects to Building Accredited Professionals if they were	No

no longer permitted to assess applications for planning consent?	
Impact Assessed Development	
Question 9 - What are the implications of the determination of an Impact Assessed (Declared) Development being subject to a whole-of-Government process?	Not applicable as this is assessed by the SCAP.
Infrastructure Schemes	
Question 10 - What do you see as barriers in establishing an infrastructure scheme under the PDI Act?	A combination of the complexity and lack of certainty of outputs of the proposed infrastructure scheme system as well as a lack of Government resources to assist in refining the legislation/process has meant that no one wants to enter into one. For vital infrastructure to be provided this situation has to be remedied.
Question 11 - What improvements would you like to see to the infrastructure scheme provisions in the PDI Act?	The whole process needs to be reviewed to ensure that infrastructure outcomes can be driven prior to and through the rezoning process i.e. arrangements for the funding and timely delivery of infrastructure that is required due to growth need to be in place prior to land being rezoned. This will provide certainty and clarity and a fairer distribution of the infrastructure funding requirements as those implications would be known in advance and can be reflected in commercial arrangements entered into by a developer and land owner. The rezoning of land needs to include staging so as to enable infrastructure to be planned and delivered in an orderly and efficient manner which means more cost effectively. The rezoning of land also needs to make specific provision for infrastructure requirements such as education (schools) and energy (electricity sub-stations).

	There are many lessons that can be learnt from the 2010 Ministerial rezoning in Mount Barker with the 41% (around 4kms) of the connector road in the Mount Barker growth area still to be constructed being one such example. Also see below, response to question 12. Guidance should be taken from the Victorian Planning Authority. Structure planning for growth areas with infrastructure designs and costings must occur prior to the rezoning process. This needs to include whole of government to capture all inputs (i.e. SA Water, Department for Education).
Question 12 - Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?	Council has previously forwarded information for this purpose to the State Government. Most recently (August 2022) information on transport infrastructure provision was provided by council to Deloittes who were retained by the Dept of Infrastructure and Transport. That information relates to shortcomings and issues with the 2012 Ministerial Transport Deeds for Mount Barker (between the Minister and various developers) and a summary of issues, implications and suggested solutions for the connector road in the Mount Barker growth area. These documents are available to the expert panel on request. Identification of needs and commitment from essential service providers is required in advance of the rezoning of land e.g. sewer, emergency services and energy. At the time of the 2010 Ministerial rezoning, council was advised by the State Government that that SA Water would build a treatment plant to cater for growth and be the sewer service provider.

	SA Water has conducted studies but has in 2022 confirmed that they have no intention to be responsible for the provision of a sewer service. SA Power Networks has for many years been seeking to find a suitable land parcel for a required new electricity substation. The Expert Panel need to consider working examples from other jurisdictions (i.e. Victoria) as what is currently in place (in South Australia) has not delivered the desired outcomes. Please also refer above to the response to question 11.
Local heritage in the PDI Act	
Question 13 - What would be the implications of having the heritage process managed by heritage experts through the Heritage Places Act (rather than planners under the PDI Act)?	Would this heritage process be managed by heritage experts within Local Government or the State Government? If it is in Local Government then not every Council has a heritage expert employed or as a contractor. Whereas a majority of Councils will have a policy planner or other expert that can process a heritage Code Amendment. If the heritage listing process sits within State Government will there be any cost implications to Councils for undertaking a listing process? Could/would the State Government undertake a listing or review of heritage items of their own volition without a request from a Council?

