Final Report and Recommendations 2023

Expert Panel for the Planning System Implementation Review

Planning System Implementation Review

Government of South Australia

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OVERVIEW

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Message from the Chair

Dear Minister,

I am pleased to present the Final Report and recommendations prepared by the Expert Panel for the Planning System Implementation Review.

At the outset, it is appropriate to recognise that the planning system in South Australia is in good shape and, in comparison with other States, we are leading the way in many areas. We have a planning system that promotes good community engagement in strategy and policy development and enables policy amendments to be undertaken more quickly to respond to change and new opportunities.

The assessment part of the system is working well. The new system also provides councils with the option to work together to undertake strategic and assessment activities, something the Panel encourages. Despite these improvements, there are some systemic issues that need attention. Given the breadth and depth of the changes that have occurred through the transition from the *Development Act 1993* to the *Planning, Development and Infrastructure Act 2016,* this is not surprising.

Throughout its consultation process, the Panel deliberately sought examples of where the Planning and Design Code is resulting in poor outcomes. Pleasingly, of the over 70,000 applications lodged under the new planning regime, relatively few examples were able to be provided. However, as development occurs and changes in nature (often in subtle ways) there are inevitably issues that need attention, whether that be a change to the Act, a new Regulation or amended or additional Code policy. These are the matters identified by the Panel's recommendations.

The Panel's recommendations range from seeking to protect important aspects of our urban and regional environments and enabling appropriate development to occur more simply, to making the administrative aspects of the application system more efficient.

In making these recommendations, we have given thoughtful consideration to the many hundreds of submissions we received throughout this process. We were also mindful of resourcing issues that are affecting the planning system, particularly in both local and State Government. Indeed, it is clear additional resources are needed, particularly to support the potential implementation of our recommendations.

We are aware some of the recommendations in this Report will negatively influence the costs of undertaking development which can, in turn, hurt affordability. However, the planning system cannot and should not be the tool to fix all matters associated with urban and regional development. Many issues are rightly dealt with in separate legislation and by other means.

In this regard, I note several submissions raised issues that were not directly related to the key matters you asked the Panel to address. Noting our time and resource limitations, we have not had an opportunity to review many of these matters and consider they are more appropriately dealt with by the State Planning Commission through the Regional Planning process that is underway, or through Code Amendments.

On behalf of the Panel, I would like to thank the South Australian community, be they officials, professionals, organisations, or community members, for taking the time to provide the Expert Panel with their thoughts and suggestions on how the planning system can be improved. I would also like to thank the staff members of Department for Trade and Investment, who helped us with research and the preparation of this Report.

The Panel considers that the recommendations it has made will have a positive impact on the planning system and in turn, lead to enhanced outcomes for the development of South Australia.

Yours sincerely,

John Stimson
Chair
Expert Panel for the Planning System Implementation Review.
March 2023


LOADING ZONE
AT ALL TIMES
AT ALL TIMES

Meet the Expert Panel

Mr John Stimson
Presiding Member

John Stimson is a qualified Urban Geographer, Town Planner and Project Manager with over thirty-five years of experience mainly in the private sector as well as in local government. Working in all states and territories of Australia and in Southeast Asia, John's range of projects includes strategic and statutory planning, urban design, project management and property development advice for residential, mixed use, commercial, industrial, civic and retail projects. He was also contracted to the Department of Planning Transport and Infrastructure in the role of Pilot Infrastructure Scheme Coordinator.

Between 2015 and 2017 John was the President of the Urban Development Institute of Australia (South Australia) and was a member of the Minister's Development Policy Advisory Committee. John is currently the Director of Stimson Consulting and is the Independent Case Manager for the Roseworthy Township Expansion Road Deed.

Ms Cate Hart

Cate Hart has significant experience in the public and private sectors in a wide range of disciplines including environmental management, community and stakeholder engagement, strategic and development planning, heritage, and governance.

She has previously worked at the City of Prospect and Wakefield Regional Council as Chief Executive Officer. Cate is currently the Executive Director of Environment, Heritage and Sustainability at the Department for Environment and Water and the President of the Planning Institute of Australia in South Australia.

Mr Andrew McKeegan

Andrew McKeegan has considerable experience working in State Government departments in the transport, property, and planning portfolios. He has previously worked as the Chief Development Officer and Deputy Chief Executive at the South Australian Department of Planning, Transport and Infrastructure. He has also set up a consultancy concentrating on integrated infrastructure and land use planning, urban development, project management and strategic planning.

Andrew is currently the Executive Director of Transport Property at the Department of Transport in Victoria.

Ms Lisa Teburea

Lisa Teburea is an experienced executive leader with a strong reputation as a collaborative and constructive contributor to successful policy, legislation and reform programs. With a background in Urban and Regional Planning, Lisa has expertise in aligning plans, policies and processes to strategic objectives and driving positive culture change at an industry level to support the implementation of reform programs.

She has previously worked at the Local Government Association of South Australia as the Executive Director of Public Affairs. Lisa is currently working as a consultant.

Introduction

An integral component of any efficient planning system is ensuring good outcomes are balanced by the operational effectiveness of the system. This Review is part of an ongoing process of continuous improvement, to ensure we have a contemporary and effective planning system in South Australia.

The initial Expert Panel on Planning Reform, established in 2013 under the guidance of Presiding Member Brian Hayes KC, provided five (5) guiding principles for its framework for reform being:

1. Partnerships and Participation
2. Integration and Coordination
3. Design and Place
4. Renewal and Resilience
5. Performance and Professionalism

The Panel reflected on these principles and determined they remain sound and appropriate for the scope of this Review. The Panel considers this is particularly important as its review and recommendations will build upon the work that has come before it and these principles provide an important linkage to the many contributions that have already been made to planning reform in South Australia.

This Review is about evolution, not revolution. As the world around us changes, our planning system needs to change with it. As such, it may be that the system requires regular and more frequent review and improvement.

The Panel heard a lot of different perspectives on the planning system. These ranged from *'it is far too easy to get a development approved'* to *'the process is too long, complicated and expensive'.* As some developments are simple in nature, such comments are to be expected as in those circumstances, approvals should be easy to obtain. However, where development is more complex, the process needs to be thorough. The Panel has based its recommendations on the issues raised that were supported by evidence.

A key theme recognised by the Panel throughout this process is a reluctance of some to embrace change. Indeed, the Panel reflected that when the planning reform process commenced in 2013, the one thing everyone – community, industry, and all levels of government – agreed upon, is that we needed a new planning system. Despite this, now we have that new system, some people are calling for things to revert to the old system that they felt was letting them down.

Whether this is reflective of a system in transition, misunderstanding or true dissatisfaction, the evidence provided to the Panel demonstrated the new planning regime is not broken, irrespective of those that dislike it. It is true that you cannot please everyone. The evidence provided to the Panel indicated there is broad support for the new system, whilst also recognising there are opportunities for improvement. It is those opportunities which the Panel has identified and made recommendations on.

In addition, as will be seen from the recommendations which follow, it is important to recognise the planning system is complex and multifaceted. This is the way it should be.

However, there appears to be a notion that has developed over time that everybody should be able to comprehend, apply and adjudicate all aspects of the planning system, just as professionals do. This is a myth.

Planning is much like any other profession, a learned skill – one which requires tertiary qualifications, experience and continuing professional development. However, it is important that citizens have good access to and understanding of the aspects of the system they participate in. By comparison to the former planning regime, the new system, and in particular the e-Planning portal, provides a much greater ability to interact with the planning system, particularly in finding out what might be able to occur on any piece of land.

Throughout its appointment term, the Panel provided early recommendations to the Minister for Planning, the Honourable Nick Champion (the Minister) on three (3) occasions. Those recommendations related to Character and Heritage matters, e-Planning/PlanSA and tree regulations. The Panel's early recommendations are reproduced later in this Report.

The Panel is pleased to now present this Final Report to the Minister, and hopes the recommendations made herein assist in creating a more liveable, competitive, and sustainable South Australia for all South Australians.

John Stimson (Chair)
Cate Hart
Andrew McKeegan
Lisa Teburea

March 2023

The Review Process

On 5 August 2022, the Minister announced the appointment of the Expert Panel for the Planning System Implementation Review (the Panel). The Minister advised that the Panel was tasked with reviewing the:

- *Planning, Development and Infrastructure Act 2016;*
- Planning and Design Code (and related instruments) as it relates to infill policy, trees, character, heritage and car parking;
- e-Planning system with a view to ensuring that it is delivering an efficient and user-friendly process and platform; and
- PlanSA website, with a view to ensuring its usability and access to information by the community.

The Panel's appointment and Review has been guided by Terms of Reference (ToR) signed by the Minister on 21 July 2022. A copy of the Panel's ToR is available in **Appendix 1.**

The ToR originally appointed the Panel from 1 August 2022 until 31 December 2022. However, at the request of the Panel, this appointment was ultimately extended by the Minister until Easter 2023 to enable the Panel to conduct extensive and robust community consultation. It was also necessary considering the local government elections which were held in November 2022.

The Panel welcomed general submissions from the day of its appointment (5 August 2022) by email, post, and telephone.

On Monday 17 October 2022, the Panel released three (3) Discussion Papers titled:

1. *Planning, Development and Infrastructure Act 2016* Reform Options;
2. Planning and Design Code Reform Options; and
3. E-Planning and PlanSA Reform Options.

The Discussion Papers were published on the Panel's webpage and were also made available on its YourSAy page.

The Panel also published a series of plain English summary papers which highlighted the high-level matters discussed in the Discussion Papers in an easy-to-understand way, to ensure that participation was not limited to frequent users, or those that are familiar with the details of the planning system.

The Panel's public consultation period concluded on Friday 16 December 2022. However, the Minister granted local government councils an extension of time until 30 January 2023 to make their submissions in recognition of the local government elections and associated 'caretaker mode'. This was necessary given the important role local government plays in delivering the planning system.

Engagement Approach

Early in its appointment, the Panel determined that it would be taking a 'listening' approach to public consultation during the Review. This was to ensure the Panel was able to actively listen to experiences with the new planning system, and not otherwise influence the discussion.

Following a tender process, North Projects Pty Ltd (North Projects) was engaged to design and facilitate the engagement program.

The Panel requested North Projects provide a short summary of its views on the engagement program for inclusion in its Final Report. That summary is reproduced, as follows:

Facilitator's Report

Consultation on legislation and regulations can be challenging. It is important to design a process that enables stakeholders to feel engaged and to equally afford them the opportunity to provide meaningful feedback. Social licence is built when Government departments dedicate resources to, and approach engagement with, a genuine commitment to listen to stakeholder and community feedback with an open mind. The Expert Panel, supported by the Planning and Land Use Services team, was dedicated to effective and genuine engagement from interested people across the State.

Cognisant of the broad spectrum of interest and stakeholders, a series of 14 workshops – both online and in person - were held between October and December 2022. Stakeholder groups included building and planning professionals, state and local government representatives, and the wider community. Over 300 people registered for the workshops.

These sessions were supplemented by 23 deputations, during which the Expert Panel heard from peak bodies and interest groups that interact with the planning system in South Australia. These groups represented the views and interests of their memberships through both their verbal deputations and written submissions to the Panel.

Overall, North Projects understands that over 600 submissions were received which, taken together, amounts to the representation of many thousands of South Australians in this process. This is an impressive engagement rate noting the nature of this consultation, and credit is given to the Expert Panel for its commitment to providing an avenue for all South Australian's to be heard throughout this process.

The engagement techniques that were employed by North Projects in this consultation included:

- ***Stakeholder Analysis** identified relevant interest groups and determined how to design appropriate engagement sessions within the resources and time constraints;*
- ***online engagement hosted on YourSAy.sa.gov.au** was offered to the wider community, and not only included surveys for completion, but also information on workshop registrations and instructions on how to make a written submission to the Panel;*
- ***a dedicated web page was created for the Expert Panel** which hosted information about the Panel's members, its Terms of Reference and meetings, together with its Discussion Papers, Summary Papers, workshop information and instructions pertaining to making a submission;*
- ***public notices, direct email distributions and YourSAy Facebook posts** were used to advertise the engagement workshops, and the consultation more broadly;*
- ***online workshops** were a key part of the engagement. Whilst open to all stakeholders, they ensured that the consultation was accessible to those in rural and remote regions and ensured representation of those areas in the engagement. We found throughout the course of the consultation that the rural and remote stakeholders' interaction with the system and the application of planning regulations in country areas were often significantly different from those in a metropolitan setting. Online collaboration mechanisms included interactive whiteboards and polling/voting platforms;*
- ***in-person workshops** enabled the Expert Panel to hear directly from participants, encouraging collaboration and networking. Whilst four (4) community specific workshops were held, one (1) was held in a 'town hall' meeting style, with the Minister for Planning attending to introduce the engagement and welcome participants; and*
- ***deputations to the Expert Panel** were presented by peak bodies and interest groups to elaborate on their written submissions and represent the interests of their memberships.*

Additionally, specific input from the State Government's Aboriginal Affairs and Reconciliation team was sought to ensure the expertise and cultural perspective of our State's Traditional Owners is overlayed in this engagement program.

We commend the Expert Panel and the Planning and Land Use Services team for the tireless efforts made to involve stakeholders, listen to the experiences of users, and take on board suggestions on how to improve our planning system. The success of this engagement was driven by the commitment and genuine intent of all involved.

It was a privilege for the Communications and Stakeholder team from North Projects to design and deliver the engagement program with the Expert Panel reviewing the implementation of South Australia's planning system.

Michelle Carroll, State Engagement Lead

Brett Manuel,
Stakeholder & Community Engagement Associate

North Projects Pty Ltd

What We Heard

The Panel has prepared a detailed 'What We Heard' report to explain its engagement process and the issues raised with it during that time.

The 'What We Heard' report is **Appendix 2** to this Report.

EXPERT PANEL

Expert panel meetings	**10**
Community engagement workshops	**14**
Email submissions	**636**
Local government submissions, representing 47 councils	**36**
Your SAy responses	**103**
Deputation days	**3**
Deputations	**23**

Reading this Report

This Final Report is to be read in conjunction with the Panel's three (3) Discussion Papers (and/or Summary Papers) released on 17 October 2022. The Panel's Discussion Papers are available to read online.

The Discussion Papers contain important contextual background information, jurisdictional comparisons, and data the Panel has not wholly reproduced in this paper. However, it has, where appropriate, included data and information contained in the Discussion Papers, particularly where necessary to understand and/or frame the Panel's recommendation.

The Panel has presented this Final Report in three (3) distinct sections. These are explained as follows:

1. **Contextual Comments**

   The first section of the Report is 'Contextual Comments'. This part contains commentary, observations, and information the Panel deemed necessary to address in this Final Report to frame and support the Panel's recommendations.

2. **Recommendations, Observations and Comments**

   The second section of this Report contains the Panel's recommendations. Each recommendation is identified and contextualised with commentary from the Panel as to why the recommendation was necessary and a suggested approach to implementation.

   The recommendations are structured in a similar order to the Discussion Papers and are separated categorically, by reference to the Panel's ToR. There is no hierarchy to the way the recommendations are structured, and they should not be interpreted as being a higher priority based on their location in the Report.

   The Panel posed questions in its Discussion Papers for public consideration and response. Those questions are largely addressed through recommendations made by the Panel. However, in circumstances where the Panel **has not** made a recommendation in connection with a question posed or where it has received substantive feedback about a particular issue, it has made 'Observations and Comments'.

   These sections are not to be read as pseudo recommendations but are intended to 'close the loop' and ensure there is a record and response to matters raised with the Panel.

   Finally, there is a table of minor and operational recommendations appended to this Report. These arise from issues identified by the Panel which require attention and resolution, but which do not command a substantive contextualised recommendation in the body of the Final Report.

3. **What We Heard**

   The Panel has also prepared a 'What We Heard' report which reflects on the community consultation undertaken and the submissions received. The 'What We Heard' report is appended to the body of the Final Report.

Recommendation Themes

Recommendation Themes

The Panel has made 113 recommendations in this Report, across its early recommendations, the substantive recommendations and those identified as minor or operational recommendations (appended to this Report). It considers all these recommendations, collectively, will make a positive difference to the planning system.

Importantly, the Panel's recommendations traverse a range of themes, which highlight the key areas for reform. The Panel's recommendations, when considered holistically, are intended to improve the planning system by:

- providing improved guidance to users of the planning system through additional and/or revised Practice Directions and guidance material which, when taken together, form a broader suite of education material which is required for both the industry, and the community;
- identifying a range of operational matters which will make a significant difference to the timeliness of the processing of development applications;
- enhancing tree protections through revised tree regulations and an expansion of Code policies pertaining to tree matters;
- alleviating community concerns through the reinstatement of appeal rights in limited circumstances;
- enhancing the professional expectations imposed upon Accredited Professionals and aligning the responsibilities of Accredited Professionals with their primary skillsets;
- providing support to the State Planning Commission's 'three (3) pronged approach' for improved character protections and identifying additional matters to enhance and improve character and heritage in South Australia;
- creating design guidelines for infill development to ensure development outcomes meet community expectations and encourage innovative housing models;
- recommending improved incentives be applied to encourage a greater provision of affordable housing; and
- enhancing the user experience of the e-Planning system and PlanSA website for both professional and community users, including through reviewing the functionality and accessibility of the online tools.

PART ONE:
CONTEXTUAL COMMENTS

Strategic Planning

The transition to the new planning system resulted in less strategic planning activities (such as the development of growth strategies, structure plans and concept plans) being undertaken by local government, as many of these initiatives were placed on hold during the preparation and implementation of the Planning and Design Code (the Code).

Whilst the system has now been in place for two (2) years, the 'gap' in strategic activities is much larger, seemingly having commenced in approximately 2012 following the preparation and completion of the six (6) Regional Plans (acknowledging the seventh plan, the 30 Year Plan for Greater Adelaide, was revised in 2017).

The Panel has identified the difficulties that have arisen as a consequence of this lack of strategic planning and has equally identified where the opportunities for reinvigoration may be. This exists not only at a council level through their individual strategic plans and the opportunity for council-driven Code Amendments, but also on a state-wide basis through the seven (7) Regional Plans currently being developed.

Transition to the Code

At the outset, it is appropriate to reflect upon the transition to the Code and its spatial application.

The Code embodies and instructs, by necessity, a performance-based approach to planning and development assessment. This was the intent of the original Expert Panel on Planning Reform led by Brian Hayes KC, and the former Expert Panel's recommendations were the genesis of the *Planning, Development and Infrastructure Act 2016* (the PDI Act) and the Code.

The Panel understands a principle of 'policy neutrality' was adopted by the State Planning Commission (the Commission) in preparing the inaugural Code. The objective of 'policy neutrality' was to transition, where possible, Development Plan content into the Code in a way that would result in limited policy change.

Of course, in the interests of procedural fairness, had significant change been proposed, the transition process would have involved an even more substantive engagement program to ensure local communities were appraised of the planning policy which was intended to apply to their areas. In a practical sense, this largely ensured the retention of areas previously identified as residential, historic, commercial etc.

The 'policy neutrality' principle was facilitated through the extensive Code policy library, which contains 65 zones and 63 subzones. However, as the Code is a state-based instrument, local government became concerned (and appears to remain concerned) local controls reflected in their Development Plans would be reduced, in an attempt to find the 'best fit' policy available in the Code library.

It is unsurprising that the specific local controls of 72 Development Plans would not be equally represented in policy to apply across the State. However, the Code does make provision for the inclusion of some local controls.

In this regard, the PDI Act is explicit in contemplating subzones that will *'set out additional policies or rules relating to the character of a particular part of a zone'.* [1] Whilst it is not the case that all subzones are local in nature, some of them are by virtue of applying to a specific area – for example, the Adelaide Central Business District subzones (i.e., City Frame Subzone within the Capital City Zone) and the Wallaroo Marina subzone within the Infrastructure (Ferry and Marina Facilities) Zone.

1. *Planning, Development and Infrastructure Act 2016* (SA) Section 66(2)(b)(ii).

In addition, the Code contains opportunities for Technical Numerical Variations (TNVs) which prescribe rules to apply at an allotment level. TNVs are also contemplated in the PDI Act by section 66(4) where it is provided the Code:

> *...may include provisions that provide for the adaptation of the rules that apply in relation to a specified zone or subzone or as an overlay to provide for necessary and appropriate local variations in specified circumstances, including by permitting in the Code -*
>
> *a. the variation of a technical or numeric requirement within parameters specified in the Code; and*
>
> *b. the variation of a requirement applying in a subzone, within parameters specified in the Code, in order to recognise unique character attributes; and*
>
> *c. the adoption of options for development, specified in the Code, that are additional to those provided in a zone or subzone or as an overlay.*

There are 13 different TNVs within the Code (this does not include Concept Plans) and 38 of the Code's 65 zones incorporate TNV content. As the majority of zones incorporate TNV content, there is an opportunity for most zones to have important localised policy woven into them.

It is within this framework of zones, subzones and TNVs that the Code makes provision for the local variation and content being sought by local government, whilst still providing a performance-based system as intended by the former Expert Panel. The Panel endorses this approach and does not consider the existing policy needs wholesale re-writing.

Strategic Planning

The Commission is undertaking the development of new Regional Plans for South Australia's seven (7) planning regions, whereby it will consider how to achieve the visions set out in the State Planning Policies. Following the Panel's extensive public consultation, it became apparent several matters raised with the Panel were related to the Regional Plans, specifically in relation to strategic sites, land supply and the regeneration of towns and suburbs.

The Panel has not shied away from making recommendations on these matters where appropriate, but also emphasises that it is imperative the Regional Plans consider the strategic direction on infill development and greenfield development (acknowledging the issues that have arisen in relation to these matters somewhat relate to limited investigation, analysis and planning being undertaken at the local level in some areas), and seek to recognise and address, amongst other things, the growing pressure on:

- physical infrastructure;
- social infrastructure;
- land supply;
- biodiversity; and
- open space.

The Panel heard these arguments and debates are currently playing out at the individual development application level, because this work has not yet been undertaken. However, in the Panel's view, it is appropriate for these conversations to take place through the Regional Plans and the consequential Code Amendments that will flow from them.

Finally, in making these observations and in encouraging councils to undertake this work, the Panel acknowledges commentary relating to the Department for Trade and Investment's (the Department) purported reluctance to include additional zones and subzones into the Code. The Panel understands this reluctance did exist at the time of the transition to the Code, noting the broad systemic change about to occur and the uncertainty of how the inclusion of additional zones and subzones would influence its overall operation.

However, it also notes the intent of the Code is to provide a consolidated, consistent policy set for the State. Accordingly, we need to ensure, as a State, we do not lose sight of the core intent of the Code – to provide greater certainty and better outcomes for South Australian's. Whilst the Panel understands the desire of keeping the Code as streamlined as possible, we must equally ensure we are not prioritising the form of the Code over the outcomes it is producing.

In this way, it must be recognised the Code is an instrument to get to the end goal of good planning outcomes, it is not, of itself, the end goal. Further, it is not a static document, and like the former Development Plans, will evolve as new opportunities are identified.

In contrast to development control, strategic planning implies that all the decisions about the suitability of a particular use in a defined area are pre-determined by a community vision. This is achieved by extensive community participation, subsequent goal setting, evolved strategies, and specific targets.

This is why planning practice uses the term 'plan-led' to refer to the primacy of strategic planning in setting the uses and development of land. In a plan-led system, the emphasis on development control is reduced because decisions have already been made – they are the essence of the planning process that should not be disturbed by exemptions and ad hoc decisions.[2]

2. Leslie A. Stein, *Comparative Urban Land Use Planning Best Practice* (Sydney University Press, 2017), 199-200.

Affordable Housing

There is a housing affordability crisis occurring in Australia, with a range of economic circumstances and policies contributing to the crisis. It would be remiss of the Panel not to acknowledge this issue in circumstances where the planning system has a role to play in the same.

The Panel acknowledges the work undertaken by the State Government to improve housing affordability. It notes this includes, but is not limited to:

- the release of land for residential housing in Hackham and proposed land supply release in Sellicks Beach, Dry Creek and Concordia;
- collaborative projects with the Commonwealth Government, including a build-to-rent project at Park Court on Greenhill Road;
- commitment to the National Housing Accord to deliver up to 50,000 new affordable homes nationally over five (5) years from 2024; and
- delivering SA Housing Authority's program to develop 1000 new affordable homes over the next four (4) years.