Question 14 - What would be the implications of sections 67(4) and 67(5) of the PDI Act being commenced?	Undertaking this process would add an administrative burden on the proponent, increase the cost of the code amendment and increase the timeframe. Who would undertake the consultation and voting process for this? Would the proponent? Or would there need to be a separate body formed to undertake the process?
Deemed consents	
Question 15 - Do you feel the deemed consent provisions under the PDI Act are effective?	This is a broader issue in regards to timeframes, the quality of information provided, amendments made to applications, deferrals by CAP's, request for further information and applications being placed on hold by an applicant. The deemed consent approach makes the assessment process more adversarial with authorities following the letter of the law to avoid deemed consents rather than finding mutually acceptable solutions.
Question 16 - Are you supportive of any of the proposed alternative options to deemed consent provided in this Discussion Paper? If not, why not? If yes, which alternative (s) do you consider would be most effective?	We are not supportive of any of the measures mentioned in the discussion paper. Allowing for the issuing of deemed approvals allows no recourse by a Relevant Authority (Council) to ensure that the correct process has been followed or to ensure that both sets of plans match. We note that Victoria and Western Australia have a similar system to South Australia's previous system (where applications are considered to be refused with an appeal to a court). We favour this approach as opposed to the current deemed consent system.
Verification of development applications	

Question 17 - What are the primary reasons for the delay in verification of an application?	Poor plans provided by the applicant which are missing vital details Application on land that doesn't exist (land not yet deposited).
Question 18 - Should there be consequences on a relevant authority if it fails to verify an application within the prescribed timeframe?	If the penalties are too harsh on the relevant authority then you will see a rise in relevant authorities sticking to a strict interpretation of the Schedule 8 requirements. This approach doesn't serve the needs of applicants, relevant authorities or the State Government.
Question 19 - Is there a particular type or class of application that seems to always take longer than the prescribed timeframe to verify?	It takes longer to verify large, complex applications especially those that require input from other departments of council (engineering, waste control, trees). With these applications we believe that it is better to work with the applicant to improve the application and this is best done through one request for information rather than at multiple stages (verification and assessment).
Question 20 - What would or could assist in ensuring that verification occurs within the prescribed timeframe?	Relevant Authorities having the ability to return incomplete applications that do not meet the requirements of Schedule 8 so the onus is on the applicant to lodge an application in a state that can be verified. Increasing the timeframe for verification as this is a major component in the assessment of an application.
Question 21 - Would there be advantages in amending the scope of Schedule 8 of the PDI Regulations?	Could remove statutory referral requirements – these could be dealt with on a case by case basis by the authority.

MOUNT BARKER
DISTRICT COUNCIL

e-Planning System and the PlanSA website Reform Options – Discussion Paper

General comments	
Topic / Question	**Comment**
Subscription to the Development Register	The proposed changes are nibbling around the edges as the subscription services do not do what they set out to do. This service purports to "notify people about developments occurring near you". Instead, it simply emails a link to the Development Register for all applications within a nominated Council area. To find out what is occurring in a suburb or street a person would need to undertake a further search of the register. To find out if there are any applications on notice in an area requires someone to click through multiple screens and then to search for the area/development. This subscription does not service the use that it was set up for.
Early Recommendations to the Minister for Planning	
Topic / Question	**Comment**
Development Application Map	Support
Builders database	Support - But who will maintain this database and at what cost? - If the builder changes midway through a development assessment who updates those details?
Code Rules as a Checklist	Currently the DAP system produces PDF documents with 100 pages or more for DTS applications so making this more user friendly is supported.

	Currently important requirements from the Overlay which override zone requirements (i.e. heights, setbacks, etc.) are placed near the end of PDF which means that this can be missed or overlooked as they are not up front. However, if this is to be generated by the system (a computer) then who will check to ensure that the correct provisions are highlighted? What happens when an application is approved using incorrect provisions that have been produced by the checklist?
User experience	
Topic / Question	**Comment**
Website Redesign	
Question 1 - Is the PlanSA website easy to use?	Finding documents, guides or factsheets on the website can be tricky and often requires multiple search entries to be entered. Sometimes information will be found by using the search box on the main page while other times you will need to look in the resources tab.
Question 2 - What improvements to the PlanSA design would you make to enhance its usability?	The search function for property addresses is broken as it relies on what the applicant/Relevant Authority inputted into the system (i.e. Avenue vs Av vs Ave). Which means that it is often better to search only for the street name and not input the type of street.
Mobile application for submission of building notifications and inspections	
Question 3 - Would submitting building notifications and inspections via a mobile device make these processes more efficient?	Yes. There will also need to be the provision to upload large files from mobile (plans, photos, etc.)
Question 4 - Where relevant, would you use a mobile submission function or are you more likely to continue to use a desktop?	We will use a mix of both mobile and desktop.