These projects are discussed in the Government's 'A Better Housing Future' document released in February 2023.

In the Panel's view, despite the initiatives of the State and Federal Governments, there remains an obligation on local government to consider, in the course of preparing strategic plans and participating in the Regional Plans, how, where and if it has the physical and social infrastructure capacity to support medium to high density developments that can equally include affordable housing. The Panel acknowledges the good work occurring in some councils to achieve this, particularly in regional areas.

Notwithstanding the above, it should also be noted that whilst planning may assist in affordable housing initiatives (namely in connection with supply, as discussed later in this Report on pages 88 and 143), there are a number of 'non-planning' matters that must also be dealt with. This is namely the broader equity issue to be addressed across all sectors as to how we find capacity– not necessarily only related to price but also to social infrastructure and services - for additional affordable housing.

As the system of development control reacts to an application, accepting input only from immediate neighbours, it lacks the larger consultation brought about by full community participation in the strategic plan.[3]

3. City of Marion, Submission January 2023, 9.

Culture of Planning

Across the world, planning systems are complex, contentious, and adversarial in nature. This is broadly understandable in recognition of the fact planning directly relates to how people live, use their land, and experience their communities.

Whilst the adversarial nature of planning in South Australia is therefore not unique, it has increased overtime, particularly in circumstances where we have transitioned from a 'black and white' system of permissibility to a performance based (and more subjective) approach.

In some ways, the Panel considers this may be a consequence of 'change fatigue'. Indeed, throughout the public consultation it observed reluctance to participate in this Review because of 'change fatigue'. This is unsurprising due to the extensive planning reform process the State has been on for over ten (10) years. However, in making this observation, the Panel also recognised there is a need for wholesale cultural change in the planning system to enable any further reforms to be impactful.

The culture of a system relates to how people approach, perceive and interact with it. This traverses those people that utilise the system on a professional level, as a user or as an affected community member. It is the sum and quality of these interactions which dictate the overall culture.

All users of the system can contribute to positive culture change.

For applicants, these improvements include the provision of all necessary information in a timely manner, coupled with recognition, expectation and understanding that if you seek to achieve a development beyond the parameters of the Code, there will be more hurdles to cross and no guarantee of approval.

The Panel heard about, and observed, a perceived entitlement from applicants to receive quick decisions with minimal requirements and/or intervention, irrespective of the development proposal.

This is exemplified by the poor-quality documentation being submitted too often on applications, largely for basic types of development.

From a community perspective, this cultural reform looks like greater acceptance and understanding the planning system is for all South Australians (not just the loudest voices) and the principle that development proposals demonstrating consistency with the outcomes sought by the Code will be subject to a straightforward assessment process. Indeed, the overarching expectation the system now places on the community is for it to participate in plan and policy making at appropriate junctures and to have a voice at the outset, rather than on a 'development by development' basis.

Of course, the Panel heard throughout the process that this change has resulted in the community losing faith in the planning system, and that they feel disconnected from decisions being made in their local areas. These feelings can, in part, be attributed to misconceptions about how the planning system has changed and the need for more community education about how and when to participate in decision making. However, the Panel acknowledges the new system may have gone too far in reducing community participation and has made recommendations which seek to remedy some of those concerns.

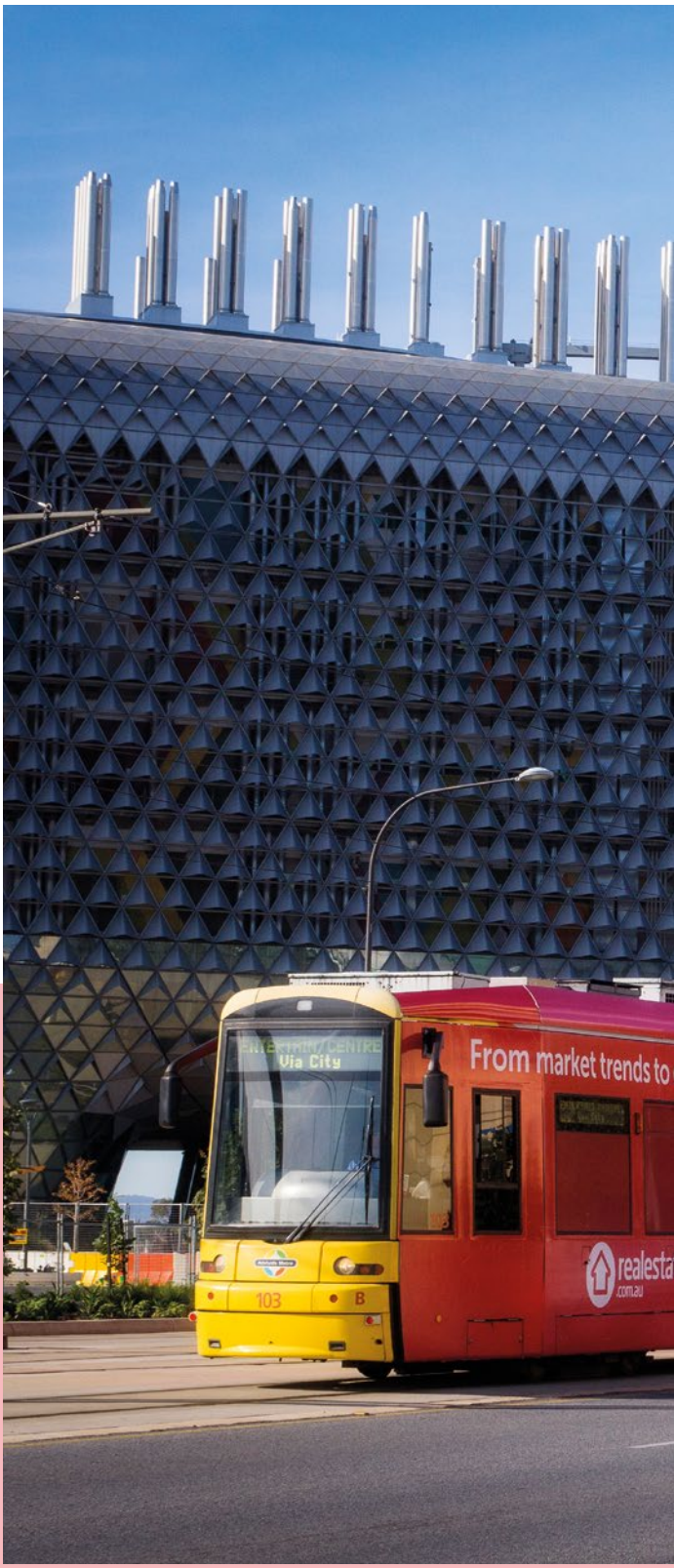
For practitioners and/or other industry professionals, cultural change means leading and/or engaging in strategic planning and the timely and diligent undertaking of development assessments, coupled with maintaining proactive communication with applicants and other stakeholders during the assessment process. Despite assertions to the contrary, the introduction of the new planning regime, assessment timeframes and/or the e-Planning system has not diminished or prevented these obligations.

Further, the Panel notes the culture of the planning profession – separate from but related to the culture of the system – also requires review. Planning as a profession is in a state of flux, as discussed later in this Report.

However, this is exacerbated by the disunity of the profession and subcultures which exist within it. The Panel heard from frustrated professionals about those individuals who deliberately impede or 'game the system' impacting on the credibility and reputation of the planning profession. The poor behaviour of some leads to more rules for the many, and the profession itself is calling for more accountability at the individual level rather than a continuous cycle of new rules for all that add further complexity to the system.

These cultural reforms are indicative of a system in transition, but are critical to ensure the operation of the new regime is optimised to its full capacity. Ultimately, when it comes to planning, it largely does not matter what system you adopt, the extent you permit community participation or where in the process that participation is permitted; in the absence of a positive culture – from all users of the system – the effect of policy or legislative changes will be limited.

Consequently, it is incumbent upon all levels of government, industry groups, key stakeholders, and community members to be part of a positive approach to planning and the opportunities that presents in building a sustainable and prosperous South Australia.



Resourcing of the Planning System

A consistent and repeated theme across the Panel's engagement period was the lack of skilled staff, and therefore resources, to undertake planning work and to assess development applications. This exists across all sectors of planning – private, local government and State government – and is a longstanding issue.

However, this matter is particularly evident in the regions, with some regional councils currently not employing any local planning staff. This skill shortage has resulted in councils outsourcing their planning work to private consultants, who are often based in the metropolitan area and can lack local knowledge in undertaking assessments. It has also resulted in significant pressures being placed on the limited planning staff they do have. The Panel heard this was primarily because of assessment timeframes and the potential for deemed consents.

Notwithstanding the regional issues, the resourcing limitations are also being felt in metropolitan areas, specifically metropolitan councils who are faced with similar issues. Whilst it is largely 'easier' to attract employees in a metropolitan context, the dwindling skills base coupled with many practitioners moving into private practice, has resulted in a smaller pool of potential applicants.

The Panel aims to alleviate some of these issues through recommendations it makes later in this Report. However, in the interim, it seeks to provide contextual commentary to the issues it has identified as they relate to resourcing of the planning system more broadly.

...there is a notable shortage in the planning workforce at present, exacerbated by a nation-wide skills shortage and the absence of a planning undergraduate degree in South Australia.[4]

Education Pathways

South Australians have previously had access to an undergraduate planning qualification through the University of South Australia (UniSA). However, due to reduced demand, the course has been withdrawn and is no longer being offered (from 2023). This is not a unique situation for South Australia, with other states also determining the viability of offering planning degrees.

Unfortunately, a consequence of this is that the resourcing issues being experienced by local government and indeed, the planning sector generally, is a matter that is set to worsen. The Panel understands Planning and Land Use Services (PLUS) and other stakeholders are proactively investigating opportunities to reinstate the undergraduate degree in South Australia, as well as considering possible alternative pathways into the profession.

To this end, the Panel notes the Minister has established the Built Environment Education Liaison Group (BEELG) to address the skills shortage and limited tertiary education pathways for built environment professions including planning, land surveying, architecture, conveyancing, valuation, landscape architecture and building surveying.

The BEELG is chaired by the Minister and includes representatives of PLUS, UniSA, Flinders University, University of Adelaide, TAFE SA, relevant industry boards and peak bodies, including key representatives from the Department. The current membership of BEELG is outlined in **Appendix 3.**

The Panel is also advised PLUS is engaging with the Department for Education, with an aim of enhancing the curriculum and raising student awareness of career opportunities relating to built environment professions.[5]

Whilst it appears some progress has been made, the situation remains that the skills gap in the planning and development industry is set to worsen significantly.

4. Planning Institute of Australia, Submission November 2022, 18.
5. Department for Trade and Investment South Australia, *Consultation Report – What We Heard and How We Responded,* 30 September 2022, 7-8.

Development Assessment

Throughout the Panel's community consultation period, and indeed through several of the submissions received, it became apparent a universal concern was the number of developments that were being 'pushed' into Performance Assessed (PA) pathways when they ought to otherwise be a Deemed to Satisfy (DTS) development. The Panel heard this, of itself, is causing additional strain on local government resources because of the resourcing (both personnel and time) investment required to undertake PA development assessments.

It appears, despite the expectation the introduction of the Code and e-Planning portal would streamline assessments and make the planning system more efficient, this intention has not translated into reality. For example, the Panel understands this occurs sometimes in the Emerging Activity Centre Subzone where there is limited provision for DTS applications (i.e. for dwellings).

Indeed, from 1 July 2020 to 1 March 2023 the following applications by Development Pathway have been determined:

Development Pathway	Number of Decisions
Accepted	11,604
Deemed to Satisfy	9,139
Performance Assessed	39,728

Table 1: *Number of developments assessed by pathway between 1 July 2020 and 1 March 2023.*

Of the PA applications, **31,269** were granted without the need for external referrals or public notification and have a statutory assessment timeframe of 20 business days.

Further analysis determined **10,502** of those PA applications were assessed in under five (5) business days, being equivalent to the statutory assessment timeframe for DTS applications.

An additional **7,119** applications were assessed between five (5) and ten (10) business days.

These numbers indicate that **over half** of the PA development applications that did not have external referrals or attract public notification were assessed in under ten (10) business days.

Whilst it is beyond the Panel's resourcing capabilities to undertake a holistic assessment of the PA applications that are being assessed in under five (5) business days, it appears this may be indicative of the number of DTS applications being pushed into PA. In this regard, the Panel was advised the top five (5) element types taking the least amount of time to assess are:

- Verandahs;
- Detached Dwellings;
- Outbuilding (shed);
- Carports; and
- Swimming pool, spa pool and associated safety features.

The Miscellaneous Technical Enhancement Code Amendment (MTECA) (discussed later in this Report) does, in part, target common and minor development where overlays are (in some cases) preventing a DTS or Accepted Development pathway. This has sought to simplify the assessment pathway for common development types, which relevantly included the above mentioned common element types (dwellings, sheds, carports and verandahs). In addition, as noted later in this Report, the issue of swimming pool safety features has also been addressed in the MTECA.

Despite the MTECA addressing some of the discrepancies associated with the application of overlays, the Panel encourages local governments to undertake an internal assessment of what 'triggers' are resulting in less DTS development in their areas (acknowledging that this work will equally require resources to be undertaken) and to provide advice back into PLUS and the Commission.

The Panel has also made a related recommendation on this topic (recommendation 65) for updates to be made to the e-Planning system to enable this data capture to be more uniform and informative across local government areas. It is hoped this data capture will identify trends and repeat occurrences of DTS moving into PA, such that a Code Amendment can be undertaken to remedy this misnomer (where appropriate).

Enforcement

Enforcement is an integral aspect of the planning system. Under the PDI Act, enforcement is a local government responsibility. This has been the case for decades and is consistent with the approach taken in the former *Development Act 1993* (the Development Act).

Despite this, throughout its engagement period the Panel heard local government has a reluctance to be the principal body responsible for compliance. The Panel observes that many local government submissions called for more or tighter planning 'rules', while also including commentary about not wanting to be the 'tree police' or the 'car parking police'. This reflects a tension in the role of councils as community advocates and their responsibilities as regulators and enforcers under the PDI Act.

Resourcing was the major issue presented by local governments, along with not wanting to be responsible for enforcing rules that are imposed by another level of government, or consents granted by another authority. The cost and complexity of undertaking effective enforcement is acknowledged by the Panel; however, local government is perceived by the community to be best placed to perform this important role for the benefit of the public.

As most enforcement activities are discretionary, there is inconsistency across local government in the extent to which they are undertaken. Where there is less enforcement action being taken, it can ultimately lead to more unauthorised development occurring in an area. It is a circular issue.

Enforcement issues are particularly prevalent in connection with car parking complaints. As the Panel identified in its Discussion Paper, managing car parking and perceived congestion issues are matters for local government to address. However, the discourse continually reverts to the Code and Code policy, suggesting that it is the planning system at fault rather than a reluctance to undertake appropriate enforcement action and/or utilise the powers afforded to council through various legislative instruments.

The Panel's review of car parking policy has confirmed there is very limited work to be done in the Code and it is, in fact, a matter for local government resolution. Whilst this is discussed in a later chapter of this Report, it is appropriate for the Panel to make these distinctions at this juncture as a call to action for local government.

In addition, despite there being no positive obligation on local government to undertake enforcement, a council should always be acting in the best interests of its ratepayers and community. This includes fulfilling legislative obligations and undertaking enforcement action when made aware of non-compliances that warrant redress. Numerous council submissions highlighted that their communities are dissatisfied with the planning system. In the Panel's view, councils can play a significant role in building public confidence by adequately resourcing and undertaking their important compliance and enforcement role.

In this regard, there may be opportunity for councils to explore collaborative enforcement arrangements which may include the sharing of resources and/or pooling of fees.

The Panel does not propose to solve this issue, or to instruct local government how to allocate its resources. However, it makes the point of recognising enforcement is an area in which local government could increase its focus.

Resourcing in State Government

The Panel acknowledges it is not only local government which is significantly under resourced, but also the State Government planning team in PLUS. This is exemplified by numerous submissions calling for PLUS to prepare and/or release required information in the form of guidance material.

Despite this, the Panel also notes the recommendations it has made will, if accepted by the Minister, have a significant impact on PLUS and other agencies which have a direct relationship with the planning system. This is because many recommendations will require State resources to ensure implementation is achieved in a timely manner. Further, the Panel's recommendations will (again, if accepted) also come at a time when PLUS is facilitating the preparation of Regional Plans and preparing for the work that will inevitably flow from those plans when adopted.

On this basis alone, the Panel strongly recommends the Government consider the resourcing of PLUS, as well as other agencies impacted by the recommendations that will be required to commit resourcing to achieve the suggested improvements, noting the significant body of work to be undertaken in the coming months and years.

However, in addition to the above mentioned forward planning and the resourcing issues identified to the Panel throughout this Review process, the Panel also considers it is imperative for PLUS to aid those local governments (and particularly regional councils) which have indicated they are struggling to achieve their legislative obligations under the PDI Act. In the Panel's view, this is not a case of providing funding but rather, aiding through shared skills (i.e., undertaking development assessments on behalf of councils).

PLUS has facilitated these arrangements in the past and the Panel understands there remains a willingness to assist councils where possible. However, it is incumbent upon councils to seek out and request the assistance of the State planning team in circumstances where they can identify difficulties being experienced.

There are additional associated resourcing issues for PLUS in providing this assistance to local government. This is again, another matter which the Panel highlights will require additional resourcing as a matter of priority, to ensure the planning system is able to function as intended and meet community expectations.

Accountability

The new planning regime has resulted in the creation and collection of data to enable assessment of system performance. That is, there is far more information available under this new system than has ever been available previously, because of the e-Planning system. Considering this data availability, it is appropriate for resources to be invested in assessing, considering, and responding to the same.

To this end, whilst also canvassed later in this Report, the Panel considers a priority area for additional State Government resourcing is within the PLUS audit team, which is specifically responsible for auditing Accredited Professionals.

Noting the discrepancies and non-compliances that have been uncovered through Accredited Professional audits undertaken to date (together with recommendations made later in this Report), the Panel believes the provision of additional resources will ensure greater oversight and accountability is achieved. Indeed, if those matters are not appropriately resourced, regulated, and managed, the integrity of the system may be compromised.

The Panel also iterates accountability ought to be at the core of audit processes and supports action being taken against those Accredited Professionals against whom adverse findings are made. Whilst the Panel understands a softer approach has been taken over this transitional period, it is now time to impose serious consequences to send a message to the industry about expected quality, conduct and compliance, and to protect the integrity of the planning system.

Diversity on Council Assessment Panels

Pursuant to section 83 of the PDI Act, Council Assessment Panels (CAPs) must have no more than five (5) members, only one (1) of which may be a member of a council, and all persons appointed to be a member of a CAP must be an Accredited Professional (except for council Elected Member members).

Under the current regime, a member of a CAP must hold Level 2 accreditation under the Accredited Professionals Scheme (APS). The levels of accreditation and the permitted functions of each level are identified in **Appendix 4.**

Professional Diversity

There is a lack of professional diversity seen on the current composition of CAPs and Regional Assessment Panels (RAPs). Recent statistics obtained by PLUS indicate that approximately:

- 59 per cent (%) of members are working as planners in varying capacities, half of which are employed by local or State Government;
- ten (10) per cent (%) of members are working as architects;
- eight (8) per cent (%) of members are retired and/or have the CAP/RAP membership as their main profession;
- four (4) per cent (%) are lawyers;
- eleven (11) per cent (%) have their own companies (however this may overlap with working in another profession such as planner/architect/lawyer); and
- eight (8) per cent (%) primary profession was unknown.

In addition to the above, PLUS statistics demonstrated approximately 42 per cent (%) of all CAP/RAP members sit on more than one (1) panel, with approximately:

- 22 per cent (%) sitting on two (2) panels;
- seven (7) per cent (%) sitting on three (3) panels; and
- one (1) per cent (%) (being one (1) person) sitting on a total of eight (8) CAPS/RAPs.

Throughout the engagement period, the Panel heard a significant barrier to participation on CAP/RAPs is the accreditation requirements, specifically the accreditation fee and the requirement to undertake Continuing Professional Development (CPD). This feedback was particularly prevalent in circumstances where aligned professions require their own fee for membership and/or registration, together with CPD requirements.

The Panel has sought to address these concerns in its recommendations pertaining to Accredited Professionals, but also notes the proposed amendments to the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019* which were recently publicly consulted on (and discussed in greater detail on page 48).

Since the Scheme's inception, the effect of membership on CAP is a reduction [in] gender diversity and professional diversity. Professions which have declined in representation include architects, lawyers, environmental scientists, engineers, landscape architects, and heritage consultants.[6]

6. Australian Institute of Architects, Submission November 2022, 7.

Gender Diversity

Under section 56A(3)(d) of the repealed Development Act, council Development Assessment Panels (now CAPs under the PDI Act) were required to ensure:

i. at least 1 member of the panel is a woman and at least 1 member is a man; and

ii. insofar as is reasonably practicable, ensure that the panel consists of equal numbers of men and women.

This provision was not transferred into the PDI Act and there is currently no requirement for gender diversity on CAPs.

In a recent study undertaken by PLUS, it was revealed that only approximately 30% of CAP or RAP membership is made up of women.

Whilst the Panel accepts there is a skills shortage in the planning field which may exacerbate this issue, it is unacceptable that there remains significant gender imbalance in CAP appointments. It is disappointing to see that, since the removal of the above mentioned requirement to ensure at least one (1) woman was appointed to an assessment panel, that these figures have gone backwards.

In the Panel's view, it should not be necessary to mandate gender diversity. However, in the circumstances, it would be remiss of it not to identify and encourage an equal gender balance is what ought to be strived for in all Panel arrangements. Indeed, the Panel itself is an example of this.

The Panel understands that PLUS is working with the Planning Institute of Australia (South Australian division) (PIA) to help identify any barriers to female participation in CAPs and what can be implemented to encourage more women to nominate for membership. The Panel supports and commends this work and hopes to see more gender balanced CAPs in the future.

Miscellaneous Technical Enhancement Code Amendment 2022

The MTECA was released for public consultation in July 2022, with public consultation concluding on 23 September 2022. The MTECA was prepared by the Commission and was the first of what will be a regular review of technical and operational aspects of the Code, based on stakeholder feedback.

The MTECA did not purport to make substantive changes to the Code, but rather, its purpose was to enhance the overall performance of the Code through a series of technical amendments. Details about the MTECA are available on the PlanSA webpage.

Whilst the consultation on the MTECA and the Panel's public consultation were undertaken separately and were at no point interlinked, the Panel acknowledges there were several matters raised with it throughout its consultation period that are proposed to be dealt with through the MTECA.

This included:

- improving the visibility of Representative Buildings in the Code by relocating the mapping of these buildings in the SA Property Planning Atlas (SAPPA). This proposed amendment was noted in the Panel's Discussion Paper, but was also consistently raised throughout public consultation, particularly by the local government sector. This amendment will go some way towards mitigating issues that have arisen over the past two (2) years regarding the visibility of Representative Buildings in the Code. It is also intended to assist local council planning teams (and the community more broadly) with section 7 property interest searches pursuant to *Land and Business (Sale and Conveyancing) Act 1994*;
- creating detailed policy for common forms of development, but specifically for decks. The Code does not include specific provisions for the assessment of decks and as a result, the Relevant Authority is required to consider the whole of the Code and identify the relevant assessment provisions for the proposal. The MTECA introduces additional policy to enable a DTS pathway and a PA pathway for decks in neighbourhood-type, residential employment, rural and recreation type zones;
- amending the Accepted Pathway for 'Swimming pool or spa pool' across all relevant zones to include 'Swimming Pool Safety Features' (as defined in the PDI Act) so the pathway considers the prerequisite for an associated safety fence. Prior to the MTECA, the associated safety fence was not identified in association with a swimming pool, such that there was no way to achieve an Accepted Development Pathway as the safety fence would be PA;
- amending the application of overlays to certain common and minor development forms (including dwellings, sheds, carports and verandahs) to simplify the assessment pathways for standard and high frequency applications whilst ensuring the overlay's policy outcomes are applied where relevant. This should result in a higher proportion of these types of development being assessed as DTS (as was originally intended under the Code) rather than as PA;
- amending public notification tables to unconditionally exclude minor forms of development (including but not limited to carports, pergolas and fences) from public notification and public notification exception criteria; and
- amending existing, and creating new, definitions within the Code to provide greater clarity to Relevant Authorities and proponents alike.