Online submission forms	
Question 5 - Is there benefit to simplifying the submission process so that a PlanSA login is not required?	Yes
Question 6 - Does requiring the creation of a PlanSA login negatively impact user experience?	Yes
Question 7 - What challenges, if any, may result from an applicant not having a login with PlanSA?	Need to ensure that no unauthorised access or lodgement of information occurs. Provided that key contact information is provided (phone and email).
Increase Relevant Authority data management	
Question 8 - What would be the advantages of increasing relevant authorities' data management capabilities?	Better in-house reporting capability, which allows for Council to use the data to its full extent.
Question 9 - if any, do you have about enabling relevant authorities to 'self-service' changes to development applications in the DAP?	We support any administration changes that allow the Relevant Authority to streamline the processing of the applicant (i.e. staging, location of developments, etc.). Having to request PLUS to make changes to a live application is not the efficient use of resources.
Inspection clocks	
Question 10 - What are the advantages of introducing inspection clock functionality?	Support
Question 11 - What concerns, if any, would you have about clock functionality linked to inspections?	More time should be allocated to undertake inspections as the current timeframes are unreasonable especially for Councils with large areas, rural areas or bushfire areas (i.e. working in heat or working on extreme or catastrophic days).
Question 12 - What, if any, impact would enabling clock functionality on inspections be likely to have on relevant authorities and builders?	Increased visibility of the work program

Collection of lodgement fee submission	
Question 13 - Would you be supportive of the lodgement fee being paid on application, with planning consent fees to follow verification?	No – this simply increases the number of payment touch points that an applicant has with Council (verification, assessment, building fees).
Question 14 - What challenges, if any, would arise as a consequence of 'locking in' the Code provisions at lodgement? How could those challenges be overcome?	Is this verification outcome or lodgement? I would assume that this would "lock in" the version of the Code rather than specific provisions because it is the Relevant Authority that decides the elements of the proposal and not the applicant. Can the DAP system manage that many versions of the Code between the payment of the lodgement fee and verification?
Combined verification and assessment processes	
Question 15 - What are the current system obstacles that prevent relevant authorities from making decisions on DTS and Performance Assessed applications quickly?	Matters that are not contemplated by the Act for example street trees, external infrastructure, Land Management Agreements
Question 16 - What would be the advantages of implementing a streamlined assessment process of this nature?	The system should be a one stop shop for development assessment
Question 17 - at, if any, impact would a streamlined assessment process have for non-council relevant authorities?	No comment
Automatic issue of Decision Notification Form	
Question 18 - What are the advantages of the e-Planning system being able to automatically issue a Decision Notification Form?	Support

Question 19 - What do you consider would be the key challenges of implementing an automatic system of this nature?	There needs to be an opportunity for an officer to review the DNF prior to it being issued to the applicant to ensure that the DNF contains the correct details and conditions.
Question 20 - If this was to be implemented, should there be any limitations attached to the functionality (i.e., a timeframe for payment of fees or the determination will lapse)?	This should be limited to simple applications to minimise the risk from mistakes.
Building notification through PlanSA	
Question 21 - Would you be supportive of mandating building notifications be submitted through PlanSA?	Support Notification shouldn't come through multiple ways (phone, email, drop into counter and the portal).
Question 22 - 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?	Follow up on non-compliance which may manifest into an increased risk to the public without an oversight of building construction.
Question 23 - Would this amendment provide efficiencies to relevant authorities?	Yes – less administrative burden on Councils to have to man phones, review emails, check message banks, etc. Making the notification go through the Portal also ensures that the application details are provided when making the notification.
Remove building consent verification	
Question 24 - Would you be supportive of removing the requirement to verify an application for building consent?	A lot of issues with the building rules application are captured at the verification stage so this step is vital to ensure that all information is provided to accurately assess the application.
Question 25 - What challenges, if any, would arise as a consequence of removing building	If verification is removed then a longer time will be required to assess an application.