In addition, there were matters raised throughout the MTECA consultation period that were outside of the scope of the Code Amendment, but which were more appropriately dealt with or considered by the Panel. This specifically included matters pertaining to the extent of public notification and the determination of 'minor variations' in development assessments. Both matters are canvassed in recommendations made by the Panel later in this Report.

Legislative Review Committee Report on Planning Reform

On 30 April 2020, the Hon. Mark Parnell MP presented a 13,928-signature petition to the Legislative Council. The Petitioners asked the Legislative Council:

1. *undertake an independent review of the operation of the Planning, Development and Infrastructure Act to determine its impact on community rights, sustainability, heritage and environment protection;*
2. *undertake an independent review of the governance and operation of the State Planning Commission and the State Commission Assessment Panel;*
3. *urge the Government to defer the further implementation of the Planning and Design Code until:*
    i. *a genuine process of public participation has been undertaken; and*
    ii. *a thorough and independent modelling and risk assessment process is undertaken;*
4. *legislate to ban donations to political parties from developments similar to laws in Queensland and NSW.*

The Petition was referred to the Legislative Review Committee (the Committee) under section 16B of the *Parliamentary Committees Act 1991*, which required the Committee to inquire into, consider and report on the Petition as it had more than 10,000 signatures.

The Committee invited submissions on the inquiry between June 2020 and September 2020. The Committee permitted some late submissions to be received, and its last submission was received in May 2021. The Committee's Final Report on the Planning Reform Petition (the Committee's Report) was laid on the table in the Legislative Council on 17 November 2021.

The Committee made a total of fourteen (14) recommendations which included, amongst other things:

> *Recommendation 5:*
>
> *The Minister for Planning and Local Government establish **an independent review of the Planning, Development and Infrastructure Act 2016 and the implementation of the Planning and Design Code** to determine the impact on community rights, sustainability and protection of the environment as identified in this Report. A review would also include the fees, charges and costs to councils of operating the new planning system. The Committee also recommends that the report resulting from the review be tabled in both Houses of Parliament by the close of 2022. The independent review should be undertaken by the Expert Panel on Planning Reform, or a panel of similarly qualified professionals, and must include consultation with community representatives.*[7]
>
> (our emphasis)

In the course of undertaking this Implementation Review, the Minister asked the Panel to consider the Committee's Report and to comment on the same. At the outset, the Panel notes the Committee completed its review prior to the full commencement of the PDI Act and the Code. This cannot be overlooked.

The Petitioners sought a determination regarding the impact the PDI Act would have *'on community rights, sustainability, heritage and environment matters'.* However, no such definitive findings could be made by the Committee in the absence of the legislation being fully operational. Indeed, despite the new planning system now being operational for two (2) years, the Panel has found it challenging to wholly ascertain what impact the legislation is having due to the limited amount of completed development in the community. Community submissions have been invaluable to the Panel in this regard.

It is in this context the Panel has considered the Committee's Report and acknowledges the recommendations made therein. It notes the recommendations are necessarily broad for the above mentioned reasons and canvas a range of issues, including (but not limited to) the risks associated with the Code, heritage, the funding of the e-Planning system and the governance of the Commission.

7. Legislative Review Committee, *Report on Legislative Council Petition 2 of 2020: Planning Reform,* (Adelaide: Parliament of South Australia, 17 Novewmber 2021), 14.

The Panel does not propose to provide specific comment on each recommendation made by the Committee. However, it considers it appropriate to recognise and comment upon recommendation six (6) which stated any review panel established for the purposes of recommendation five (5) (reproduced above) should also consider whether the State Planning Policies (SPPs) should be incorporated into the Code. This recommendation was made in the context of ensuring *'policy matters are considered by the Relevant Authorities in determination of development applications'.* [8]

The Panel has considered this proposition and has determined it is not necessary for the SPPs to be identified within the Code. This is because the SPPs are the highest form of planning policy in this State and are intended to *'set out the State's overarching goals or requirements for the planning system'* [9] rather than be utilised as an assessment tool. Indeed, they are specifically excluded from being considered during development assessment. This is identified in section 58(4) of the PDI Act, which provides:

> *A state planning policy is not to be taken into account for the purposes of any assessment or decision with respect to an application for a development authorisation under this Act.*

In the Panel's view, if the genesis of the Committee's recommendation is that the SPPs are not adequately translated into the Code (noting that the version of the Code it considered was not the version ultimately implemented in March 2021), the solution is not to insert them into the same. Instead, work should be undertaken to identify areas in the Code policy that need to be strengthened and better connected to the SPPs.

In this regard, the Panel also acknowledges the Commission has now begun preparing, for the first time since the commencement of the PDI Act, the seven (7) Regional Plans.

Importantly, section 64(3) of the PDI Act requires Regional Plans to consider and be consistent with SPPs. On that basis, we are yet to see how the SPPs will influence the creation of those designated planning instruments and the impact they will have on the planning system moving forward.

Finally, the Panel also acknowledges the Committee's recommendations twelve (12) and thirteen (13) recommend review into demolition controls and the protection afforded to Representative Buildings in the Code, respectively. The Panel has considered and made recommendations pertaining to both matters, as identified later in this Report.

8. Legislative Review Committee, Planning Reform, 15.
9. *Planning, Development and Infrastructure Act 2016* (SA) Section 58(2).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A Comment on Case Law

At the time of writing this Final Report, six (6) cases have been handed down by the Environment, Resources and Development Court (ERD Court) pertaining to the interpretation and application of the Code and e-Planning system. The Panel understands one (1) of those matters has been appealed to the Supreme Court.

The Panel acknowledges the comments of the ERD Court in those matters and anticipates the body of case law knowledge and interpretive guidance will only expand as time goes on.

However, the Panel thought it prudent to refer to and reflect on the comments made by the Court in *Evanston South Pty Ltd v Town of Gawler Assessment Panel* [2022] SAERDC 14 (Evanston), noting numerous submissions received by the Panel concurred with the commentary therein.

In Evanston, the ERD Court made several comments and observations about the structure and interpretation of the Code, the SAPPA and the online e-Planning system generally.

Specifically, the ERD Court:

- noted while it is still necessary to consider the provisions of the Code under the PDI Act *"the portal curates the Code provisions that are to be considered and applied".* [10] In looking at the Code, the Commissioner said:

  > *many of the provisions identified by the Code had little or no bearing on the assessment required in this matter, in particular the Overlays and a number of the General Development policies. Further, not all of the relevant Code provisions were identified by the portal – underlining the vagaries of a system which seeks to confine the assessment against the Code to only those provisions generated by an algorithm from the portal.*[11]

- stated for the Court to consider *"the kinds of development reasonably contemplated in the Open Space Zone, in the subject circumstances, is sufficiently uncertain as to call in aid an exploration of the Code beyond that curated by the portal".* [12]

The Commissioner added for the Court to determine the land use intent of the Zone it was necessary to determine:

  - where the Open Space Zone sits in the hierarchy of 'like' zones; and
  - whether the Open Space Zone policies apply with the same force throughout the Zone;

- noted *"whilst it is possible to view the geographic distribution of zones, subzones and overlays on the South Australian Property and Planning Atlas**...the search is, at best, clunky and difficult to navigate and comprehend"*** [13] (emphasis added);

- commented about the Code that:

  - the index of Code provisions is very limited, and there are no hyperlinks, no identifiers, footers or markers on each page;
  - a reader of the Code needs a working knowledge of tools attached to the Portal;
  - the authors of the digital planning system had not understood there would be, on occasions, a need to browse the Code; and
  - the Portal cannot be relied upon, in all circumstances, to call up the only provisions to which regard should be had; and

- observed *"contrary to the Objects of the* [PDI] *Act, the **digital planning system is not simple and easily understood"*** [14] (emphasis added).

Importantly, the feedback the Panel received indicated the matters identified by the Court were being grappled with broadly across the sector. The Panel has sought to address some of the concerns arising from this judgment (and submissions received) through the recommendations that follow.

Separately, albeit relatedly, the Panel also acknowledges several submissions referred to the term 'seriously at variance' and the limited application of that principle.

10. *Evanston South Pty Ltd v Town of Gawler Assessment Panel* [2022] SAERDC 14, 14 [65].
11. *Evanston*, 14 [66].
12. *Evanston*, 14 [67].
13. *Evanston*, 14-15 [68].
14. *Evanston*, 15 [72].

The threshold for what will be 'seriously at variance' has been considered by the Court on numerous occasions and is a relatively high bar to meet. That is, a proposed development would need to be significantly at odds with the locality and applicable planning policy to be considered 'seriously at variance'.

Despite the Court's determination and application of this principle, it appears the community continue to apply a different meaning. The Panel heard on numerous occasions throughout its engagement period that 'seriously at variance' developments were occurring regularly, across Adelaide in particular. However, upon further interrogation, those circumstances often related to developments that were disliked by the community but were otherwise assessed as being appropriate in the location.

Accordingly, whilst there were calls for the Panel to recommend a definition of 'seriously at variance' be incorporated into the PDI Act, it maintains the Court has provided sufficient consideration and guidance as to how and when the principle of 'seriously at variance' ought to be applied. The Panel does not therefore propose to make any recommendations pertaining to the same.

PART TWO:

PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016

Public Notification and Appeals

At the outset, the Panel would like to acknowledge that it received a number of submissions requesting the reinstatement of appeal rights as they existed under the former Development Act. Whilst the Panel has proposed amendments to appeal rights in the recommendations which follow, it is important to recognise that as a State, we have undergone a systemic change whereby the community input (and thus opportunity to influence the types of developments occurring in a location) is intended to occur 'up front' in the planning policy stage.

This is, of course, a contentious issue and is not one that is readily understood by the community at large. It follows that greater education on the new planning system, and particularly to the model of engagement and appeal rights, should be provided to help alleviate this angst. This view is also reflected in the recommendations that follow.

Recommendation 01

Proposed developments which exceed the maximum height identified in the Planning and Design Code (including any affordable housing incentive) should attract third-party appeal rights.

In its Discussion Paper, the Panel acknowledged and provided its support for the position vocalised by the Commission following the Phase Three engagement on the Code that:

> *development which is envisaged in the zone should not be subject to notification; except where either acceptable standards of built form or intensity are exceeded, and/or the development is likely to result in substantial impacts on the amenity of adjacent dwellings located on land in another zone.* [15]

That is, dwellings ought to be able to be built with minimal interference in residential zones, commercial centres ought to be established in locations where that is envisaged and so on.

However, it also recognised community concern was, amongst other things, driven by a perceived expectation of notification and appeal rights, and a belief the community is being excluded from the development process if they are not afforded both. This was confirmed throughout the Panel's public consultation, which demonstrated this consternation is particularly prevalent in connection with the height of certain developments.

It appears these concerns, specifically pertaining to height but equally applicable to other issues, are derived from a lack of certainty afforded to the general community. As we have seen on numerous occasions throughout the past two (2) years, developments which exceed the maximum acceptable height identified in the Code are being approved with no recourse for the community to question or appeal the decision.

In the Panel's view, it is reasonable for the community to expect the maximum heights identified in the Code are, indeed, maximums that should not be exceeded. As the Panel heard regularly throughout its consultation, if these numbers are only considered 'guidelines,' what is the point of their inclusion in the Code?

The Panel has therefore determined it is appropriate to recommend third-party appeal rights should apply to proposed developments which exceed the maximum height envisioned in a zone/subzone.

The Panel recommends this is achieved by assigning those 'over height' developments as Impact Assessed (Restricted) development. In making this recommendation, the Panel recognises consideration will need to be given to how this right of appeal will apply to strategic and catalyst sites which, by their nature, are expected to have additional development capacity, including height.

If this recommendation is accepted, it will strike a balance between enabling development to progress, but also allowing the community certainty and power to appeal development that is beyond what the Code considers *'acceptable standards of built form or intensity'.*

However, for the avoidance of doubt, the Panel also confirms its recommendation to reintroduce third-party appeal rights in these specific circumstances does not equate to an appetite or intention to otherwise re-introduce third-party appeal rights into the balance of the new planning system.

> ***In terms of planning, one area of particularly [sic] concern for me is the lack of enforcement of height limits on new medium-and high-density developments. For example, a site might be zoned for four storeys, however, a developer might put in an application to build a building that is five, six, or even seven storeys high. These types of applications are habitually approved, and they severely undermine the public's faith in the planning system...The height limits have been worked out in consultation with councils and the public and they ought to be strictly adhered to.***[16]

15. State Planning Commission, *Phase Three (Urban Areas) Planning and Design Code Amendment Engagement Report* (Adelaide: 2021), 4.
16. Charles Gilchrist, Submission December 2022, 8.

Recommendation 02

Greater education needs to be provided on public notification and how to make a submission on a development application.

Unlike the previous planning regime, the advent of the e-Planning system has streamlined public notification such that all publicly notifiable development applications are published on the PlanSA website, through the public register. This enables any person from anywhere in the State to lodge a representation on any development application shown on the register. Members of the public can also 'opt in' to receiving push notifications when a new application is added to the public register, for their consideration and perusal.

Despite this increase in public notification and representation rights (albeit equally recognising the statistics demonstrate that year on year, less applications are being notified under the PDI Act than the former Development Act), it appears there is a significant misunderstanding in how the new system of public notification operates, and what tools are available for interested persons to ensure they are made aware of developments occurring in the State.

Whilst this is a natural consequence of substantial systemic change and is likely to improve with time, the Panel considers there is utility and benefit in providing more public education and awareness on this aspect of the new system.

It may be appropriate for the State government to facilitate aspects of this education, through its various publications and platforms. However, local governments remain best placed to provide the vast majority of education, thus ensuring their constituents have the requisite knowledge and understanding of not only the new public notification provisions, but also of publicly notifiable developments occurring in their areas. This education could be achieved through mechanisms already employed by local governments, including their own webpages (i.e. simply having a link to the public notification register on the PlanSA website) or community newsletters.

In addition to this, the Panel has also identified a need for Elected Members to receive further education on their role in the planning system, and specifically how they are able to interact with it and/or function as community advocates, irrespective of whether they are the nominated Elected Member CAP representative. This view is based on the Panel hearing Elected Members expressing conflicting advice on how they can and cannot participate in the system.

This also became apparent to the Panel through many council submissions calling for increased Elected Member representation on CAPs, namely on the premise that local knowledge, community views and interests need to be better represented on CAPs.

In the Panel's view, whilst it is appropriate for an Elected Member to sit on a CAP to provide community insight into a proposed development, the purpose and intent of a CAP is to assess a development application against the relevant provision of the Code. It is therefore not appropriate to enable additional intervention in development proposals based only on a personal opinion or community disquiet.

Recommendation 03

Extend the public notification zone in rural areas outside of townships to align with separation zones identified by the Environment Protection Authority, based on proposed land use.

Section 3 of the PDI Act defines the term *'adjacent land'* as:

> *In relation to other land, means land than is no more than 60 metres from the other land.*

It follows that when publicly notifiable development applications must give notice to *'the owner or occupier of each piece of adjacent land',* they must only provide notice to those properties within 60 metres of the boundary of the site being developed.

This distance is largely suitable in metropolitan and township settings, where the types of development proposed are (more often than not) only likely to directly impact those neighbouring properties within 60 metres. There are, of course, exceptions to this recognising some developments may have broader implications beyond 60 metres.

However, the Panel heard more specifically that this notification distance is insufficient for certain forms of development in rural areas. This arises on the basis land holdings are significantly larger, the same person often owns multiple adjacent allotments (i.e. in farming scenarios) such that no other person is actually notified, and the types of development proposed regularly have the capacity to impact the broader community far beyond the notifiable 60 metres.

Whilst those more impactful development types would likely require an Environment Protection Authority (EPA) referral pursuant to Schedule 9, clause 9 of the *Planning, Development and Infrastructure (General) Regulations 2017* (PDI Regulations) and Part 9 of the Code (and oftentimes, also require an EPA Licence albeit this occurs after a planning consent is granted), advising the EPA does not equate to advising the community. This is exacerbated by the fact, in the rural context, no sign is required to be erected on the land where a publicly notifiable development is proposed.

The Panel heard there is a desire for the public notification distances to be increased in rural locations, and it was suggested the notification distance ought to be at the assessing planner's discretion.

The basis for this suggestion is understood. However, if introduced, it would fail to provide certainty or consistency to applicants and the community, and may expose regional councils to legal challenges. Accordingly, whilst the Panel agrees rural public notification distances should be increased, it considers there needs to be an appropriate framework to determine what those distances are.

The Panel has considered what options may be available and in doing so has looked to the EPA's guidance material, specifically to its document titled *'Evaluation Distances for Effective Air Quality and Noise Management'* (August 2016)(EPA Evaluation Distances).

The EPA Evaluation Distances document was prepared in 2016 and is likely due for review*, noting it refers to the Development Act rather than the PDI Act. Despite this, the separation distances identified in that document could be adapted as a basis for increased public notification distances in rural settings. The EPA Evaluation Distances document identifies certain industrial/commercial land uses ought to be situated a specified distance away from sensitive land uses (including residential uses), recognising the increased impact they may have, irrespective of using the best management practices. For example, in the case of frost fans, the EPA Evaluation Distance document provides a separation distance of 2,000 metres is required due to the noise impacts that may be experienced.

In the Panel's view, if the EPA recognises an impact may be experienced up to 2,000 metres away from the proposed development such that a separation distance of this magnitude is required, it would be appropriate for an associated development application to be publicly notified more closely in accordance with this advice.

> ***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...Increasing the notification will allow nearby residents who may be affected by the development to be informed of the proposal and to provide comment.[17]***

*Note: The EPA has updated the Evaluation Distances document since the preparation of this Report.
17. Mount Barker District Council, Submission January 2023, 18.

Recommendation 04

An additional 'on boundary' category of public notification should be created such that only directly affected neighbours are notified of on boundary developments by the Relevant Authority.

The Panel heard the public notification requirements are currently creating the unintended outcome whereby developments that are only publicly notifiable by virtue of being on the boundary of an allotment are being notified to persons unaffected by the proposed development (i.e. neighbours across the street or at the rear).

This is causing additional administrative load for Relevant Authorities in circumstances where they are required to send out a significant number of public notification letters for a development that would, in reality, affect only one (1) or two (2) adjacent landowners.

To this end, the Panel considers it is reasonable for an additional category of 'on boundary' public notification to be introduced to mitigate this issue and better align public expectations pertaining to notification.

> ***In a residential context, development on a boundary which triggers public notification process by virtue of its height or length, is likely to impact the immediately adjoining neighbour, but is unlikely to have impacts on the broader locality. Notifying all properties within 60 metres of the development in such circumstances is considered excessive and does not accord with the fundamental purpose of public notification.[18]***

18. City of Mitcham, Submission January 2023, 3.

Observations and Comments

Environment, Resources And Development Court

The Panel posed a question in its Discussion Paper pertaining to whether an alternative appeal mechanism ought to be explored and, if so, what that ought to be.

The feedback received indicated there was minimal, if any, appetite for an alternative appeals mechanism, noting the existence of the specialist ERD Court.

However, several submissions acknowledged the substantive delay occasioned through the Court process, specifically the inefficiencies that arise at compulsory conference level, and the seemingly unreasonable time taken to receive a judgment on those matters that do progress to hearing.

The Panel heard it is often taking over a year for planning appeals to be resolved (from the date of filing the appeal to receipt of decision), with parties often waiting up to eight (8) months to receive a judgment following a hearing. It was suggested to the Panel that one (1) reason for this is that appeals are:

> *needlessly traversing irrelevant or uncontroversial issues and do not focus on the issues that ought to be in contention...* [This] *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.*[20]

In light of the above, the Panel was requested to make recommendations pertaining to the efficiencies of the ERD Court and was pointed to Schedule 5, clause 42 of the PDI Act which provides that regulations may be made regarding:

> *The practice or procedure of the Court when exercising jurisdiction under this Act.*

It also relevantly observes that the ERD Court Practice Directions have not been updated since June 2015 (predating the introduction of the PDI Act) and even then, only one (1) of the 12 Practice Directions were updated at that time. The remaining 11 are dated 2005.

The Panel acknowledges the power to make regulations relating to the exercise of jurisdiction of the Court. However, it does not propose to recommend doing so, recognising this issue is somewhat outside of its ToR and its expertise.

To this end, the Panel supports the Department's further consultation with the Court and the Attorney-General as to what mechanisms may be appropriate to improve the efficiencies associated with determining planning decisions.

Council Assessment Panel Meeting Procedures

Section 83(1)(f) of the PDI Act provides:

> *The procedures of an assessment panel must comply with any requirements prescribed by the regulations.*

Regulation 18 of the PDI Regulations subsequently provides:

> *Except insofar as a procedure is prescribed by the Act or these regulations, the procedures of an assessment panel in relation to the conduct of its business will be as determined by the assessment panel...*

The PDI Regulations canvass procedures relating to voting, quorum, minutes and public access to meetings. However, one (1) matter both the PDI Act and Regulations are silent on (and which subsequently fall to each individual CAP to determine) is the speaking time allocated to representors at a CAP meeting.

On the Panel's review of several CAPs' meeting procedures, it appears it is 'standard' to allow five (5) minutes for a representor to address the members and speak to their representation.

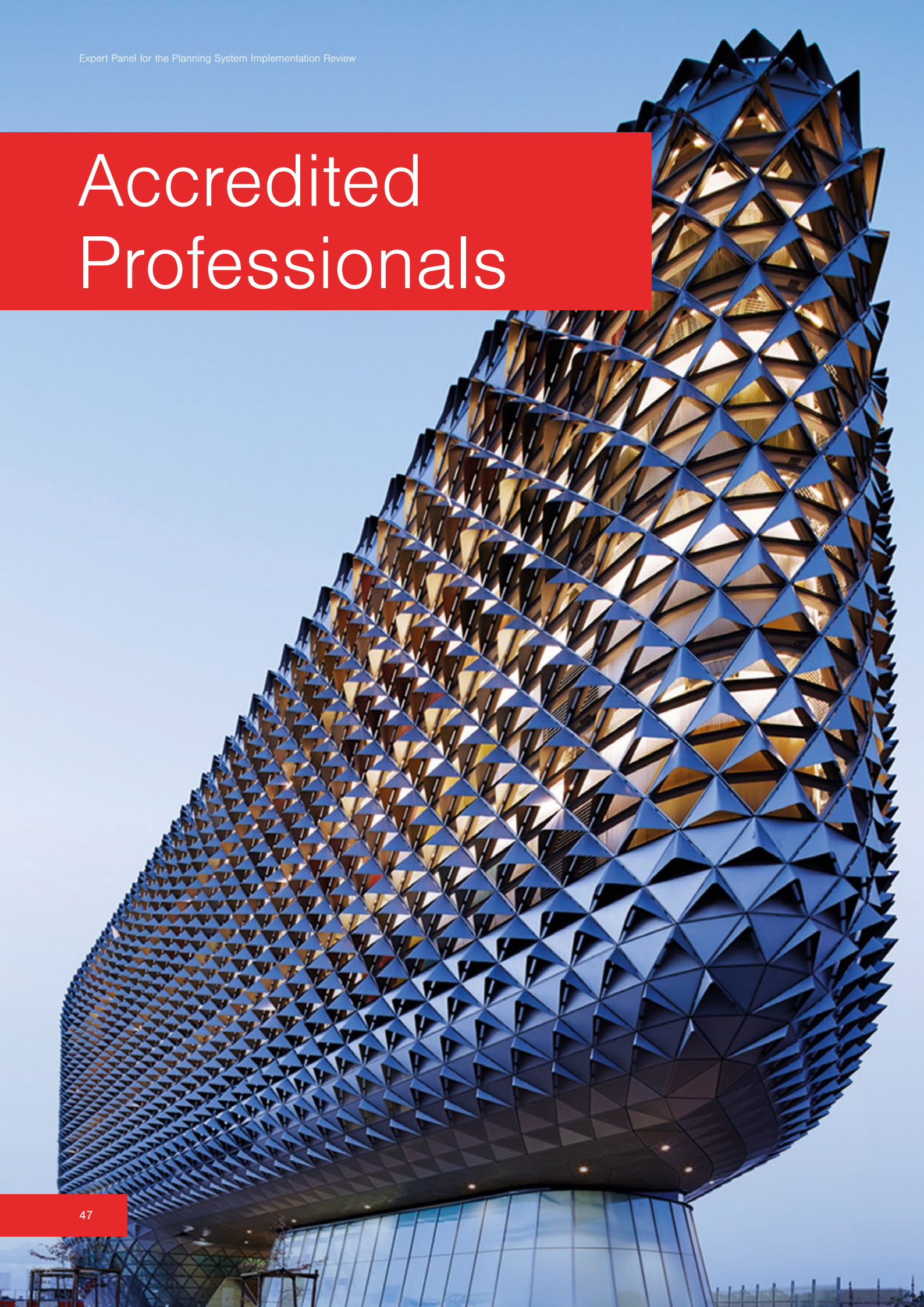
The feedback received by the Panel indicated a loss of public confidence in the representation process, and a need to re-instate third party appeal rights to provide a greater community voice and ensure communities felt adequately represented in the assessment process.

The Panel has arrived at a view on this issue as identified in recommendation 1 above. However, it also considers a further, simple, and quick way to better incorporate the community is for CAPs to increase the speaking time allocated to representors and allow for community voices to wholly heard at the time the CAP is determining an application.

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 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.[19]

19. Property Council of Australia, Submission November 2022, 1-2.
20. Property Council, 3

Accredited Professionals



The Panel understands that PLUS recently undertook a review of the APS and published its findings in September 2022. Importantly, that review sought to consult directly with Accredited Professionals specifically regarding the nuances of the APS and any improvements, changes or clarifications that were required to the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019* (the AP Regulations).

The APS review report is published on the PlanSA website for public information, and the Panel understands work is being undertaken to progress the recommendations that were both accepted and those that needed further investigation. In particular, the Panel draws attention to the *Planning, Development and Infrastructure (Accredited Professionals) (Miscellaneous) Amendment Regulations 2023* (AP Amendment Regulations) which were released for public consultation in January 2023.*

The AP Amendment Regulations progress several of the recommendations made in the APS review report, but also address several matters raised with the Panel, including but not limited to:

- enabling anyone with Planning Level 1 accreditation to undertake or perform the functions of a Planning Level 2, 3 & 4 without the need to lodge any further applications for accreditation;
- enabling Accredited Professionals working in a local council to assess any development that the council itself undertakes (and is the applicant);
- revising the required ethics CPD units to be undertaken by planning and building Accredited Professionals from two (2) to one (1) unit for each CPD period; and
- revising the CPD requirements for Accredited Professionals holding Planning Level 2 (CAP members) from ten (10) units per CPD period to four (4) units, being one (1) unit for each competency.

These amendments will assist in providing practical and beneficial change to Accredited Professionals and will also improve the accessibility of allied professionals seeking to sit on CAPs (as discussed earlier in this Report).

Despite these amendments occurring alongside the Panel's review, it is important to distinguish the APS review with the work of the Panel, specifically noting that the Panel's interrogation of matters pertaining to Accredited Professionals was broad reaching and related to the interaction of Accredited Professionals and the APS with the PDI Act, the PDI Regulations and Code.

* The AP Amendment Regulations came into operation on 26 May 2023.

Recommendation 05

Minor variations undertaken by Accredited Professionals were a 'hot topic' and one the Panel received substantial feedback on. This namely arose in connection with:

- from a private certifier perspective, the delay (and oftentimes, the refusal) occasioned by councils in issuing Development Approval as a result of 'checking' consents issued by Accredited Professionals that contain minor variations pursuant to section 106 of the PDI Act;
- from a local government perspective, the incorrect or unreasonable application of 'minor variations' to development consents issued by private Accredited Professionals; and
- universally, the lack of a definition of 'minor variation' in the legislative framework.

As identified in the Discussion Paper, data from the Development Application Processing (DAP) system suggests that 24 of the 57 Accredited Professional – Building Level 1s (AP – BL1s) have assessed **2,534** applications for planning consent (for Exempt or Accepted development applications) and six (6) of the AP-BL1s have assessed **386** applications with a DTS assessment pathway. Six (6) of these AP – BL1s have been audited by the Department's Audit and Investigations team.

The Audit and Investigations team have advised the extent of errors identified during periodic audits of AP – BL1s includes the following:

- incorrect categorisation of the development e.g. processed as Accepted Development or Exempt Development when it exceeded the criteria for that category;
- failure to ensure required documentation was obtained to support HomeBuilder application assessment;
- failure to obtain all required information set out in the PDI Regulations Schedule 8 – Plans;
- failure to apply Practice Direction 12 mandatory conditions on the Decision Notification Form (DNF); and
- processing DTS where the criteria had not been demonstrated or inclusion of minor variations (AP-BL1s are not permitted to approve DTS with minor variations).

Further, in relation to minor variations, the Department's Audit team identified the following in relation to infill type development applications that it has audited:

- 23 infill type development applications have been audited out of approximately 150 total applications audited over the last year;
- only one (1) Accredited Professional appeared to have written evidence of a checklist assessment report which documented their assessment of relevant DTS criteria in the applications audited. Within this report there were minor variations to certain DTS criteria which were supported by written justification in relation to the proposed buildings within the context of the site and locality. An example of this checklist report is identified in Table 2; and
- other Accredited Professionals who were audited did not show evidence of such assessment reports to justify the decisions made to issue Planning Consent or minor variations to DTS criteria. In certain more severe cases there were errors in the processing of the applications under the requirements of the legislation (which the auditing team is addressing with corrective measures).

One (1) of the good examples audited was for an application for two (2), two (2) storey dwellings. The assessment revealed three (3) minor departures from the DTS criteria which were deemed to be 'minor variations' by the private Relevant Authority assessing the application.

The following table summarises the assessment of these departures:

Assessment matter	Relevant DTS Criteria	Assessment of Minor Variation
Front setback	DTS/DPF 5.1 in the Zone Average setback calculated as 5.6 meters	The proposed dwelling front setback is 5.5 metres. The 10cm shortfall was considered to be minor, given that standard default Code policies allow a setback one metre forward of the adjoining allotment. The proposed development was considered to be consistent with the character and amenity of the locality.
Upper-level side setback	DTS/DPF 8.1 in the Zone Criteria requires a 1.8m side setback for a dwelling	The proposed dwelling upper-level internal side setback at the staircase area was 1.5m. It was considered that the 30cm shortfall was minor, given that it related to an internal property boundary, and which does not unreasonably impact on the adjoining vacant allotment, as this may be replicated from the adjoining vacant allotment.
Landscaping	DTS/DPF 22.1 in the Zone The criteria require 69.37m^2 of landscaping for this particular development.	Development proposed a total landscaped area of 65.93 m^2 . It was considered that the 3.44 square meters or 4.9% shortfall to be minor, given that the landscaping would be barely perceivable when viewing the overall development.

Table 2: *Minor variation justification checklist example.*

The justification provided for considering the departures as minor seems reasonable (and supportable) to the Panel in this instance. However, complaints and other anecdotal information (typically provided by council officers to the Department) reveals that private Accredited Professionals are approving departures from DTS criteria which may not reasonably be considered 'minor'.

The complaints and feedback which related to minor variations, when considered together with the above mentioned audit findings, indicated to the Panel there is a need to reconsider which Accredited Professionals are issuing planning consents, both generally and specifically in relation to minor variations.

On that basis, the Panel has determined to adopt a two (2) phased approach to its recommendation pertaining to the interaction between Accredited Professionals and minor variations. It is expected that, if accepted, phase one (1) will be implemented as soon as possible. Following that implementation, the Panel recommends further analysis, audit and review is undertaken twelve (12) months later to ascertain whether additional measures – being those contained in phase two (2) – are required to be implemented.

Recommendation 05 – Phase 1:

The Accredited Professionals Scheme and associated Regulations should be amended to remove the ability for building professionals to issue planning consents.

As recognised in the Discussion Paper, the former Minister for Planning determined that an AP – BL1 could act as a Relevant Authority for the purposes of giving planning consent in relation to DTS development of the following classes of development (other than where there are variations):

- the construction or alteration of, or addition to, an outbuilding, in which human activity is secondary; or
- the construction or alteration of, or addition to, a carport or verandah; or
- the alteration of, or addition to, an existing detached or semi-detached dwelling or a detached or semi-detached dwelling to be erected in accordance with a development authorisation which has been granted; or
- the construction of a new dwelling; or
- remedial or additional construction required for the purpose of achieving compliance with an earlier development authorisation relating to a new dwelling; or
- if planning consent has been granted for a DTS development for the construction of a new dwelling, a proposed division of land providing for that development.

This is legislated in regulation 25(2) of the PDI Regulations.

The Panel queried whether this process meets community expectations, and whether it would be more appropriate to only allow Accredited Professionals to issue consents aligned with their professional skills and qualifications. That is, allowing only building certifiers to issue building consents and only planning professionals to issue planning consents.

The feedback received on this matter was overwhelmingly in favour of this change, with the notable exception of building industry professionals and representative groups, and some regional councils (namely citing resourcing pressures) in opposition.

Irrespective of this broad support, on reflection of the evidence provided by the APS audit team regarding the misapplication and misunderstanding of the Code by AP-BL1s, the Panel considers, on balance, it is reasonable to align the issuing of consents with their associated professions. Accordingly, the Panel recommends the ability for building certifiers to issue planning consents is removed from the PDI Regulations.

The Panel recognises removing the capacity of AP-BL1s to issue DTS planning consents may fundamentally change the business proposition for some private certifiers. However, it notes that those certifiers will still have the capacity to engage accredited planning professionals within their businesses to continue to offer and facilitate these services.

Equally, the Panel understands this may place additional resourcing pressure on regional local governments, particularly those which rely upon their AP-BL1s to assess DTS planning consents rather than outsource the same. This is an unfortunate consequence, albeit a necessary one to ensure accurate and compliant planning decisions are being made by qualified persons.

Recommendation 05 – Phase 2:

Only Planning Accredited Professional Level 1 (Assessment Manager) practitioners may determine minor variations.

Section 106(2) of the PDI Act states:

> *If a relevant authority is satisfied that development is deemed-to-satisfy development except for 1 or more minor variations, the relevant authority must assess it as being deemed-to-satisfy.*

Currently, under the APS, Accredited Professional Planning Levels 1 and 3 can assess a DTS application with minor variations. Despite AP-BL1's being unable to assess DTS with minor variations, the Panel understands this does occur (as evidenced by the audit findings earlier in this Report).

The Panel is of the view that in circumstances where Phase 1 of this recommendation does not result in the reduction of inappropriate application of minor variations, it will be appropriate to further amend the APS and PDI Regulations to only enable Accredited Professional Planning Level 1s (AP-PL1s) to assess DTS applications with minor variations. This will provide clarity to stakeholders regarding the consistent and appropriate application of minor variations.

It is thought Phase 2 of this recommendation should be deferred until such a time the effects of Phase 1 can be understood. The Panel considers an assessment of the effectiveness of Phase 1 should occur twelve (12) months after its implementation.

The flow on effect of this amendment is that currently, AP-PL1 is only able to be exercised by Accredited Professionals working as Assessment Managers in local government and is not otherwise able to be exercised in a private capacity.

Accordingly, AP-PL3s should be 'on notice' and ensure they are considering and assessing minor variations appropriately, lest they lose the right to do so in future. It may also be appropriate for Accredited Professionals to keep accurate documentation as to the basis for their decision making (generally, but particularly in relation to minor variations) to ensure the same is justifiable.

Recommendation 06

The Government, through Planning and Land Use Services, works with Assessment Managers to identify, and develop guidelines for minor variations which may be implemented by the State Planning Commission.

The Panel has considered what options may be available to alleviate some of the difficulties being experienced by all industry stakeholders in connection with minor variations, including the possibility and practicality of defining 'minor variation' in the legislative framework.

The Commission has previously attempted to prepare guidance material on this topic in accordance with section 43(2)(b) of the PDI Act, being guidelines specifically in relation to what can and cannot constitute a minor variation in a DTS development.

The Panel recommends guidance material is developed and suggests Assessment Managers work with the Department and PLUS to identify and develop guidelines for minor variations which may be implemented by the Commission. This should include consideration of what minor variations are being consistently and frequently requested such that there is merit in considering including the same into the Code. The Panel considers Assessment Managers are best placed to provide 'on the ground' insight to inform the guidance material.

Several submissions also requested a variation percentage (%) be identified as a tool against which a minor variation could be measured.

The Panel recognises the logic in the provision of a percentage (%) for this purpose. However, conversely, it queries the appropriateness of it. For example, if an additional 10% of what is prescribed in the policy is an acceptable 'minor variation', then should we not amend the policy to accord with what we consider is acceptable? That is, raise all prescriptive policy provisions by 10% and not allow minor variations.

It is for this reason the Panel has not recommended the introduction of any specific tools to measure and/or identify minor variations, particularly in the absence of further consultation with Assessment Managers, being frequent and experienced assessors of the same.

Recommendation 07

The e-Planning system should require a Relevant Authority to record when a minor variation has occurred.

There is currently no requirement (or ability) for a Relevant Authority to record when it has granted consent to a development application with minor variations on the e-Planning portal. This lack of record keeping makes it difficult for the appropriate application of 'minor variation' to be audited.

The Panel considers there is merit in the e-Planning system being updated to require a Relevant Authority to identify and record when they have assessed and granted consent to a development application with minor variations.

Recommendation 08

There should be automatic mutual recognition for related professional bodies.

The Accredited Professionals Scheme provides that:

> *Practitioners may be eligible for a class of accreditation under the Scheme if the person is a member of a professional association or body that provides an equivalent scheme for the recognition of qualifications, experience and technical skills that is recognised by the Accreditation Authority under Regulation 16 of the* [AP] *Regulations.*[21]

Currently, the only recognised equivalent schemes are through registration and/or membership with PIA and the Australian Institute of Building Surveyors (AIBS). This recognition as an equivalent scheme enables practitioners to utilise their membership of PIA or AIBS as a pathway to obtain accreditation under the APS, and also reduces their APS application fee from $582.00 to $281.00.

This discount is not unreasonable in circumstances where PIA and AIBS charge their own membership fees. However, as the Panel heard throughout its public consultation period, other professional bodies also charge registration and/or membership fees to their members (some of which have mandatory registration in order to practice, such as Architects who are registered with the Architectural Practice Board of South Australia) but are not recognised as an equivalent scheme under the APS, either in terms of fees or accreditation pathways.

The Panel notes the APS Review included a recommendation to broaden the Qualifications, Skills and Experience requirements to make it easier for allied professionals to obtain accreditation. However, in the Panel's view, it is imperative the APS removes unnecessary barriers to allied professionals becoming accredited and additional opportunities should be considered.

Accordingly, noting the desire to increase the professional diversity of CAPs/RAPs, in circumstances where allied professional bodies operate their own industry membership bodies (via either a voluntary or mandatory membership) it is appropriate for the APS to automatically recognise them as an equivalent scheme for the purposes of regulation 16 of the AP Regulations. This mutual recognition may entice additional allied professionals (which may include but is not limited to architects, lawyers, surveyors and landscape architects) to obtain accreditation under the APS and provide their skillsets to CAPs/RAPs.

The Panel understands some of these professions may not, by virtue of the profession alone, meet the requisite technical skills to be an Accredited Professional under the PDI Act. However, this can be overcome by mandating relevant training be undertaken (either in association with use of the equivalent scheme or as a condition of accreditation) for those professionals who cannot demonstrate their applicable planning experience (i.e. a lawyer who practices in criminal law may need training, whereas a planning and environment lawyer may not).

21. Department for Trade and Investment, *Guide to the Accredited Professionals Scheme* (Adelaide, 2023), 8.

Recommendation 09

Accredited Professionals must be audited more frequently than once in every five (5) years.

Pursuant to regulation 27 of the AP Regulations, Accredited Professionals must be audited once in every five (5) years to ensure that they are making decisions consistent with the legislative framework.

The audits that have been undertaken by the APS audit team in the past 18 months demonstrate several inconsistencies and issues in the assessment process being undertaken by Accredited Professionals (both planning and building), including but not limited to:

- inconsistency findings, where an Accredited Professional has failed to ensure consistency with an earlier approval for the same development;
- being unable to demonstrate DTS planning criteria has been met;
- failure to include mandatory planning conditions on a DNF (where required) in accordance with Practice Direction 12;
- failure to maintain CPD records and evidence of attendance/completion;
- application documentation was corrected/edited by the Accredited Professional conducting the development assessment;
- incorrect determination of the category of development (Accepted Development or Exempt Development);
- incorrectly verifying the application, stating they were the Relevant Authority and completing the development assessment, when they were not the Relevant Authority;
- failure to obtain and assess all relevant Schedule 8 documentation relevant to the development assessment OR documentation obtained did not contain all prescribed Schedule 8 requirements; and
- failure to address requirements of Ministerial Building Standards (specifically MBS008 – Bushfire).

As a consequence, the Panel heard from several councils that there are delays in issuing Development Approvals because they do not trust assessments made by private Accredited Professionals and they felt the need to 'double check' the consents that had otherwise been lawfully granted. The Panel understands several discrepancies and errors have been identified through this practice, such that councils feel they have no option but continue to undertake the same as a matter of process.

Given the number of DTS planning consents that have been processed by Accredited Professionals since the commencement of the new planning regime (3,675 between March 2021 and March 2023), and in light of the errors identified through the audit process, the Panel considers it would be appropriate for Accredited Professional audits to occur more frequently than once in every five (5) years.

In making this recommendation, the Panel recognises the APS Audit team will require additional resources to facilitate its increased workload. This is also reflected in the Panel's earlier commentary on Accountability (see page 30).

The Panel is therefore reticent to provide a recommendation as to how frequently audits should occur. However, the number and types of errors that have been occasioned in a period of two (2) years is worrisome, and whilst this may be, in part, transitional, there is a risk to safety, amenity and the integrity of the system if not more regularly reviewed.

Separately, albeit relatedly, the Panel acknowledges the approach of the APS auditors has been more forgiving during the transition to the new system, with most sanctions being in the form of warnings. The Panel considers the transitional period is now over (being we are now two (2) years 'down the track') and it is appropriate for the auditors to impose more severe penalties for those Accredited Professionals found to be operating inappropriately.

Observations and Comments

Accredited Professional Complaints

Regulation 28 of the AP Regulations provides any person may make a complaint about an Accredited Professional to the APS if the person believes:

a. *that the accredited professional has failed to comply with, or acted in contravention of, the Act or any regulations under the Act (including these regulations) with respect to any matter associated with any assessment, decision, permission, consent, approval, authorisation, certificate or process that relates to any development (or proposed development); or*

b. *without limiting paragraph (a), that the accredited professional has acted in a manner that constitutes an offence under section 91 of the Act; or*

c. *that the accredited professional has acted in contravention of the code of conduct.*

However, noting the significant concern expressed by local government about the (alleged) poor decision making of Accredited Professionals, the Panel was surprised to learn that since the commencement of the APS, only 16 valid complaints (being complaints which comply with the relevant criteria) have been received in accordance with regulation 28.

Whilst Accredited Professionals are required to be audited under the APS, this system of accountability exists alongside the complaint mechanism rather than instead of. Indeed, it must be acknowledged there are limitations on audit sample selections and there is equally no guarantee a decision or action that would have otherwise been worthy of a complaint will be uncovered in the audit process.

It follows that if the APS is not being made aware of the issues being experienced 'in the field' through complaints, there is likely a significantly greater number occurring than those identified through audit alone. The Panel also understands a complaint may trigger a periodic audit, particularly in circumstances where the complaint has been upheld.

The APS is currently preparing guidance material pertaining to complaints to assist in ensuring there is broad understanding as to how a complaint can be lodged and how it will be managed. However, the Panel makes these observations in the hope it also acts as a reminder to the community, industry, and local government that there are regulatory processes in place to ensure Accredited Professionals are operating in accordance with the APS Code of Conduct and equally, are appropriately applying planning policy, outside of audits alone.

Resourcing Mandatory Inspections

The Panel thought it appropriate to recognise the opportunity for AP-BL1s to undertake mandatory building inspections on behalf of local government. This is equally an observation for local government, noting the resourcing and enforcement difficulties that are being experienced in the sector.

The Panel does not consider sufficient compliance is occurring as a consequence of the skills gap in councils. Indeed, despite the legislative obligations imposed by the PDI Act, the Panel understands those obligations are in some cases not being observed because of lack of resources. This is not meeting community or system expectations, noting specifically that a robust planning system requires an equally robust (and consistent) enforcement framework.

It is therefore appropriate for councils to extend the undertaking of mandatory building inspections to private AP-BL1s, rather than only utilising those AP-BL1s within their employ. The Panel acknowledges any private AP-BL1 will need to be appropriately authorised pursuant to section 210 of the PDI Act in order to undertake these functions.

In these circumstances, conflicts of interest (for example, an inspection could not be undertaken on a building that the AP-BL1 had assessed or otherwise been involved with) would need to be appropriately managed. This could be achieved through mandatory declarations and auditing.

Notwithstanding these challenges, the Panel considers there is significant community benefit to be derived from more readily outsourcing mandatory inspections to private Accredited Professionals.

Impact Assessed Development

Recommendation 10

Impact Assessed (Declared) development assessment is returned to a whole of Government process.

As noted in the Panel's Discussion Paper on the PDI Act, the current assessment process for Impact Assessed (Declared) development is now streamlined and, unlike the former Development Act, there is currently no need for a Cabinet Submission to be prepared and progressed to determine an application for an Impact Assessed development. Instead, the current Impact Assessed (Declared) assessment pathway enables the decision to be made by the Minister for Planning alone, following receipt of an Assessment Report from the Commission.

This ultimately results in a scenario whereby other Government Ministers may not be formally advised of, or have an opportunity to influence, the development application prior to the final decision being made. This can be problematic as there are a plethora of matters considered in an Impact Assessed (Declared) development that can affect a range of ministerial portfolios, including but not limited to environmental and infrastructure portfolios.

During its public consultation, the Panel queried whether there was public support for Impact Assessed (Declared) developments returning to a whole-of-Government process, as existed under the Development Act. This proposition was almost exclusively supported, with proponents stating it would provide increased transparency and accountability to the process. Further, as the decision-making responsibility would no longer sit solely with one (1) Minister, the Panel heard this would ultimately encourage and promote the coordination and collaboration of agencies across Government and will assist in achieving better outcomes for South Australians.