consent verification? How could those challenges be overcome?	
Concurrent planning and building assessment	
Question 26 - What would be the implications of enabling multiple consents to be assessed at the same time?	If planning and building consent were assess concurrently how would the system deal with requests for information or amendments that may vary the assessment process for each application? For example: If the pitch of a roof was amended to meet height requirements for the planning consent how would this be affect a building rules assessment under consideration? Would the clock need to start again to allow for additional time to consider the new roof framing? What would happen if the BRC had already been issued? Would this require a variation application to be lodged to vary the BRC? How would this process work efficiently when there's different Relevant Authorities (i.e. Council/Assessment Panel and a Private Building Rules Certifier)? How would they communicate a change of plans or that they had requested that the applicant amend the plans? The above example shows that this should be a linear process.
Innovation	
Topic / Question	**Comment**
Automatic assessment checks for DTS applications	
Question 1 - What do you consider would be the key benefits of implementing an automatic system of this nature?	This should only be used to provide pre-lodgement advice to applicants.

Question 2 - What do you consider would be the key challenges of implementing an automatic system of this nature?	If there is a mistake made by an automated system who would discover that one has been made (i.e. who reviews the automated system)? Who and how would a mistake be rectified? What happens if construction has commenced?
Question 3 - Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?	There is a need to work through the legislative, policy and on-ground matters prior to introducing the system prior to considering whether or not it should be introduced.
3D modelling for development application tracker and public notification	
Question 4 - What do you consider would be the key benefits of the e-Planning system being able to display 3D models of proposed developments?	This could be considered but we believe that at this point in time the majority of the effort should go to fixing the current system.
Question 5 - Do you support requiring certain development applications to provide 3D modelling in the future? If not, why not? If yes, what types of applications would you support being required to provide 3D modelling?	It depends on the types of applications this is required for as not every builder/developer produces 3D modelling. The system would need to ensure that the 3D models are updated to capture any changes or amendments as they are made.
Question 6 - Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?	See above
Augmented reality mobile application	
Question 7 - Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?	This could be considered but we believe that at this point in time the majority of the effort should go to fixing the current system.

Accessibility through mobile applications	
Question 8 - Do you think there is benefit in the e-Planning system being mobile friendly, or do you think using it only on a computer is appropriate?	We support this initiative
Question 9 - Would you be supportive of the Government investing in developing this technology so that the PlanSA website and the e-Planning system is functional on mobile?	Yes

Attachment A:

PLANNING SYSTEM IMPLEMENTATION REVIEW

Comments to the Expert Panel on Infrastructure Schemes

Adelaide Plains Council, Town of Gawler, Light Regional Council, City of Onkaparinga, City of Playford, City of Salisbury, Mount Barker District Council, Barossa Council

Staff from the above growth Councils have come together to provide a joint response regarding the need to establish workable infrastructure schemes for large and complex land developments. We agree with the expert panel that as provided in the *Planning, Development and Infrastructure Act 2016* (the Act) the General and Basic scheme would be overly complex and difficult to work with, if operatable at all. Two quotes from the Expert Panel Discussion Paper are illuminating:

*"The provisions regarding general infrastructure schemes have **not yet** commenced and before they have commenced, the Commission must conduct an inquiry into the schemes in relation to the provision of essential infrastructure under Part 13 of the PDI Act, and a report on the outcome of the inquiry must be laid before both Houses of Parliament* (pg. 31)".

This is a very concerning delay in the provision of essential infrastructure, which in turn would be a drag on project implementation and overall economic development. Despite the PDI Act being in place since 2016. The Discussion Paper also highlights the complexity of managing these infrastructure projects:

*"The legislative provisions surrounding infrastructure schemes under the PDI Act are **far more detailed and complex** than the legislative provisions in most other jurisdictions* (pg. 33)".

Councils have responded to this legislative and policy gap with local developer contributions schemes using Land Management Agreements, Deeds and Infrastructure Agreements to levy Separate Rates on properties once they reach a development trigger. These schemes in themselves are complex and require individual tailoring of legal advice and agreements. They involve extensive staff resources in the development of proposals, gaining cooperation of landowners and levying of the separate rate.