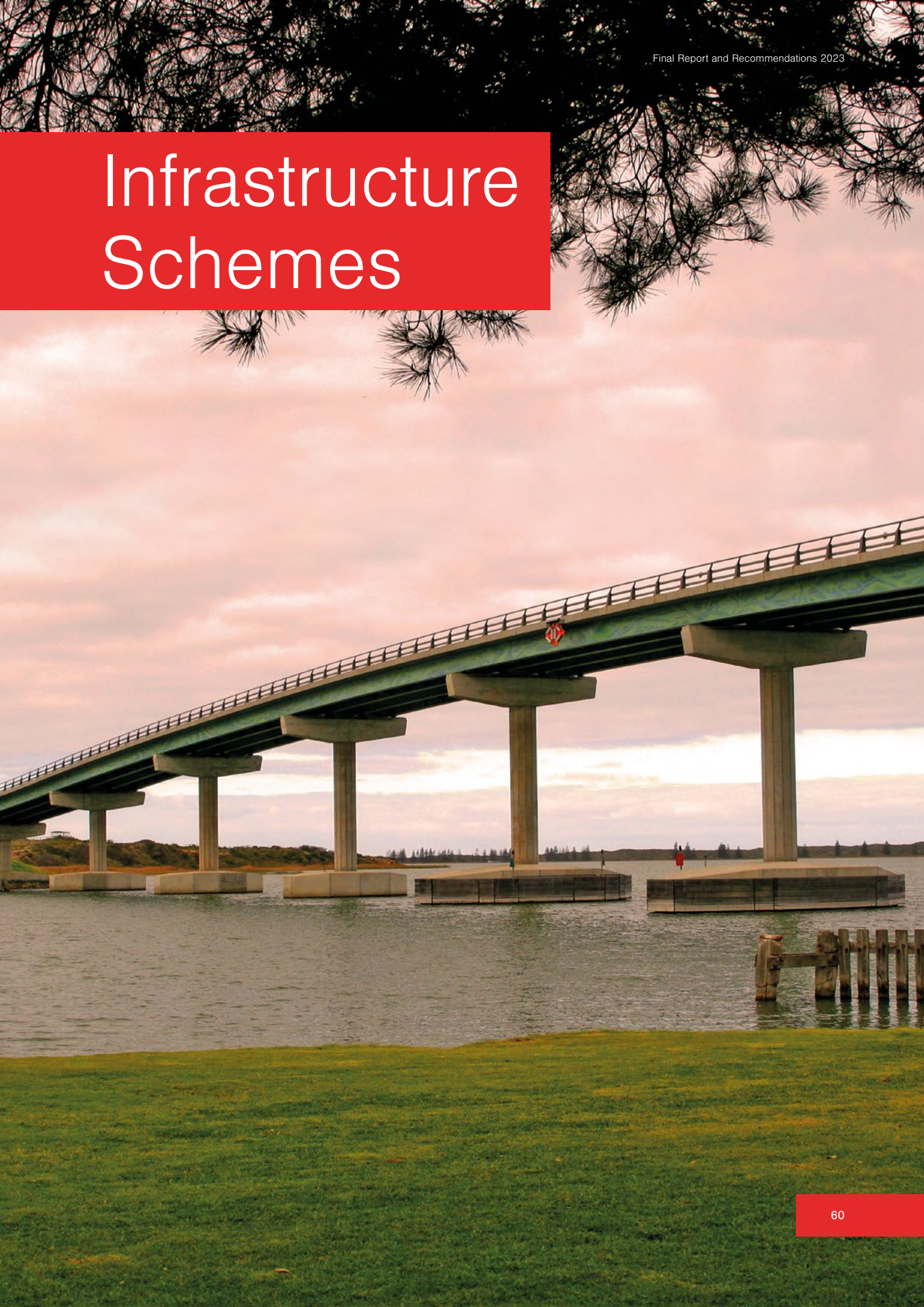
On this basis, the Panel recommends the assessment of Impact Assessed (Declared) developments be reverted to a decision-making process analogous to that which existed under the former Development Act. It envisions the revised Impact Assessed (Declared) pathway will require an application to go through a Cabinet process, and the Governor will again be the ultimate decision maker (at the direction of the Government).

Whilst the Panel recognises this will add additional time to the processing and assessment of an Impact Assessed (Declared) development application, it will ensure all Ministers are appraised of the development and any complexities or matters associated with their portfolios, through the Cabinet process. Taking additional time is an acceptable price to pay to ensure better, more transparent development outcomes.

> ***A process which is whole-of-government and not limited to only the Minister for Planning's portfolio may bring a broader understanding and insight to development decisions, and a greater appreciation of the role and benefits of the planning system across government...greater transparency is a positive outcome.***[22]

22. City of Adelaide, Submission January 2023, 38.

Infrastructure Schemes



Recommendation 11

A Government business unit should be established to manage and implement infrastructure schemes.

It was apparent to the Panel that stakeholders find the current infrastructure scheme provisions difficult, unwieldly, and unworkable. There was near unilateral consensus for the revision and improvement of the provisions. However, very few submissions sought to suggest what or how this might be achieved.

The Panel discussed this issue at length, noting the ongoing difficulties the provisions are causing the industry and the complexities associated with the potential resolution of the same.

Through this discussion, the Panel became aware the Department has recently undertaken to review the application of infrastructure schemes (separate to this Review) and the outcomes of that work were kindly shared with the Panel. Interestingly, the findings largely aligned with the primary issues identified throughout the public consultation, namely the lack of 'upfront' funding availability and a body to oversee and manage schemes are the main roadblocks to their establishment.

On that basis, prior to recommending a wholesale rewrite of the infrastructure scheme provisions, the Panel had determined the Government should first attempt to aid in their use through the provision of appropriate funding and scheme guidance.

The Panel considers this would best be facilitated through the establishment of a business unit within a Government agency which focuses on the management and implementation of infrastructure schemes.

Importantly, in February 2023 (whilst the Panel was preparing this Report), the State Government announced the establishment of the Infrastructure Planning and Development Unit (IPDU), which will sit within the Department. The Panel understands the IPDU will be responsible for coordinating the provision of infrastructure and utilities and has been created to drive residential developments. The announcement of the IPDU was coordinated with the Government's announcement that it is fast tracking the release of residential land to enable the development of nearly 24,000 homes.

The full functions of the IPDU are not yet known. Accordingly, the Panel thought it necessary to retain its initial recommendation to ensure its views and commentary pertaining to infrastructure schemes (and how a business unit may assist their facilitation) is not lost. This equally ensures the opportunities identified by the Panel may be progressed by IPDU or another suitable Government business unit, as appropriate.

> ***A whole of government approach that provides a single point of contact to improve the coordination of infrastructure provision and provides funding that includes private sector infrastructure providers such as SA Water and SAPN is required. A lead government agency should be appointed to lead and drive the coordination.***[23]

23. URPS, Submission December 2022, 3.

The Panel envisages that the responsibilities of the infrastructure business unit (being the IPDU or a suitable alternative) should include, but not be limited to:

- sourcing and obtaining funding and financing opportunities for the delivery of infrastructure, potentially including the investigation of the State providing the much needed 'up front' funding in appropriate circumstances, which could be recouped over the life of the development;
- investigating opportunities for legislative reform to improve the scheme establishment process, which may include considering the opportunity to combine precinct planning and infrastructure (this could potentially occur through the *Urban Renewal Act 1995);*
- being responsible for State infrastructure planning for infrastructure items in growth areas that are outside the remit of Infrastructure SA. This could include providing the framework for infrastructure planning at a State level, down to local delivery;
- facilitating conversations between the private sector, local government and state Government agencies;
- providing more guidance (through expertise and guidelines) around when an infrastructure Deed should and should not be used based on scale and complexity (and where a scheme would be more appropriate);
- working to educate the industry around the use of different 'tools' in different circumstances i.e. structure planning and master planning, to ensure infrastructure is costed, negotiated and delivered;
- undertaking strategic infrastructure planning for privately held re-development areas; and
- preparing Scheme Standards for matters such as cost and the level of detail to be included in the scheme documentation, to ensure consistent and clear expectations for all parties when establishing an infrastructure scheme.

In addition to the above, there would also be value in considering positioning the IPDU (or an alternative business unit) in a central Government agency (such as the Department of the Premier and Cabinet or Department of Treasury and Finance) to enable centralised coordination and funding for infrastructure schemes.

The Panel considers the implementation and establishment of a business unit of this nature could provide the 'missing piece' to the infrastructure scheme provisions in the PDI Act, thus making them not only workable, but also attractive. Indeed, in circumstances where funding can be provided 'up front' by the State Government, it is likely that both the private sector and local government will be more open to utilising schemes in their current form.

The intent of the infrastructure scheme provisions in the PDI Act is acknowledged, and the Panel understands what the legislature was attempting to achieve with them. However, the execution of that intent has fallen short, thus leaving both the private sector and local government uncertain how an infrastructure scheme would work practically.

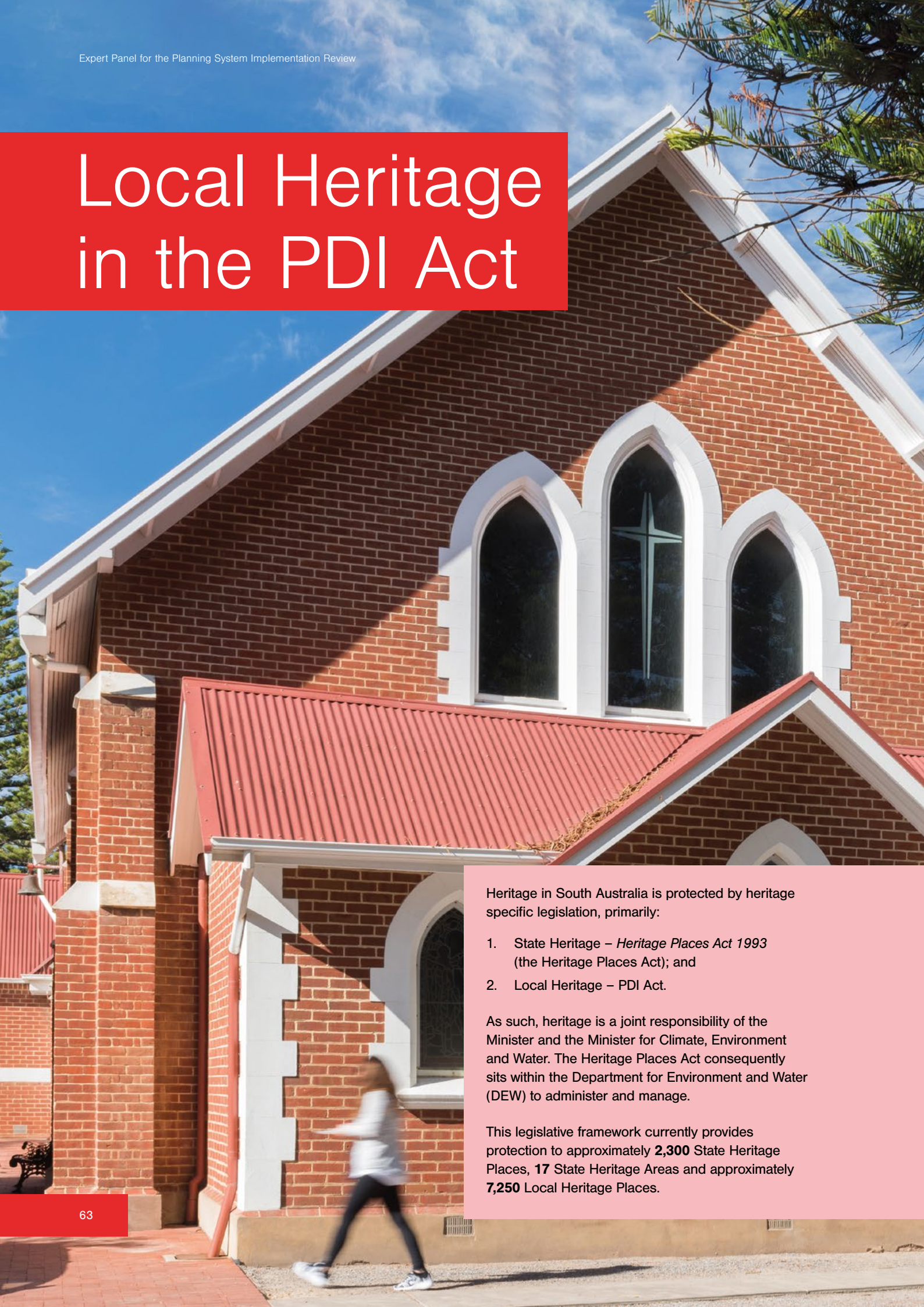
Whilst the introduction of a business unit does not solve all the issues, it would provide an element of independence, being it is separate from the proponents of proposed infrastructure schemes. This, of itself, would be a positive step forward, noting this has been an industry concern with schemes and the timing of the appointment of the Scheme Coordinator pursuant to section 165 of the PDI Act.

If the IPDU is unable to improve the situation following a few years of operation, consideration should be given to a review of the relevant provisions of the PDI Act.

> ***A whole of government approach, bringing key agencies into the planning process, would address the needs and expectations of State level agencies involved with amongst other matters, transport infrastructure, education, health and wellbeing, emergency services, environment, recreation and sport and of course local government. The key facilitator of such a forum would be an empowered authority with a legislative scope to drive land use and infrastructure coordination.[24]***

24. City of Onkaparinga, Submission January 2023, 4.

Local Heritage in the PDI Act



Heritage in South Australia is protected by heritage specific legislation, primarily:

1. State Heritage – *Heritage Places Act 1993* (the Heritage Places Act); and
2. Local Heritage – PDI Act.

As such, heritage is a joint responsibility of the Minister and the Minister for Climate, Environment and Water. The Heritage Places Act consequently sits within the Department for Environment and Water (DEW) to administer and manage.

This legislative framework currently provides protection to approximately **2,300** State Heritage Places, **17** State Heritage Areas and approximately **7,250** Local Heritage Places.

Recommendation 12

Local heritage should be removed from the *Planning, Development and Infrastructure Act 2016* and incorporated into the *Heritage Places Act 1993*, thus aligning State and local heritage listing processes.

The idea of combining the local and State heritage listing processes into the Heritage Places Act is not new and was identified in the Brian Hayes KC led Expert Panel in 2014. In its report *'Our Ideas for Reform'*, the then Expert Panel stated that heritage laws ought to be *'consolidated into one integrated statute'* [25] rather than continue to sit across both planning and heritage legislative instruments.

It was later pursued by the Environment Resources and Development Committee (ERDC) in 2019, where it recommended in its report 'An Inquiry into Heritage Reform' (Heritage Inquiry) that a suite of reforms be adopted that resulted, amongst other things, in:

> *Simple, efficient and responsive processes for the nomination, assessment and listing of local and state heritage places and state heritage areas, which arise from* ***a single piece of 'heritage' legislation****, in accordance w****ith the authority of one 'heritage' Minister*** *(including the provision of interim protection during the nomination and assessment stages).* [26]
>
> (our emphasis)

In its Discussion Paper, the Panel queried whether local heritage matters ought to be managed by heritage experts rather than planning professionals, thus creating legislative separation between heritage and planning.

The Panel received substantial, near universal, support in favour of this proposition. In some circumstances, this support related to the clarity a single piece of legislation would provide. However, in others, the support largely related to how overwhelmingly convoluted and expensive the local heritage listing process is under the PDI Act, and a hope a simpler pathway would be provided if local heritage was brought into the Heritage Places Act.

In this regard, the Panel heard that:

> *By our estimate there are some 45 steps involved in working through [the Local Heritage Listing] process, at a likely cost to Council of $50,000 - $60,000 (depending on scope of Engagement Plan and involvement of suitably qualified heritage experts). By contrast, there are in the order of 8 steps involved in the process of obtaining a State Heritage Listing for a property, at negligible cost to the nominator...*[28]

The Panel acknowledges and agrees it should not be more complex and/or more expensive to list a local heritage place than a State heritage place. Indeed, this complexity currently serves as a barrier to local heritage listings.

Noting the recommendations made by bodies that have come before the Panel, the Panel recognises it is not 're-inventing the wheel' in making this recommendation, but further endorsing the same.

However, through this transition to the Heritage Places Act, the Panel also considers there is utility in considering the role of Representative Buildings in the hierarchy of heritage and character.

Whilst the Panel understands this recommendation will have implications for DEW, it considers it necessary to again make this recommendation such that it may be advanced as soon as reasonably practicable.

> ***Council continues to support legislative reform, preferably by amendment, which gives effect to the ERDC Report recommendation that there should be a simple, transparent, more responsive, and lower-cost method of listing of Local Heritage Places (as exists for State Heritage Places).***[27]

25. South Australia's Expert Panel on Planning Reform, *Our Ideas for Reform* (Adelaide: 2014), 66.
26. Environment, Resources and Development Committee, *An Inquiry into Heritage Reform* (Adelaide: 2019), v.
27. SA Heritage Council, Submission December 2022, 3.
28. Scott McLuskey, Submission September 2022, 3.

Recommendation 13

Section 67(4) and 67(5) of the *Planning, Development and Infrastructure Act 2016* should be repealed, or otherwise never turned on.

Sections 67(4) and 67(5) currently prescribe that an area cannot be designated in the Code as an area constituting a heritage, character or preservation zone or subzone unless the amendment to the Code has been approved by **51 per cent** of relevant owners of allotments within the relevant area (based on one (1) owner per allotment being counted under a scheme prescribed by the PDI Regulations).

These provisions have not yet commenced and have remained inactive since the commencement of the PDI Act. However, as with the consolidation of heritage under one (1) statute, the Panel is not the first body to consider the inclusion of sections 67(4) and 67(5) in the PDI Act problematic.

This was also recognised and recommended by the ERDC Heritage Inquiry, which stated:

> *Sub-sections 67 (4) & (5) of the Planning Development and Infrastructure Act 2016* ***should be repealed*** *in order to ensure that planning policy is determined by proper planning principles through broad community consultation,* ***rather than through a selective vote*** *of property owners.*[29]
>
> (our emphasis)

The Legislative Review Committee endorsed the findings of the ERDC Heritage Inquiry in its 2019 Report, where it also recommended:

> *The Minister for Planning and Local Government implement each of the recommendations made by the Environment, Resources and Development Committee in its Inquiry into Heritage Reform (2019) as a matter of priority.*[30]

Indeed, as the Panel identified in its Discussion Paper, it is wholly inappropriate for heritage policy to be subject to a popularity contest. This is particularly as the purpose of heritage policy is to protect and retain heritage for the benefit of our State and future generations, and to preserve South Australia's history.

It was on this basis the Panel queried whether there was support for removing these provisions from the legislative framework.

Unsurprisingly, public feedback on this issue was resoundingly in favour of removing these subsections of the PDI Act, recognising their inclusion as nonsensical and unfavourable to character and heritage in our State.

The Panel subsequently recommends that sections 67(4) and 67(5) are removed from the PDI Act, or otherwise never turned on.

29. Environment, Resources and Development Committee, *Inquiry into Heritage Reform,* v.
30. Legislative Review Committee, *Planning Reform*, 178.

Deemed Consents

Section 125 of the PDI Act provides that where a Relevant Authority fails to determine a development application within the time prescribed by the PDI Regulations, the applicant may, before the application is decided, give the Relevant Authority a deemed consent notice that states planning consent should be granted. This applies for all DTS, PA and restricted development, as there are timeframes prescribed for the assessment of planning consent.

The assessment timeframes are set out in regulation 53 of the PDI Regulations and provide base assessment timeframes (which do not include additional time allowed for public notification and referrals) for each assessment pathway, as follows:

Deemed to Satisfy	5 Business Days
Performance Assessed	20 Business Days
Restricted Developments	60 Business Days

These assessment timeframes, partnered with the possible application of deemed consent, were one (1) of the primary criticisms of the new system the Panel received throughout its consultation. Namely, there was a view the system has become driven by time and efficiency, rather than by good planning outcomes.

The Panel also heard the deemed consent provisions are causing issues with stress and wellbeing, and anecdotally, they are the reason for some practitioners leaving the profession. It was on this basis many planning practitioners, industry bodies and local government called for the abolishment of deemed consents, and also advocated, in the alternative, for the provision of additional assessment time.

The Panel recognises the need for timeframes. Plainly, under the old system, the lack of accountability caused significant, sometimes excessive delays for applicants and a remedy was required. Indeed, the former Expert Panel on Planning Reform noted in its Report that industry and practitioners expressed concerns about assessment periods and suggested the introduction of measures such as mandatory timeframes and deemed approvals if timeframes are not met. [32]

The introduction of timeframes and assessment clocks has generally yielded positive outcomes for applicants as, for the first time, applicants are placed on even footing with Relevant Authorities and are able to ensure timely decisions are being made.

The Panel has consequently determined, on balance, there is value in the retention of deemed consents in the planning regime, despite the calls for their removal. In making this decision, the Panel acknowledges the deemed consent provisions are causing substantial angst to Relevant Authorities, but particularly to local government. A fact that is exacerbated by the resourcing difficulties the sector is currently faced with.

However, the somewhat surprising and unexpected consequence heard by the Panel was that the introduction of assessment timeframes has meant planners are unable to have positive relationships with applicants. Whilst it was not entirely clear what the premise for this conclusion was, the Panel can only deduce there is a perception that collaborative engagement with applicants is time consuming and will cause them to 'lose' valuable assessment time.

The Deemed Planning Consent provision is having extremely negative impacts on workplace culture, and contributing to staff leaving the local government sector.[31]

31. Local Government Assessment Managers Forum, Submission November 2022, 1.
32. South Australia's Expert Panel on Planning Reform, *What We Have Heard* (Adelaide: 2013), 78.

In the Panel's view, interaction with applicants is a fundamental responsibility of Relevant Authority planners, not only from a customer service perspective, but more importantly, from an outcome perspective. In the Panel's experience, developments that have been positively influenced by advice and communication from the assessing planner often result in better outcomes. The introduction of the new planning regime, assessment timeframes and/or the e-Planning system has not diminished this obligation.

Notwithstanding the above, the Panel equally recognises the submissions received largely called for the removal of the deemed consent provisions on the basis the assessment timeframes were unreasonable and placed too much pressure on planning practitioners.

It became apparent to the Panel the provision of additional assessment time would go some way to alleviating the apparent stress associated with the deemed consent provisions (recognising this may not wholly remove any concerns with the same). It has sought to provide some relief to Relevant Authorities in this regard, with the recommendation which follows.

Further, in making this determination, it must be recognised that for the period the PDI Act has been operable, the State and indeed the world, has undergone significant disruption through the pandemic. An interesting by-product of travel limitations has been a significant increase in development applications, with, at least anecdotally, people choosing to spend their money on home improvements, new builds (particularly through HomeBuilder) and development more generally. This increase in development applications has occurred alongside a once in a generation systemic change to the planning system, which has exacerbated both the benefits and constraints of the new regime and has seen Relevant Authorities assessing more applications, albeit now with the possible application of deemed consent.

The number of development applications received across the whole system since commencement, by month, is demonstrated in Figure 1 below. This indicates the peak of applications occurred in March 2022 (4,077 applications) and has dropped between 20 and 30 per cent (%) since that time.

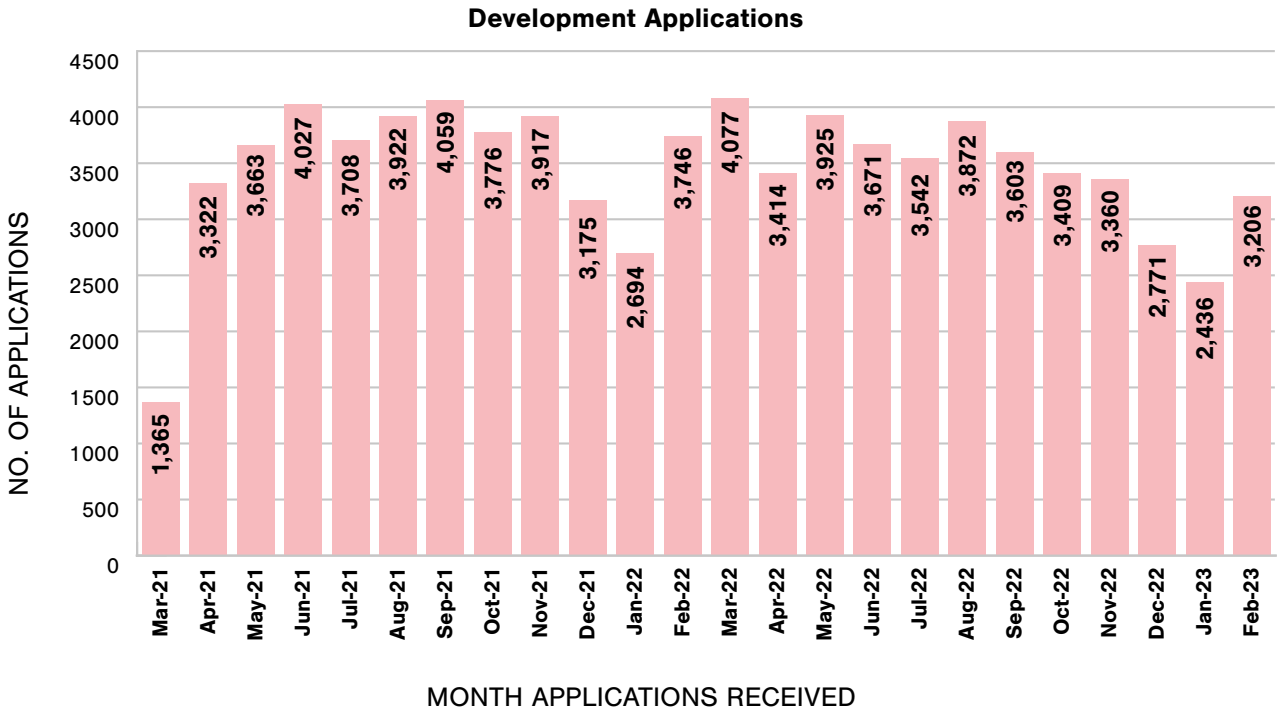


Figure 1: *Number of development applications received by month, between March 2021 and February 2023.*

Recommendation 14

Increase the assessment timeframe associated with Performance Assessed development applications to 30 business days for complex applications, thus increasing the time available before a Deemed Consent may be issued.

As noted earlier, the Panel heard throughout its public consultation the base timeframes provided in regulation 53 are insufficient, particularly when assessing complex development applications which require both internal and external referrals. Further, the Panel heard a (likely unintended) anomaly has arisen whereby longer timeframes are afforded to simple developments, and shorter timeframes to complex developments, subject to public notification and referral requirements.

This scenario was illustrated to the Panel in the following example:

> *A carport with a length of 12 metres on a side boundary in the Established Neighbourhood Zone attracts a maximum assessment timeframe of 70 days; inclusive of the 20 day base assessment, 30 days associated with public notification, and an additional 20 days to allow presentation of the matter to the relevant Assessment Panel.*
>
> *A three storey residential flat building comprise of a series of 8 townhouse style dwellings...in the Urban Corridor (Boulevard) Zone attracts a maximum assessment timeframe of 20 days. The same would be true of a four storey mixed use building with a ground level retail and apartments above.*[33]

The Panel agrees regulation 53 needs to be amended to remedy this anomaly and to recognise different development types will, by their very nature, take longer to assess.

The Panel advised in its Discussion Paper that an analysis of data since the inception of the PDI Act (and thus the ability for deemed consent) showed that up until 28 July 2022 (Period 1), there were **31 deemed** consent notices issued across **18 relevant authorities**. The Panel has sought an update to this data and confirms between 28 July 2022 and 14 February 2023 (Period 2), an additional **three (3)** deemed consents notices were issued to **2 relevant authorities**. Importantly, the notices issued in Period 2 were issued to authorities which also received notices in Period 1.

The Panel also advised in its Discussion Paper there were **over 5000** planning consents issued out of time in Period 1. These are all applications where a deemed consent could have been issued but was not. In Period 2, an **additional 1,671** consents were issued out of time. The Panel sought to further interrogate this data and was provided with additional information which identified **over 85 per cent (%)** of the consents issued out of time were PA development applications.

In addition, to inform its understanding of the issues being experienced by Relevant Authorities because of the assessment timeframes, the Panel was provided with data demonstrating the number of decisions made by each Relevant Authority within time and out of time, with their associated percentages (%).

The data associated with the bottom five (5) performing Relevant Authorities is reproduced in the following Table 3. The names of the Relevant Authorities have been redacted as the Panel does not seek to make this a 'name and shame' exercise, but rather, to demonstrate the extent to which decisions are being made out of time. These numbers can be attributed to many things, including but not limited to inadequate timeframes to undertake assessments and resourcing.

33. Scott McLuskey, 5.

Relevant Authority	Consent Decisions in Time	Consent Decisions Out of Time	% In Time	% Out of Time	Average Business Days Over Time
Council A	285	303	48.47%	51.53%	5.9
Council B	710	350	66.98%	33.02%	19.87
Council C	396	162	70.97%	29.03%	14.4
Assessment Panel A	874	321	73.14%	26.86%	14.6
Council D	781	274	74.03%	25.97%	11.01

Table 3: *Bottom five (5) performing Relevant Authorities based on assessment timeframes.*

In light of the above, and after much consideration, the Panel has determined an equitable solution to the stressors associated with deemed consent is to better align assessment timeframes with application complexity.

The Panel has determined that as PA development applications are most frequently assessed out of time and are, equally, the application type to traverse both simple and complex developments, revised assessment timeframes should only apply to this assessment pathway. It is apparent the timeframe afforded to both DTS and Restricted developments are fit for purpose.

Development assessment timeframes should be based on size and/or complexity of the proposed development. The Panel recommends this be achieved through building class. For example, the base assessment timeframes relating to PA development applications (per regulation 53(1)(b)) should be amended as follows:

Building Class	Base Assessment Timeframe
Class 1(a) when there are two (2) or less proposed; class 10a and 10b	20 Business Days
All other classes	30 Business Days
Any development in the absence of a building class	20 Business Days
Multiple element development applications will default to the time assigned to the element with the greater assessment timeframe.	

Table 4: *Proposed assessment timeframes based on building class.*

The above mentioned timeframes do not include or otherwise account for public notification, referrals or any other time that is added to the assessment clock by virtue of regulation 53.

The Panel hopes the provision of additional days not only assists Relevant Authorities and relieves some of the anxiety related to deemed consents, but equally encourages and promotes improved engagement with applicants to ensure better development outcomes.

Recommendation 15

The Deemed Consent provisions should apply to land division applications.

A Relevant Authority must determine an application for land division consent within 60 days pursuant to regulation 53(e) of the PDI Regulations. The Panel considers this is a reasonable timeframe to be applied to land division applications.

The data provided to the Panel confirms that majority of land divisions are being considered within the legislated timeframes. However, there does not appear to be a justifiable reason for there to be no consequence in circumstances where the timeframes are exceeded.

In light of the above, the Panel considers there is merit in the deemed consent provisions being applied to land division consents to provide consistency and certainty to applicants and recommends section 125 of the PDI Act be amended to include land division consents.

Verification of Development Applications

Regulation 31 of the PDI Regulations provides, amongst other things, upon receipt of a development application under section 119 of the PDI Act, a Relevant Authority must:

- determine the nature of the development;
- if the application is for planning consent – identify the elements for assessment and the category (or categories) of development; and
- determine whether the Relevant Authority is the correct entity to assess the application,

within five (5) business days of receiving the application.

The purpose of verifying a development application is to identify the appropriate assessment pathway for a development, identify the Relevant Authority and to assign the appropriate assessment fees. There appears to be some confusion and uncertainty as to what the verification process is intended to do.

In the Panel's Discussion Paper, it indicated **16 per cent (%)** of all development applications were being verified out of time.

The Panel sought to further interrogate this data and, like deemed consents, identified that **over 80 per cent (%)** of out of time verifications were for PA development applications.

This was distilled to the Relevant Authority level, where the Panel was provided with the data pertaining to which Relevant Authorities are verifying the most applications out of time. This data is reproduced in Table 5 below. As with the deemed consent data, the names of the Relevant Authorities have been redacted as the Panel does not seek to make this a 'name and shame' exercise, but rather, a demonstration of the extent to which applications are being verified out of time.

The Panel identified in its Discussion Paper why it suspected there were delays in verification being undertaken. Through the Panel's public consultation on this issue, these suspicions were confirmed, with the Panel hearing the difficulties associated with verification were vast, involving not only difficulty in making the determination within the legislated verification timeframe, but also in obtaining suitable documentation upon which it could undertake the verification process.

Indeed, the consultation also confirmed (albeit somewhat 'off the record') that some Relevant Authorities were utilising the verification period to commence development assessment, thus gaining additional assessment days, and reducing the risk of a deemed consent notice being issued.

Relevant Authority	Assessments Commenced	Verified Out of Time	% Out of Time	Average No. Days Out of Time
Metropolitan				
Council A	1424	1065	74.7%	10
Council B	2932	1462	49%	7
Council C	2129	686	32%	4
Council D	3297	673	20%	4
Regional				
Council E	641	330	51.4%	5
Council F	991	491	49.5%	5
Council G	1212	317	26%	5
Council H	678	163	24%	14

Table 5: *Bottom five (5) performing Relevant Authorities based on verification.*

Recommendation 16

The State Planning Commission should prepare a Practice Direction regarding verification.

It is apparent each Relevant Authority undertakes verification in their own way, with some doing it far better than others. However, the difficulty that arises is there is no consistency or continuity in how the principles and requirements of verification are being applied.

The Panel considers there would be utility in the Commission preparing a Practice Direction on Verification Best Practice, which should equally include and identify guidance material pertaining to Requests for Mandatory Documentation.

Notably, the Panel understands that many Relevant Authorities are not appropriately communicating with applicants in the Request for Mandatory Documentation process. That is, in circumstances where the Relevant Authority issues a Request for Mandatory Documentation to undertake and/or complete verification, there is opportunity for it to advise an applicant not only what they require to complete verification, but also what concerns they may have with the application and what additional information may be required. Whilst the Panel understands some Relevant Authorities provide this early advice to the applicant, most do not.

The preparation of a Practice Direction on verification would not only assist Relevant Authorities but would equally provide assurance to applicants as to how they can expect the verification process to be undertaken. This will remove ambiguity and the inconsistent application of verification principles across Relevant Authorities.

Recommendation 17

The requirements of Schedule 8 of the *Planning, Development and Infrastructure (General) Regulations 2017* should be reviewed to ensure that a Relevant Authority is provided with sufficient information to assess the nature of the application and assessment pathway, at the time of verification.

The Panel frequently heard one (1) of the primary challenges associated with verification is the inadequate documentation provided by applicants for the purposes of Schedule 8 of the PDI Regulations, together with the requirements of Schedule 8 itself.

Submissions were received by the Panel which spoke of the type of information required by Schedule 8 and the fact it is too prescriptive for some forms of development (i.e. minor structures) and too relaxed for others. It was also identified there are currently no prescriptive requirements for some forms of development, for example the type of documentation required for a proposed change of land use development application.

In reflecting upon the purpose of verification – namely being to assign an assessment pathway and appropriate assessment fees – it is imperative the documentation requirements are clear and concise, and not left to interpretation.

On this basis, the Panel recommends the requirements of Schedule 8 are reviewed to ensure Relevant Authorities are provided with sufficient information to determine the nature of the application and the assessment pathway, at the time of verification.

Schedule 8 should have a more refined list of mandatory information for all types of development, such as a site plan or supporting reports. Without this the process is reliant on the assessment commencing and receiving the further information before being able to confirm the status of the application. It potentially compromises the ability to identify fees and all the elements as part of verification, identify the correct assessment pathway and notification requirements. It can also lead to extended timeframes, resolving changes and recommencement of processes for assessment.[34]

The Panel considers it would be appropriate for this review to contemplate matters including, but not limited to:

- requiring a Certificate of Title to be provided at the time of the application;
- whether there is scope for creating a refined list of mandatory documentation required to be provided with all forms of development; and/or
- specifying the level of detail required to be identified on plans.

It is highly recommended that a standard verification RFI/check list be developed (including the information specified in Schedule 8), so as to fast track the verification process and ensure all mandatory documentation is provided. This would also assist in ensuring verification is occurring within the prescribed timeframe.[35]

In addition, many submissions called for the development of an electronic verification checklist within the e-Planning portal. It was suggested this could be a mandatory information declaration checklist, which would require applicants to review their plans and confirm they have provided the requisite documentation in accordance with Schedule 8. The checklist should separately identify each piece of mandatory information required and require the applicant to confirm (via a checkbox or similar) that the same is being uploaded in the suite of application documents.

The Panel sees value in this inclusion and recommends investigations are undertaken to incorporate such a form.

34. City of Unley, Submission January 2023, 7
35. Eyre Peninsula Councils (Joint Submission), Submission January 2023, 4.

Recommendation 18

Increase the verification timeframe to align with development application complexity.

As noted earlier, pursuant to regulation 31(2) of the PDI Regulations, a relevant authority must verify a development application within five (5) days of receiving it.

However, as with the assessment timeframes discussed earlier in this Report, the Panel heard this 'blanket' verification timeframe does not account for the intricacies associated with complex development applications. This was particularly exemplified in circumstances where the verification process requires internal council referrals (for example, for engineering or traffic) which, of itself, may consume a significant portion of the five (5) business days.

On that basis, and to align verification with the Panel's approach to assessment timeframes, the Panel proposes verification timeframes be increased to align with development application complexity. The Panel recommends this is achieved through building class, to recognise the complexities that are associated with varying forms of development. The verification timeframes should be amended as follows:

Building Class	Verification Timeframe
Class 1(a) when there are two (2) or less proposed; class 10a and 10b	Default 5 Business Days
All other classes	10 Business Days
Any development in the absence of a building class	Default 5 Business Days
Multiple element development applications will default to the time assigned to the element with the greater verification timeframe.	

Table 6: *Proposed verification timeframes based on building class.*

Recommendation 19

The following recommendations are intrinsically linked and should be implemented together.

Recommendation 19.1

If an application is verified in less time than the legislated verification timeframe allows, any additional time available to verify the application should be added to the associated development assessment timeframe.

The current system of verification does not provide any incentives to Relevant Authorities to verify a development application as efficiently as possible. Whilst it enables five (5) days to verify, there is neither a reward nor penalty for those Relevant Authorities that verify development applications in less or more than the legislated timeframe.

To this end, the Panel considers there is utility in introducing a system whereby those Relevant Authorities which efficiently verify development applications are rewarded with having the remaining verification days added to their overall assessment timeframe. In these circumstances, the applicant is no worse off (noting that the prescribed number of verification days could have been utilised for verification alone) but rather, may be better off knowing their application is moving through the system.

This change would equally result in better verification data being obtained, as Relevant Authorities would be less likely to commence an assessment within the verification timeframe, as the Panel knows is occurring at present.

The Panel considers if verification is achieved in less than the legislated timeframe, the remaining number of business days should be **automatically applied** to the assessment timeframe by the e-Planning system. That is, Relevant Authorities should not have to apply to have the remaining verification days added to the assessment timeframe.

Recommendation 19.2

If the legislated verification timeframe is exceeded, any additional time taken to verify the application should be deducted from the associated development assessment timeframe.

In its Discussion Paper, the Panel posed the question as to whether there should be consequences imposed on a Relevant Authority if it fails to verify a development application in the timeframe prescribed by the legislation.

Unsurprisingly, the responses to this question were mixed, with the local government sector largely opposing and the private sector imploring the introduction of verification consequences.

The Panel heard numerous reasons why verification can often be delayed or extend past the legislated timeframe, as identified earlier in this Report. However, noting the verification period is at times being used to commence development assessment, the Panel considers it is appropriate for a consequence to be introduced.

The Panel has determined that an appropriate consequence for failing to verify a development application within the legislated timeframe is for those additional verification days to be deducted from the Relevant Authority's development assessment timeframe. This is juxtaposed with the Panel's above mentioned recommendation providing additional days for assessment when verification is achieved efficiently.

Accordingly, if a Relevant Authority takes seven (7) business days to verify a development application that would be assigned a five (5) business day verification timeframe, then two (2) business days would be deducted from the overall assessment timeframe. Accordingly, if the development was DTS, the Relevant Authority would need to assess the development application within three (3) business days, lest a deemed consent be issued. For the avoidance of doubt, the Panel does not intend the time taken for an applicant to pay the requisite fees will impact the development assessment timeframe.

As above, the Panel considers if verification exceeds the legislated timeframe, the additional number of business days taken to verify should be **automatically deducted** from the assessment timeframe by the e-Planning system. That is, applicants should not have to apply to have the assessment days deducted.

Separately, as a matter of process and to assist Relevant Authorities with managing their workflows, the Panel considers it would be appropriate for the e-Planning system to notify Assessment Managers (or otherwise a nominated person in private practices) that a verification timeframe is nearing conclusion. This will assist with providing oversight and mitigating circumstances whereby verifications are occurring out of time (and therefore assessment days are being deducted).

> ***The current verification timeframes are appropriate; however, a penalty may be appropriate if extended delays occur (i.e. reduction in overall assessment timeframe).***[36]

36. Eyre Peninsula Councils (Joint Submission), 3-4.

Recommendation 20

Land division verification should be recentralised.

Under the previous planning system, a land division application was required to be lodged through the Electronic Land Division Lodgement Site (EDALA), a State Government operated system. Upon lodgement in EDALA, Department staff would verify that the application met the requirements of the then Development Act prior to distributing it to the necessary authorities to commence the assessment process. This was a centralised verification portal.

However, upon the commencement of the PDI Act, despite all other aspects of the planning system becoming more centralised, the verification of land divisions was decentralised. This is because land divisions are now verified in the same manner as all other development applications – by the Relevant Authority.

The Panel heard from the Surveyors Board, being the industry body representing surveyors in South Australia, that de-centralising the verification process has resulted in inconsistencies in how land division verification is being approached.

Indeed, the Surveyors Board advised:

> *We now have each Council responsible for the verification of applications lodged in their Council area which results in 68 interpretations of the requirements of the Act. There are many examples of inconsistencies of this approach resulting in much difficulty providing information to the general public and developers as to how their application is going to progress.* [37]

In the interests of consistency, the Panel sees value in recentralising the land division verification process and recommends the same.

37 Surveyors Boards SA, Submission November 2022, 1

Minor Variations to Development Approvals

As noted earlier in this Report, the audits undertaken by the APS have identified several instances where Accredited Professionals are incorrectly applying the planning rules. The Panel has sought to mitigate this issue with recommendation 5.

However, a separate issue arises in connection with minor variations to approved developments and how the same are managed. Specifically, regulation 65 of the PDI Regulations provides that a Relevant Authority may grant a minor variation to a development authorisation previously granted under the PDI Act, and in those circumstances, no new Development Approval needs to be given.

Currently, regulation 65 should operate such that the Relevant Authority for the original consent makes the determination on whether the proposed variation is minor or not. If it is minor, the relevant council should be notified of any approved changes as a matter of course. Alternatively, if it is determined not to be minor and a variation assessment is undertaken, the relevant council would be advised of the same in reissuing the Development Approval inclusive of the variation.

The Panel heard there have been numerous instances of 'minor variations' being issued by Relevant Authorities after the grant of Development Approval for matters which are by no means minor, but which they cannot interfere with noting no new Development Approval needs to be issued.

This matter is exacerbated by the cumulative impacts of several minor variations being made after the issue of Development Approval.

Recommendation 21

The State Planning Commission investigate the cumulative impact of multiple minor variations and provide further guidance as to when a minor variation should and should not occur.

The Panel has identified a need for further investigations to be undertaken in relation to the cumulative impact of minor variations made pursuant to regulation 65. This is specifically in relation to those instances where multiple minor variations are requested following the issuing of a planning consent, such that the cumulative impact of those 'minor' amendments result in a change that may otherwise have been deemed worthy of re-assessment.

The Panel is conscious of ensuring the capacity to make minor variations following the issuing of a planning consent is not taken advantage of and used for inappropriate purposes. Whilst this does, to a degree, fall to the Relevant Authority to consider when making their assessment, it would be beneficial for additional guidance material to be provided as to how multiple minor variations are managed and when it is appropriate to require a variation application and full re-assessment (this may include, for example, where the minor variation relates to a trigger for public notification).

The Panel considers the Commission is best placed to lead these investigations and provide the guidance material to Relevant Authorities.

Recommendation 22

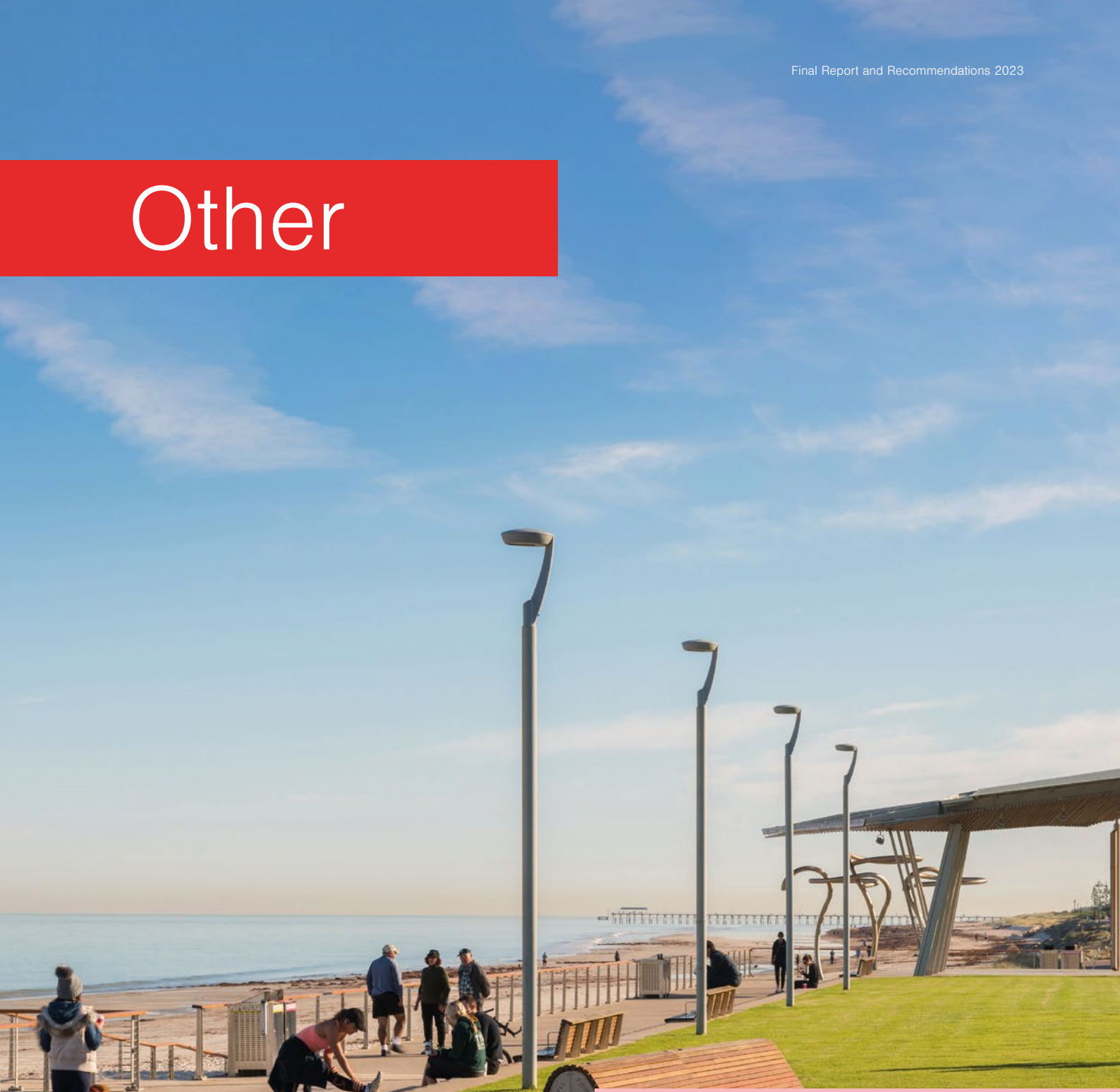
Minor variations to a planning consent once Development Approval has been issued should only be assessed by the relevant council.

In light of the above, the Panel considers it necessary to recommend minor variations to a planning consent should only be assessed by the relevant council (rather than the original Relevant Authority, if not a council) once Development Approval has been issued.

It also considers a timeframe to deal with minor variation applications made under regulation 65 is imposed. In this regard, it considers five (5) business days would be appropriate. This will ensure minor variation applications are not unnecessarily delayed.

Further, the Panel recommends this amendment should also provide an opportunity for applicants to obtain a deemed consent on a regulation 65 minor variation in circumstances where the relevant council fails to assess the minor variation within the legislated timeframe (whether five (5) business days or otherwise).

Other



As anticipated, the Panel received a significant amount of feedback beyond the topics identified in its PDI Act Discussion Paper. Having considered those submissions, the Panel has determined to make additional recommendations on the matters that follow, noting the frequency and validity in which those concerns were raised in submissions.

The following 'Other' recommendations only pertain to matters which relate to the PDI Act and the associated suite of Regulations. Recommendations falling into the 'Other' category for the Code and e-Planning/PlanSA are identified later in this Report.

Recommendation 23

The State Planning Commission should review the size and purpose of catalyst sites.

A catalyst site is a large site which provides opportunity for significant integrated development to occur. The intent of catalyst sites is to provide residential development in concert with small scale commercial development such as restaurants, cafes, and shops. The catalyst site policies apply within the City of Adelaide in the following locations:

- Business Neighbourhood Zone (Melbourne Street West Subzone)
- City Living Zone (East Terrace Subzone)
- City Main Street Zone (City High Street Subzone)
- Community Facilities Zone (St Andrews Hospital Precinct Subzone).