An alternative solution to Land Management Agreements and Separate Rates is required to enable the development of the State's strategic growth areas. The solution needs to work for these areas because they require co-ordinated infrastructure delivery and rezonings where not all landowners are in agreeance and where the infrastructure provision may have a long horizon and several providers.

We strongly believe based on our combined experiences there must be a whole of government approach, requiring all relevant parties to come together to discuss and ultimately agree to revised schemes for infrastructure requirements, its delivery and funding. The Councils agree with the State Government position that infrastructure delivery must be resolved prior to the commencement of the Code Amendment.

Given the need to expedite development in South Australia a simpler system can be developed. The Councils who have collaborated to develop this paper contend that this lack investment in infrastructure is delaying infrastructure projects from housing to employment lands and hence holding up both orderly and economic development.

Infrastructure Schemes should be clear and straightforward in what they need to achieve based on the following principles - **strategic, equitable, sustainable and best practice, adaptive, and economical**

Within the Discussion Paper – Planning, Development and Infrastructure Act 2016 Reform Options, we note the Jurisdictional Comparison and consider there is substantial merit in further exploring alternative legislative provisions noting there is support within this group for a similar approach taken by the Victorian Planning Authority. It is noted that the State of Victoria has been operating a Developer Contributions Scheme since 2003.

We have been asked to respond to the following questions on Infrastructure Schemes posed by the Expert Panel:

1. What do you see as barriers in establishing an infrastructure scheme under the PDI Act?

Response

- Acknowledging that one of the schemes is not operational, the schemes are overly complex with numerous decision-making points by different owners.
- Councils are concerned that most of the decision making, and control comes from the State Government when Local Government has the knowledge, links to the community and current and future ownership of most of the infrastructure.
- The schemes provide no guidance on where the upfront investments will come from.

2. What improvements would you like to see to the infrastructure scheme provisions in the PDI Act?

Response

- It is considered the issues identified in question 1 plus the recommendations in questions 3 should be considered.
- In addition, councils would like the definitions of infrastructure to be reviewed to incorporate open space recreation and community infrastructure.
- The Act should be amended to ensure Structure Planning of growth areas with infrastructure designs and costings occurs prior to the rezoning process.
- The Act needs to require that the State Government provides for an effective whole of government infrastructure co-ordination that aligns with Regional Plans, including funding mechanisms for infrastructure agencies. It is difficult for councils to engage with infrastructure providers (e.g. SA Water and the Department for Education) at the strategic planning and rezoning stages. Agencies need to be committed to providing services to facilitate and support development opportunities.

3. Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?

Response

The Victorian system has been identified as having a better infrastructure model and provides an example of measures that could be adapted to South Australia such as:

- Predetermined costs for various types of infrastructure, with the ability to alter the agreed cost when identified in a structure plan.
- A State infrastructure fund to pay for infrastructure prior to development proceeding and costs being recouped.
- A minimum requirement that 10% of land is allocated towards key infrastructure at the structure planning stage.

responses to expand beyond the questions proposed by the Panel

Example of current approach to infrastructure provision in Gawler East Growth Area

On 1 July 2017, Council introduced three Separate Rates across the Gawler East Growth Area totaling $19.6 million (M):

1. Transport Infrastructure (Link Road) Separate Rate - $8.2M
2. Community Infrastructure Separate Rate - $4.8M
3. Traffic Interventions Separate Rate - $6.6M.

In addition, Council made a contribution of $5.4M to the development of infrastructure in Gawler East Growth Area bringing the total potential infrastructure spend to $25M.

<u>Additional Mount Barker specific comments</u>

An example of where infrastructure delivery can breakdown is the Mount Barker growth area arising from the rezoning by the State Government in 2010 which is the subject of a current review report that is being prepared for the Department of Infrastructure and Transport by Deloittes. The Mount Barker District Council has contributed to that report from a lessons learnt perspective.

In our opinion, first and foremost, arrangements specifying the responsibility for the funding and timely delivery of required infrastructure need to formally be in place prior to the rezoning of land. Infrastructure obligations need to be clear and reflect the commercial arrangements between the development industry and the land owners.