The Code provides policy dispensation to catalyst sites, allowing them to exceed prescribed maximum building heights and site coverage requirements.

A 'catalyst site' is currently identified in the Code as being a site greater than 1500 square metres. However, the MTECA proposes to insert the following definition of the term 'catalyst site' into the Code, to provide greater clarity:

> *Means a site greater than 1500m^2 , which may include one or more allotments.*

The notion of providing catalyst site policy is to ensure land available in appropriate locations is not underutilised and underdeveloped, and is premised on a view that *'design, setback and interfaces can be appropriately managed on larger sites'.* [38]

In the Panel's view, the current policies applying to catalyst sites in the Code are more representative of strategic sites. This view arises on the basis the criteria to establish a catalyst site is limited only to the size of the site, and consideration the requisite site size is not so large as to make it 'catalytic'. On that basis, the Panel believes the minimum size of catalyst sites needs to be dramatically increased so as to ensure the policy applies only to those truly catalytic sites and also to encourage the amalgamation of land. The Panel has not recommended the size a catalyst site should be, as this determination will fall for consideration in the course of the recommended review.

In addition, the Panel also considers there is opportunity to prescribe additional criteria for the creation of catalyst sites. This could include, but is not limited to, considering the merits of:

- applying additional incentive policy through both planning and non-planning mechanisms to encourage the creation of catalyst sites;
- including additional design parameters and/or expectations to ensure catalyst sites satisfactorily transition into the urban landscape;
- requiring the provision of a structure plan for catalyst sites to bring the community into the conversation at the policy level before approvals are sought and obtained;
- requiring an outline consent to be obtained for catalyst sites (acknowledging the need for a Practice Direction to be prepared in accordance with section 120 of the PDI Act) to give both the applicant and community certainty;
- preparing additional guidance material pertaining to catalyst sites and what is and is not capable of being deemed catalytic; and
- appeal rights.

The Panel makes these observations in recognition of the fact raising the size requirement for a catalyst site in the absence of additional policy is unlikely to result in innovative development.

In light of the above, the Panel recommends the Commission review the size and purpose of catalyst sites, with specific thought given to what it means for a site to be catalytic and how to best manage community expectations pertaining to the same. To achieve this, there may also be benefit in the Commission consulting and working collaboratively with the City of Adelaide.

The City of Adelaide is concerned that current catalyst site policies are insufficient to manage the transition in height and scale of development across the city. City of Adelaide cannot support catalyst sites in the city without stronger policy to achieve desired design quality. [39]

38. City of Adelaide, 10
39. City of Adelaide, 10

Recommendation 24

Demolition of all dwellings should be recorded on the e-Planning portal.

Pursuant to Schedule 4, clause 10 of the PDI Regulations, the demolition of buildings is an exempt form of development unless the building is a local heritage place or in a zone, subzone or overlay identified in the Code for the purposes of the regulation.

This contrasts with the position that previously existed under the former Development Act, as demolition was a form of development requiring application under that regime (albeit only a building rules application as it was excluded from requiring development plan consent).

Whilst the Panel understands the intent of this exclusion was to streamline demolitions and create efficiencies, it has resulted in a scenario whereby limited data is being captured as to the number of dwellings being demolished and the time periods demolition is occurring.

The Panel also heard this provision is negatively impacting councils' ability to oversee tree removals in its area as:

> *trees are being removed at the same time that a dwelling is being demolished. Councils have lost oversight over the trees that existed on the property prior to demolition, which allows the applicant to submit an application for a new development on a vacant site without any further scrutiny. Unless a complaint is made at the time that the trees are being cut down, Council generally has no knowledge of the work being undertaken and therefore cannot investigate the nature of any tree removals. With a view to regain this oversight, we advocate for the reintroduction of demolition assessments outside of the Local Heritage Place Overlay, State Heritage Place Overlay and Historic Area Overlay.*[40]

The Panel considers these factors together provide a sufficient basis upon which it recommends the introduction of a mandatory notification system through the e-Planning portal.

The Panel considers a mandatory notification system could require the relevant council to be notified of the planned demolition no less than five (5) business days prior to the demolition. This will give councils an opportunity to inspect the site if necessary and enable them to be aware of the number and location of demolitions occurring in their areas. There would be no obligation for the council to act or do anything following the notification.

If accepted, this recommendation will ensure councils are afforded the oversight they require, and will also facilitate data capture identifying when, where, and how many demolitions are occurring.

40. City of Burnside, Submission January 2023, 6.

Recommendation 25

Local government and State government collaborate to review and redevelop the Local Design Review Scheme.

A Local Design Review Scheme (LDRS) is established by section 121 of the PDI Act. In March 2021, the LDRS rules were endorsed and released by the former Minister for Planning.

Importantly, the fundamental features of the LDRS are:

- when established, local government retains the discretion to establish a Local Design Review Panel (LDRP); and
- in circumstances where a LDRP is established, development applicants are still required to 'opt in' to the Scheme. That is, local government may undertake to establish a LDRP, but there is no legislative obligation on an applicant to refer their development application to the LDRP for consideration and advice.

An additional, yet critical, aspect of the LDRS is that the advice rendered by a LDRP is not binding. Whilst it must be considered by the Relevant Authority assessing the development application *'insofar as may be relevant to the assessment of proposed development',*[41] it otherwise carries no weight. Accordingly, if a LDRP provided design revisions and advice to an applicant's development application, there is no basis to require that advice be actioned by the applicant in advance of the development assessment being undertaken.

It is unsurprising the Panel received feedback from both the local government sector and interested stakeholders (such as architects and the Office for Design and Architecture (ODASA)) that the LDRS is unlikely to be used in its current form.

Whilst it was broadly agreed the concept of the LDRS is good and has the potential to make a positive impact to the design of developments in our State, further work needs to be undertaken regarding the model and implementation of the same. Specifically, the Panel heard the LDRS places too much administrative burden on local government. Although it was recognised a degree of governance and rigour around the administration of the LDRS is required, the current requirements are too onerous.

The Panel cannot overlook the difficulties that have been identified in the implementation of the LDRS and recommends local and State governments collaborate to review and redevelop the LDRS into a more functional and attractive proposition.

In making this recommendation, the Panel acknowledges there were calls from stakeholders for a recommendation to be made mandating both the establishment and use of LDRPs. However, in this current housing market and noting the resourcing strains already being experienced by local government, the Panel does not consider imposing additional costs (both on applicants and on local governments) for this purpose, is an appropriate outcome at this time.

Notwithstanding the above, a possible interim measure that may be useful whilst additional local and State government consultation is occurring, is for the State to establish a State based local design review panel (noting a State based design review panel already exists for developments that will be assessed by the Commission or referred to the Government Architect) that could be voluntarily utilised by any persons, for any development, in any location across the state. This could be viewed as a 'pilot program' which would aid local governments in assessing the value and impact derived from the panel, thus informing their decision to invest in the establishment of their own LDRP.

Given the importance of achieving good design outcomes, the Panel also considers there are options for design advice (like those used for local heritage) to be implemented which may be efficient and effective.

41. *Planning, Development and Infrastructure Act 2016* (SA), section 121(7).

Recommendation 26

The State Planning Commission investigate implementing a land supply and demand monitoring program.

As noted earlier in this Report, the State Government has recently announced the rezoning of land in Hackham in Adelaide's south to facilitate master planned residential development. This land, together with additional parcels slated for rezoning in the coming years, form part of the approach to housing affordability and population growth.

However, the ongoing provision of residential land supply is a critical issue to be resolved.

The PDI Act requires the review of land supply through section 7 pertaining to the Environment Food Production Area (EFPA). The EFPA is land protected from urban encroachment in recognition of its rural, landscape, environmental or food production significance within Greater Adelaide.

Section 7(10) of the PDI Act currently provides that:

> *The Commission must conduct a review under subsection 9(b) on a 5 yearly basis.*

The intent of this review is to ensure there is sufficient land outside of the EFPA available to accommodate housing and employment growth over the long term, being at least a 15-year period. Only if the Commission finds there is insufficient land available for this purpose is it able to vary an EFPA.

In connection with long-term supply, the Panel had contemplated recommending the implementation of an ongoing land supply and demand monitoring program. However, it notes this was recently announced by the State Government in February 2023. The new Land Supply Dashboard is expected to make *"urban land supply and development activity data more timely, accessible, transparent, and interactive through an online platform".* [42]

Similar to other States, an annual land supply and development monitoring program will track the quantity and diversity of offerings, which is important to provide an evidence base for future growth management strategies and policy amendments. The results of an annual land supply and development monitoring program can be used to hold Local Government to account in meeting their density targets. [43]

The Panel has also identified the following opportunities worthy of the Government's consideration:

Frequency of Review

As identified above, the Commission is required to conduct a review of the EFPA on a five (5) yearly basis. It is also able to 'self-initiate' an inquiry for the purposes of reviewing the EFPA in accordance with section 7(9)(a).

The Panel considers there is opportunity to provide more certainty in the frequency of reviews going forward.

This may come through the amendment of section 7 to provide for more regular reviews of the EFPA (being at least, or more frequent than, the current five (5) year requirement) or alternatively, through the Commission's provision of a 'forward planner' for when it will be conducting self-initiated reviews.

The Panel considers this is important to ensure the Commission is responding to data and trends as that information becomes available, including Census data (noting the Commission's most recent review of the EFPA did not have the benefit of updated 2021 Census information) and information arising from the newly implemented land supply monitoring system.

Sub-regional Review

The Commission's EFPA review is to be undertaken on the land supply available within the whole of Greater Adelaide. However, noting changing and/or desired settlement patterns, the Panel considers there is utility in this assessment also being undertaken on a sub-regional basis.

This would assist in identifying where the future land supply is located, and would enable the community, local government, and industry to make adequate preparations for the same.

The implementation of a land supply monitoring program, in conjunction with the Commission undertaking more frequent EFPA reviews, will ensure the reviews are more nuanced and informed.

42. Government of South Australia, *Land Supply Dashboard to Support Housing Market Stabilisation* [Media Release], 28 February 2023.
43. City of Burnside, 15.

Recommendation 27

The State Planning Commission should review and amend the Community Engagement Charter to provide guidance on First Nations engagement.

The Panel sought feedback on the Review from the Aboriginal Affairs and Reconciliation (AAR) branch of the South Australian Attorney-General's Department. AAR is responsible for providing engagement, support and advice for Aboriginal people and Government.

At the outset, it is important for the Panel to acknowledge that there is significant activity occurring to reform the First Nations cultural heritage protections across Australia. This is occurring at a national level through the Australian Government's partnership with the First Nations Heritage Protection Alliance, together with the ongoing discussion and promised federal referendum on the Indigenous Voice to Parliament.

Locally, the South Australian Government introduced the *First Nations Voice Bill 2023* to Parliament in February 2023, fulfilling an election commitment to State-based implementation of the Uluru Statement from the Heart. The Bill has since passed both Houses of Parliament and was proclaimed as law on 26 March 2023.

It is in that context AAR's submission to the Panel detailed a desire for Aboriginal heritage to be considered earlier in the planning process.

Relevantly, the Commission is charged with the preparation and amendment of the Community Engagement Charter (the Charter) under section 45 of the PDI Act. The Panel considers it is appropriate for the Commission to initiate a review of the Charter and, following appropriate consultation, amend the same to ensure it provides guidance on how and when engagement with First Nations people must be facilitated.

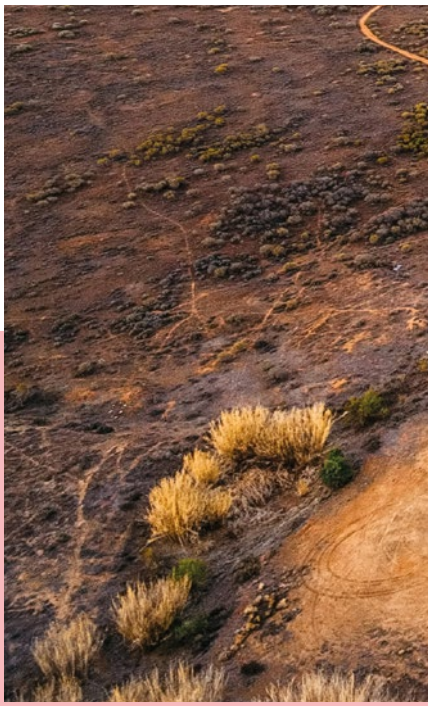
In conjunction with its review of the Charter, the Panel also considers it would be appropriate for the Commission to explore, what, if any, specific First Nations cultural heritage values ought to be reflected in the Code. This may include (but is not limited to) identifying what locations require specific cultural heritage policy to be included at zone level, rather than on a development-by-development basis.

If any policy of this nature is identified for incorporation in the Code, this will assist in triggering applicants to consider Aboriginal heritage at the commencement of a development project and will ensure planning decisions are well-informed.

In addition to the above, the Panel also received feedback there was an appetite to recognise and acknowledge First Nations cultures in the PDI Act. Specifically, it was suggested this could be included as an object of the Act under section 12, or as a Principle of Good Planning under section 14.

The *Queensland Planning Act 2016* was referenced as a precedent for this integration, where section 5(2)(d) of that statute provides that a way to advance the purposes of the legislation is to include *'valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition'.*

The Panel has opted to refrain from making a recommendation of this nature, but notes this could be a matter the South Australian First Nations Voice may have a view on when established.



Recommendation 28

The State Government should investigate and consider how planning is dealt with in out of council areas.

The Panel heard from the Outback Communities Authority (OCA) about the planning challenges being experienced in the out of council areas i.e., the South Australian outback. Importantly, by way of background, the OCA has responsibility for the management and local governance of the unincorporated areas of South Australia and is established pursuant to the *Outback Communities (Administration & Management) Act 2009.*

Pursuant to section 94(c) of the PDI Act, the Commission is the relevant authority for proposed development when the development is:

> *to be undertaken in a part of the State that is not (wholly or in part) within the area of a council, other than in a case where a regional assessment panel has been constituted in relation to that part of the State.*

The Panel understands no RAP has been established for out of council areas and the Commission remains the relevant authority. Further, *Practice Direction 7 – Inspection Policy for Out of Council Areas 2019* provides the rules for the inspection of new developments built in out of council areas in South Australia's outback.

Despite this, the Panel heard there are significant challenges associated with planning in the area managed by OCA and consequently, there are a number of unauthorised developments emerging that are not facing enforcement action, and which are at odds with the locality. The Panel understands this issue is being perpetuated by the lack of a continuous line of sight to what is occurring.

To that end, there may be opportunity to improve this scenario through the establishment of a specific body (potentially a RAP) which has the requisite local knowledge to undertake both assessment and enforcement functions in the out of council areas. This body should also consider how planning is managed in the outback to ensure more positive, consistent, and appropriate outcomes.

The Panel believes this is important as, noting the Government's promotion of regional tourism, the current unauthorised development will impact on tourists' perception of the northern part of the State.

Recommendation 29

The State Government, through Planning and Land Use Services, should aid and guide those Relevant Authorities struggling to verify and assess development applications within the prescribed timeframes.

In light of the data provided under the Deemed Consent and Verification chapters of this Report, it is clear there are some Relevant Authorities – namely local government – which are struggling to verify and assess development applications in the mandated timeframes.

The Panel has made recommendations to address the feedback it received regarding insufficient timeframes. However, if accepted by the Minister, those recommendations will (more likely than not) take some time to be implemented.

Accordingly, in the interim, the Panel recommends the State Government, through PLUS, reach out to those Relevant Authorities known to be underperforming and ascertain what specific issues they are experiencing.

As acknowledged earlier in this Report, the Panel understands there are significant resourcing issues being experienced in the local government sector which may be partially or wholly to blame in some circumstances. However, the Panel considers it critically important the difficulties are understood and where possible, assistance is provided to those Relevant Authorities as necessary.

For the avoidance of doubt, the Panel does not intend, nor does it recommend, for PLUS to become a pseudo training organisation. It considers training functions can and should be undertaken by membership bodies such as PIA and/or the Local Government Association.

However, the Panel considers there may be opportunity for PLUS to encourage and facilitate training to encourage the profession to continue to upskill. This could potentially evolve through the form of a mentoring program and/or hosting a performance-based planning 'bootcamp' across a number of days, several times a year. Facilitating initiatives of this nature may alleviate some of the issues being experienced in the transition to the new system, for both practitioners and Relevant Authorities.

PART THREE:
THE PLANNING AND DESIGN CODE

The Planning and Design Code

Prior to delving into the Panel's recommendations (and contextual comments for those recommendations) on the Code, it is prudent for the Panel to acknowledge a significant number of submissions sought specific, nuanced policy changes within the Code. That is, the submissions requested the Panel make recommendations pertaining to the application of singular policy provisions within the Code, often in respect of particular land parcels or areas.

Despite this, it must be appreciated the Code is over 5000 pages long and contains varied policy across overlays, zones and subzones. Whilst it remains true the Panel's ToR tasked it with reviewing the Code and specific matters therein, it is unfortunately not possible nor practical for the Panel to delve into the application and potential amendment of singular policy provisions.

The Panel considers its role is more strategic and systemic in nature, and its recommendations reflect the types of broad policy amendments that have capacity to facilitate substantive change to the way the planning system operates.

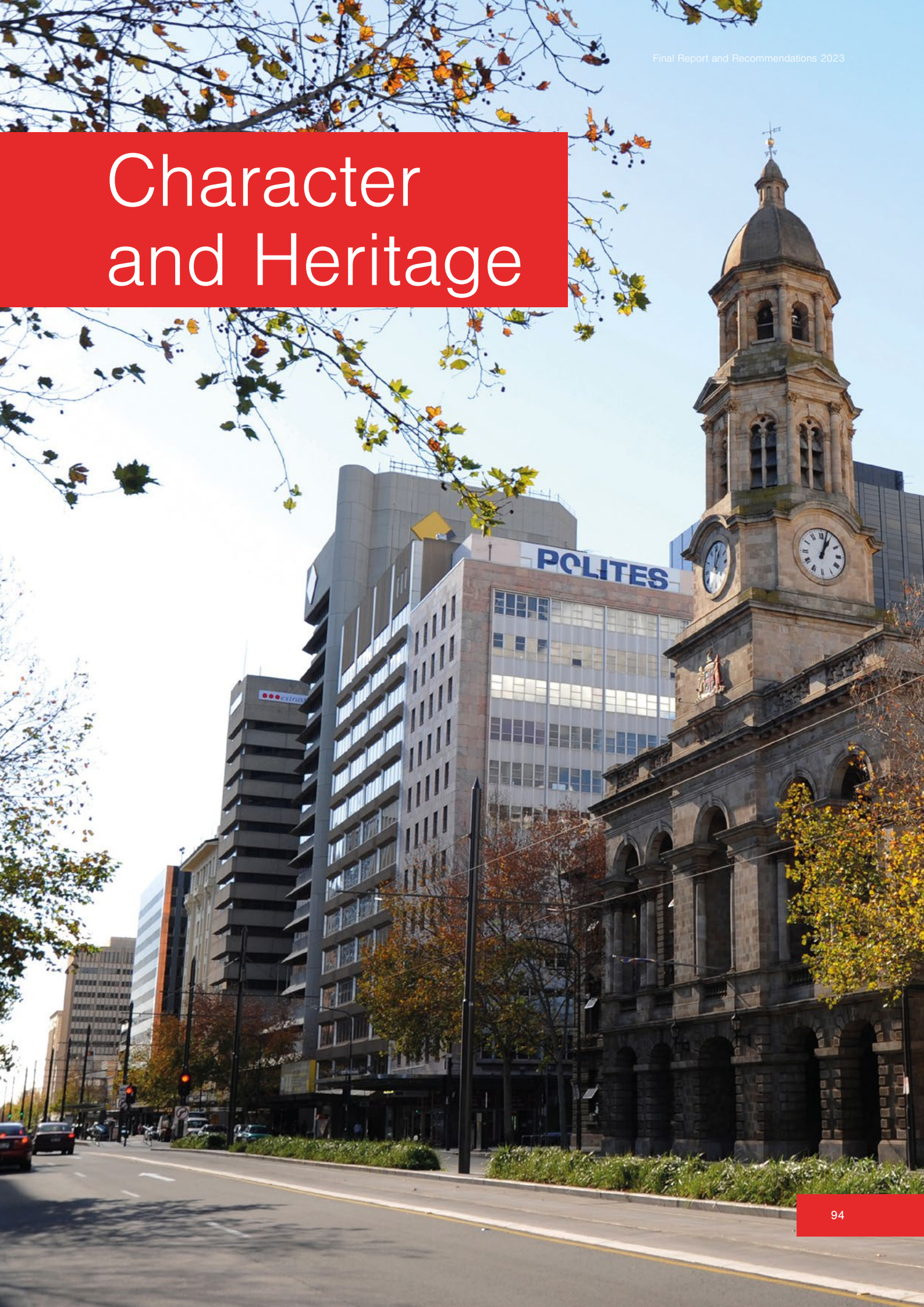
Whilst these recommendations will not satisfy everyone, particularly those that sought specific recommendations to be made in particular locations, it recognises a number of the requested policy changes have merit and ought to be pursued at an appropriate time, albeit through another channel.

To this end, it is appropriate to reiterate at this juncture the detail contained earlier in this Report pertaining to the spatial application of the Code. That is, in circumstances where councils are dissatisfied with the application of Code policy in particular locations, it remains incumbent upon them to undertake the investigations, provide justification for change, and discuss the same with PLUS. There equally remains opportunity for councils to initiate those changes of their own accord. Whilst the Panel recognises the desired amendments are not always able to be achieved through a Code amendment, it understands rezoning (potentially to include the application of TNVs) can assist in providing the additional guidance and 'local content' sought by local government.

In addition to the above, the Panel received submissions from councils which indicated, amongst other things, the policy provisions contained in the Code were not directive enough and required further amendment. These submissions often contained 'real life' examples (as requested by the Panel) to ensure the challenges arising from the policy were adequately communicated.

Rather than respond to each of the specific examples provided, the Panel has considered the submissions and examples in totality and has used that information to form the views and recommendations which follow.

Character and Heritage



As the Panel identified in its Discussion Paper, there has, for a long time, been a distinct misunderstanding between the terms 'character' and 'heritage'. It is important for these terms to be distinguished, as they each reference different attributes which enhance a locality, and which warrant preservation.

To assist in alleviating this confusion, the Panel contemplated relocating character and heritage recognition in the Code from overlays into their own separate zones.

However, noting the hierarchy of the Code and the need for character and heritage protections to be a prominent consideration in development assessment, the Panel determined to retain the status quo.

Notwithstanding, the Panel has opted to separate and distinguish the recommendations that follow. Accordingly, the Panel has provided recommendations on 'character and heritage', 'character' and 'heritage' separately. This separation recognises the proposed reforms do not equally apply to both places of character and places of heritage.

Early Recommendations to the Minister for Planning

The Panel's early recommendations on Character and Heritage matters were included and identified in its Discussion Papers. The Panel understands the Minister has accepted all the Panel's early recommendations on these topics and work is now underway to progress these.

The Panel's early recommendations on character and heritage matters stemmed from the Commission's 'three (3) pronged approach' to character and heritage reform, as presented to the Minister in August 2022. The three (3) prongs of the Commission's proposal were:

1. **Elevate Character Areas to Historic Areas**

   Support and facilitate councils to undertake Code Amendments to elevate existing Character Areas to Historic Areas (where appropriate criteria or justification exists).

   This option will allow demolition controls to apply across a broader area of the State, while still maintaining the integrity and consistency of the Code. Councils would be required to consult with their communities on any proposed Code Amendments to elevate character areas to historic areas.

   To facilitate this body of work, the Commission plans to request PLUS to prepare updated guidance materials to provide support to councils in undertaking this process. It is thought that those guidance materials will include detailed information requirements regarding the preparation of heritage surveys, as well as procedural requirements for undertaking Code Amendments.

2. **Character Area Statement Updates**

   Support and facilitate councils to review and update their 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.

   These enhanced Statements will provide a stronger focus on design which is bespoke to local character and heritage areas and will provide better tools for assessment of character and heritage values.

   To facilitate this body of work, the Commission plans to request that PLUS work with councils to better understand the current situation (that is, what is working, what is not working, and identify any gaps and deficiencies). PLUS will subsequently prepare guidance material to assist in the addition of policy content within the Statements for councils that want to pursue changes.

3. **Tougher demolition controls in Character Areas**

   Introduce a development assessment pathway that only allows for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved.

   This change is aimed at ensuring that existing buildings in Character or Historic Areas are only demolished when the replacement building is in keeping with the character or historic value of the area.

Following receipt of the three (3) pronged approach and noting that the Panel's ToR require it to consider character and heritage in the Code, the Minister referred the Commission's proposal to the Panel for its consideration. In doing so, the Minister also asked that the Panel provide its advice and early recommendations for those aspects of the Commission's proposal that it was willing to endorse. This is consistent with, and permitted by, the Panel's ToR.

The Panel considered the Commission's proposal and advised the Minister on 20 September 2022 of **its support** for 'prongs' one (1) and two (2). A copy of the Panel's letter to the Minister is **Appendix 5.**

The Panel resolved to provide early support for these two (2) prongs of the proposal on the basis they represent sensible improvements to the character and heritage framework in South Australia, and both can occur with limited intervention from the State. Indeed, the power already exists for councils to undertake the body of work envisioned by these reform proposals.

Despite this, the Panel recognises the preparation of guidance materials by PLUS would also substantially assist in empowering the local government sector to transition to enhanced heritage protections at a local level with greater certainty and in a consistent manner.

Separately, it also notes the advancement of these two (2) prongs would go some ways toward addressing the concerns that have been raised by stakeholders in several forums, particularly those around local policy and seeking additional guidance in character and heritage statements.

Noting prong three (3) is the most significant of the reforms proposed, the Panel determined to defer its advice to the Minister until it had conducted public consultation.

The feedback received, and the Panel's final position on this matter, is provided at recommendation 31 of this Report.

Recommendation 30

The State Government, through Planning and Land Use Services, prepare a template set of design guidelines for character and historic areas.

There are currently two (2) advisory documents that sit beside the Code to assist with the design of contextually responsive development in both heritage and character areas. The Panel considers these not only need updating, but a template set of guidelines should also be prepared for local governments to adapt for use in their areas.

The first advisory document is the Historic Area Overlay Design Advisory Guidelines (the Historic Guidelines) which provide guidance to applicants and designers on key design considerations to help achieve an appropriate contextually responsive design. The Historic Guidelines identify a range of common design attributes that may be relevant when responding to Desired Outcome 1 in the Historic Area Overlay. They are not intended to be a 'check list' to the design or assessment process, but rather support the Desired and Performance Outcomes of the Code. They are not additional policy.

The Historic Guidelines are also supported by Style Identification Advisory Guidelines which assist applicants and designers to identify places that display the historic themes and characteristics expressed by the Historic Area Statements. It is these places that the design of new development (or additions or alterations) should contextually respond to. In some areas, these places have been identified as Representative Buildings.

The second advisory document, the Character Area Overlay Design Guidelines (the Character Guidelines), fulfil a similar role to the guidelines above, but are applicable to development in areas subject to the Character Area Overlay.

Whilst these guidance documents exist, they are too broad and need enhancement through the inclusion of graphics and nuance to character types. On this basis, the Panel considers there is utility in PLUS creating a template set of design guidelines based on era (i.e. Victorian, Tudor, post-modern) which can then be adapted and implemented by local government based on the character and/or historic presentations found in their areas. The guidelines should be graphically rich to provide as much visual guidance to designers and applicants as possible. The adoption of the guidelines by councils should be subject to community feedback to ensure they meet community expectations.

The Panel considers these guidelines would replace the Historic Guidelines and Character Guidelines and could be applied in the same way. That is, there is no intention for the guidelines to be used as additional policy.

However, the benefit of their creation will be that the guidance material appropriately reflects the development design expectations of a community and what types of design features are desirable based on the prevailing style of homes in the locality.

Character

Recommendation 31

The Expert Panel supports the State Planning Commission's proposal to require a replacement building to be approved prior to demolition being able to occur in Character Areas.

As identified earlier in this Report, the Panel provided its support to the first two (2) 'prongs' of the Commission's character and heritage reform proposal in October 2022. However, it determined to reserve its decision on 'prong 3' subject to undertaking public consultation.

To recap, the Commission's 'prong 3' was:

> ***Tougher demolition controls in Character Areas***
>
> *Introduce a development assessment pathway that only allows for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved.*
>
> *This change is aimed at ensuring that existing buildings in Character or Historic Areas are only demolished when the replacement building is in keeping with the character or historic value of the area.*

The feedback the Panel received on this proposal was largely in favour of its introduction, with many submissions citing community certainty as a primary benefit. However, it is also noted many submissions recognised and identified the flaws of this proposal, namely it does not go as far as to require the approved replacement building to be constructed.

Having considered all the submissions pertaining to this matter, the Panel has determined to support the introduction of 'prong 3'. However, it recommends significant community education is undertaken alongside the implementation, ensuring there is broad understanding of the limitations of this policy. More specifically, the Panel considers it vital the community understand the creation of this assessment pathway will not wholly prevent the demolition of buildings in character areas or impose an obligation on an applicant to build an approved replacement building.

The Panel considers it is important to acknowledge this issue at the outset noting, if implemented, there will come a time when community expectations are not met, particularly if a site is left vacant for a lengthy period or if an approved replacement building is superseded with an alternative proposal following demolition.

It is likely that the introduction of 'prong 3' will result in a higher rate of investment in initial development applications and thus (hopefully) result in the construction of approved replacement buildings. However, this will, inevitably, not always be the case.

Despite this, the Panel also recognises, in circumstances where the first approved replacement building is superseded with an alternative proposal, the alternative proposal will **also need to be of a sufficient quality and design** to satisfy the requisite provisions of the Code. This will include satisfying the requirements of any Character Area Statements improved through the implementation of the Commission's 'prong 2' (as supported by the Panel).

Overall, the Panel considers, when taken together with 'prongs 1 and 2', the Commission's proposed 'prong 3' will help make applicants more aware of the expectations associated with designing contextually suitable buildings in character areas.

However, as one (1) submission recognised, upon implementation of 'prong 3', consideration will need to be given to the use of the term 'replacement building', noting the land use definition of this term provided in Part 7 of the Code which specifically relates to a new building which has *'the same, or substantially the same, layout and external appearance as the previous building'.*

Recommendation 32

The role of Representative Buildings should be reviewed.

The Panel received several submissions which sought increased visibility of Representative Buildings in the Code. This was raised for various reasons, including but not limited to, more clearly identifying Representative Buildings in the Code and also providing clarity about how Code policy ought to be applied to Representative Buildings.

There are currently 12,050 Representative Buildings identified in the Code.

As mentioned earlier in this Report, the MTECA (which is currently awaiting approval from the Minister) proposes to move the identification of Representative Buildings from the reference layers of SAPPA and add them to the spatial mapping layer of the Historic Area and Character Area Overlays, as appropriate. The intention is to make Representative Buildings more visible in the Code, thus creating more certainty for property owners and Relevant Authorities without elevating their status.

Whilst some submissions indicated this Code Amendment does not go far enough to protect or identify Representative Buildings and were critical of the fact they are only identified on SAAPA (rather than separately and individually listed in the Code), the Panel considers it is not able to recommend embedding the list of Representative Buildings in the Code policy. This is because listing the buildings individually would result in their perceived protection and an expectation Representative Buildings are elevated as a 'third tier' of heritage protection.

Notwithstanding the above, the Panel agrees with the submissions seeking more clarity as to how Code policies apply to Representative Buildings.

Importantly, the administrative definition of Representative Buildings provided in the Code states (in part) that they are:

> *...buildings which display characteristics of importance in a particular area.*

However, save for this definition and their reference in Historic Area and Character Area statements, the Code policies themselves do not refer to Representative Buildings. This has created a degree of confusion for Relevant Authorities as to how they are expected to apply certain Code policies to Representative Buildings.

For example, the demolition policy (PO 7.1) in the Historic Area Overlay states:

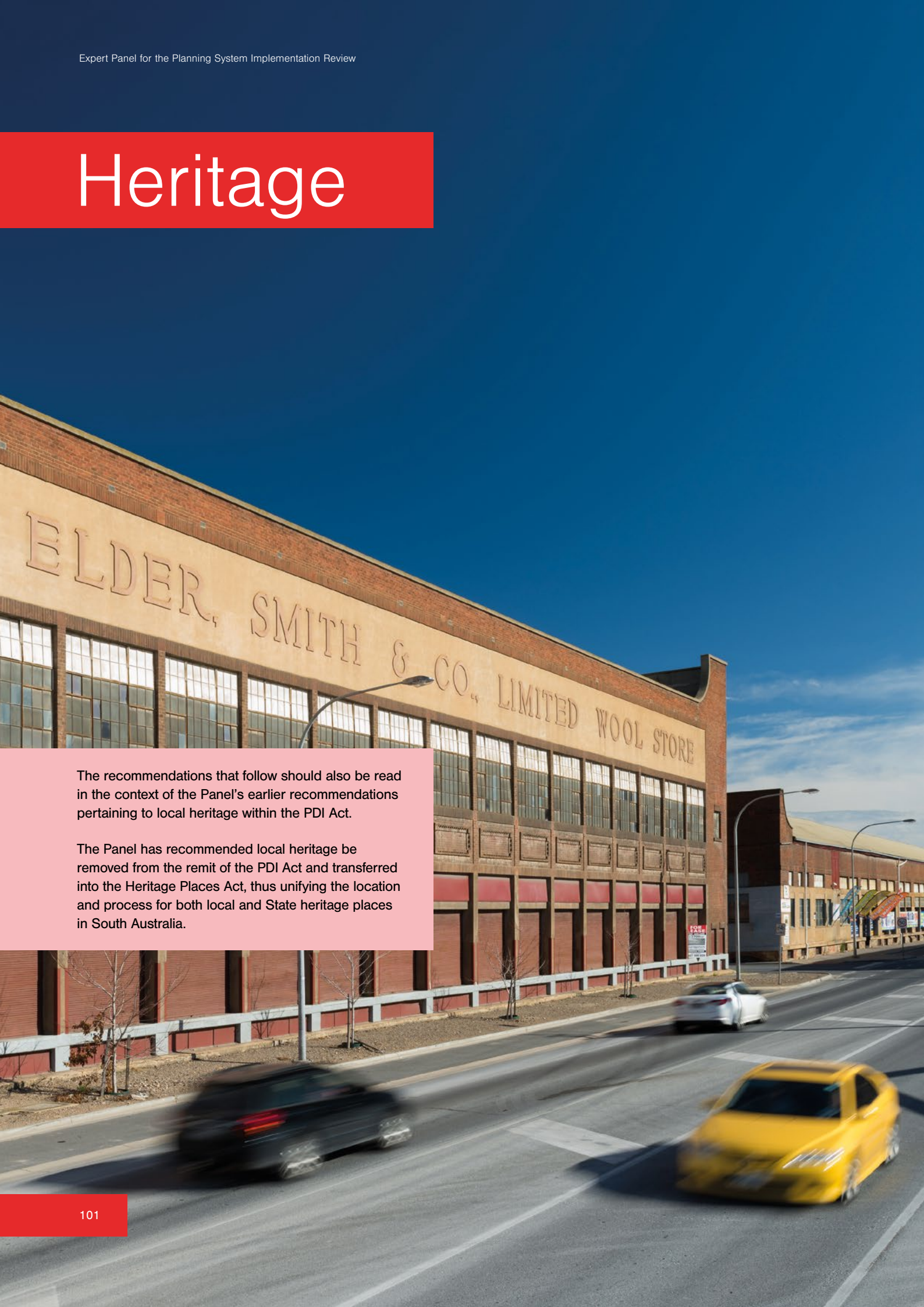
> *Buildings and structures, or features thereof, that demonstrate the historic characteristics as expressed in the Historic Area Statement are not demolished, unless:*
>
> *a. the front elevation of the building has been substantially altered and cannot be reasonably restored in a manner consistent with the building's original style; or*
>
> *b. the structural integrity or safe condition of the original building is beyond reasonable repair.*

The Panel was advised, in the absence of specific reference to Representative Buildings in this policy, it is unclear whether a Representative Building should be assumed to be a building which *'demonstrate(s) the historic characteristics as expressed in the Historic Area Statement'* and should therefore be retained in the absence of parts (a) and (b) being satisfied. Further, the Panel was advised when this was queried, the advice received indicated each building ought to be assessed individually on its merits, and no assumption can be made that a Representative Building is automatically worthy of retention.

In the Panel's view, if there can be no expectation of protection afforded to Representative Buildings, it is unclear what the utility of their inclusion in the Code is.

On this basis, it is recommended that the role of Representative Buildings be reviewed in the context of other recommendations made in this Report (i.e. recommendation 12).

Heritage



The recommendations that follow should also be read in the context of the Panel's earlier recommendations pertaining to local heritage within the PDI Act.

The Panel has recommended local heritage be removed from the remit of the PDI Act and transferred into the Heritage Places Act, thus unifying the location and process for both local and State heritage places in South Australia.

Recommendation 33

To facilitate greater adaptive reuse of heritage places, the Planning and Design Code should include a broader range of possible land uses for heritage places than those listed in the relevant zone or subzone.

The Panel recognises that adaptive reuse of heritage places is an important part of retaining and maintaining heritage in South Australia. This is reflected by the existence of *State Planning Policy 3: Adaptive Reuse*. However, notwithstanding the SPP, as it currently stands, the planning system does not facilitate adaptive reuse particularly well.

Whilst many of the barriers to adaptive reuse stem from the building rules and the requirement to adhere to safety and accessibility provisions (which is wholly reasonable and understandable), the Panel considers there is scope for the planning system to better assist and enable this form of redevelopment.

One such solution is for the Code to identify a broader range of land uses that may be appropriate in specific zones and subzones for the adaptive reuse of heritage places. For example, this may include permitting a heritage place to be adapted into a function centre in locations where that form of development is not otherwise envisaged.

Adaptive reuse is the process of repurposing buildings for viable new uses and modern functions, other than those originally intended to address present day needs, action and sustainable investment.[44]

In the Panel's view, land use concessions of this nature will encourage innovative redevelopment of heritage places, whilst equally recognising the location of a heritage place should not be a barrier to redevelopment.

It would also be appropriate for the Government to undertake further investigations to ascertain what other concessions may be available in the planning system to better promote and encourage the redevelopment of heritage places.

Council seeks the inclusion of strong adaptive reuse policies in the Code, giving greater concessions or scope for the redevelopment of State and Local Heritage Places e.g. a broader range of possible land uses than listed in the relevant Zone or Subzone.[45]

44. State Planning Commission, *State Planning Policies for South Australia,* (Adelaide: 2019), 34.
45. SA Heritage Council, 6.

Recommendation 34

The State Government resource the identification and assessment of heritage that is not within a council area.

As noted earlier in this Report, the Panel heard from the OCA in relation to planning difficulties being experienced in outback South Australia. Whilst the OCA raised the need for greater planning oversight in the out of council areas (as canvassed in recommendation 28), it also advised the Panel there were several potential State and local heritage places being decimated by poor development and simply, their lack of official recognition.

The OCA is aware of where a number of these heritage sites are and can provide this information as a starting point. However, it simply does not have the resources or capacity to undertake the identification and assessment of heritage across the entire out of council area.

On this basis, the Panel recommends the State Government shoulder this responsibility and resource the identification and assessment of heritage that is not within a council area. This could potentially be achieved using heritage consultants, noting when such consultants are engaged, better outcomes are achieved.

The identification and recognition of heritage will ensure the history of the State is better preserved in these locations and may equally enhance the interest and tourism capacities of out of council areas.

The Council requests that assistance is provided to the identification and assessment of Local Heritage Places in Land not within a Council Area. Over 60% of South Australia is not covered by a Local Council. It is noted that it is the responsibility of the State Planning Commission to prepare Heritage Code Amendments for these areas.[46]

46. SA Heritage Council, 6

Recommendation 35

On the basis that local heritage is transitioned to the *Heritage Places Act 1993*, the places currently identified as local heritage should be reviewed to ensure they meet all relevant criteria.

The Panel recommended earlier in this Report (recommendation 12) that local heritage is consolidated with State heritage in the Heritage Places Act. The acceptance and implementation of this recommendation would see heritage being managed cohesively across the State, by heritage experts.

However, the Panel has identified that, should the recommendation be accepted, an opportunity exists to audit all places currently identified as local heritage to ensure those places continue to meet the relevant criteria and the listing contains sufficient detail about the heritage value of the place.

A by-product of this audit could be that some local heritage places are removed from the list and will lose their protection. However, in the Panel's view, such an occurrence will be indicative of a property that should not have been listed at first instance.

> ***Council requests that such legislative reform also enables the audit and review of the current places on the Local and State Heritage lists as recommended by the Environment Resources and Development Committee in its Inquiry into Heritage Reform.***[47]

In addition to the above, the Panel also considers there would be value in the audit encompassing a review of the online local heritage register to not only ensure it is current, but to also ensure its usability. The Panel understands this online register is currently quite inflexible, difficult to use and requires revision. It also requires improved integration with SAPPA.

The Panel acknowledges any audit of local heritage places would be most appropriately conducted by local government with support from DEW.

> ***The South Australian Heritage Database, in which the Register is recorded, is more than twenty years old and is inflexible and difficult to access. Heritage owners, consultants and planners cannot easily find the information they need about why a place is of heritage significance and therefore which values should be protected.***[48]

47. SA Heritage Council, 3
48. SA Heritage Council, 6

Tree Policy

At the outset, the Panel acknowledges whilst some of the recommendations that follow would ordinarily be more suitably located in the PDI Act section of this Report, it determined to incorporate these recommendations in the Tree chapter to provide ease of access when considering tree related matters.

However, prior to providing its recommendations, the Panel considers it highly important to clarify the validity of a representation made to it in many of the submissions it received throughout its public consultation, specifically in relation to the claim that South Australia is purportedly losing approximately 75,000 trees per annum.

This figure is derived from the Conservation Council SA's 2021 report *'A Call to Action: Protection Adelaide's Tree Canopy'*, [49] where it states:

> *There was general agreement that:*
>
> - *Trees are under threat in our city – **Greater Adelaide is losing a phenomenal number of trees – about 75,000 trees per annum.** If this continues, there is no hope of reaching Adelaide's goal of becoming 'a green liveable city'.* [50]
>
> (our emphasis)

Importantly, whilst this number has been widely adopted by the community and media, in an article published by The Advertiser on 29 April 2021, the Conservation Council SA chief executive advised that:

> *the figure was a **"rough estimate" given lack of official figures.** He said the number was based on taking national tree canopy statistics, multiplying the area of Greater Adelaide by the percentage of tree canopy loss and dividing it by the canopy spread of a single tree.*
>
> *...*
>
> *"It's a rough estimate but it's based on the best data we have at the moment. And it gives a sense of the scale of the challenge we are facing, and the need for urgent law reform to turn it around".* [51]

Whilst the Panel does not dispute that South Australia's tree canopy is likely to be in decline, it is cautious about the wholesale reliance upon a number that is, on Conservation Council's own admission, a 'rough estimate'.

The true number will not be accurately known until year-on-year analysis of Light Detection and Ranging (LiDAR) data can be undertaken.

Unfortunately, the State Government LiDAR data is not, at the time of preparing this Report, available for the Panel's consideration or release. Accordingly, the Panel has not had the benefit of analysing the information that may be derived from the same. Notwithstanding, the Panel has made recommendations on trees in the interests of protecting them where appropriate. In doing so, it has had regard to the submissions received from the community, industry bodies and representative groups.

The Panel encourages the Government to take an evidence-based approach moving forward and to focus its strategies not only on those areas that need additional tree canopy cover, but also on uncovering the reasons why certain areas have limited cover. In this regard, the Panel also considers it is incumbent upon councils to enhance their street tree planting and replacement programs.

The best time to plant a tree was 20 years ago. The second-best time is now.

Chinese Proverb

49. Conservation Council SA, *A Call to Action: Protecting Adelaide' Tree Canopy'*, 2021.
50. Conservation Council, *A Call to Action, 2.*
51. Renato Castello, *75,000 trees a year destroyed across Adelaide according to a Conservation Council report,* The Advertiser (Adelaide, South Australia), 29 April 2021.

Early Recommendations to the Minister for Planning

On 7 December 2022, the Minister wrote to the Panel requesting it provide him with early advice regarding potential changes to the PDI Regulations as they relate to regulated and significant trees, and the associated offset costs and fees.

In considering and determining its early recommendations, the Panel had regard to the two (2) reports obtained by the Commission, being the Arborists Report titled *'Open Space and Tree Project – Part 1A (Arborist Review)'* [52] and the Research Report titled *'Urban Tree Protection in Australia: Review of Regulatory Matters'* (the Research Report). [53] The Panel also had regard to what it had heard to that point in time through the consultation process.

The Panel resolved to make the following early recommendations on tree regulations:

1. Circumference

Recommendation: The prescribed circumference of a regulated and significant tree be reduced with the intent of offering protection to a broader range of mature trees.

As it stands, Regulation 3F(1) of the PDI Regulations provides that in order for a tree to be deemed 'regulated', it must have a trunk circumference of at least two (2) metres, and in order for it to be deemed 'significant', it must have a trunk circumference of at least three (3) metres. Importantly, in the case of trees that have multiple trunks, the trunks must have an average circumference of 625mm or more (with the total circumference totalling at least two (2) metres (regulated) or three (3) metres (significant)).

The Research Report observed that the minimum trunk circumference used to trigger regulated and significant tree protections is too generous and recommended it be revised. It appears this is because, by comparison to other jurisdictions, South Australia requires the greatest minimum trunk circumference in the Nation before legislative tree protection is triggered.

The Panel has considered the submissions received during public consultation calling for this change, together with the reports prepared for the Commission, and concurs with the view that the current minimum trunk circumference is too high. It therefore **recommends** South Australia's minimum trunk circumference be significantly reduced to better align our tree protections with both other Australian jurisdictions, and community expectations.

The Panel has chosen to abstain from recommending what the revised minimum circumference should be (recognising additional analysis needs to be undertaken prior to arriving at this number). This analysis includes the impact on land supply (particularly infill) and consideration of the resourcing implications associated with increasing the number of development applications to be assessed.

In addition to the above, during its consultation the Panel received several submissions which advanced the notion that a state-wide minimum trunk circumference was inflexible, and these provisions ought to be applied based on the needs of individual areas, as occurs interstate.

However, notwithstanding these submissions, it is the Panel's view that revision to the minimum trunk circumference ought to result in protection being afforded to a far broader range of mature trees, such that the Regulation ought to remain a state-wide provision.

2. Canopy

Recommendation: The Government investigate the use of tree canopy as a measure of tree protection.

As was noted in the Research Report, South Australia is behind other Australian jurisdictions in not already affording tree protections based on the crown spread (also known as tree canopy) of a tree.

The Panel considers there is a sound basis upon which tree canopy ought to be introduced as a measure of tree protection. This is particularly in circumstances where South Australia's current policy position on urban trees is focused on the retention and increase of tree canopy cover.

The Panel therefore **recommends** the Government investigate the use of tree canopy as a measure of tree protection to recognise the value canopy provides not only to urban cooling and amenity, but also to biodiversity and public health.

52. Dean Nicolle, *Open Space and Trees Project – Part 1A (Arborist Review)*, (Adelaide: 2022).
53. R.L. Belder, K.D. Delaporte & S. Caddy-Retalic, *Urban tree protection in Australia: Review of regulatory matters,* (The University of Adelaide, 2022).

In addition, the Research Report also recognises:

> *Crown spread is an attractive metric for councils to use in determining tree protected status due to the ease of its determination for aerial photography, which is routinely examined during the development application process.* [54]

Noting the impending release of the advanced LiDAR data capture in South Australia, the ability to easily and accurately determine crown spread will be significantly improved, albeit not necessarily outside of Greater Adelaide.

As with the above mentioned circumference recommendation, the Panel has again chosen to abstain from recommending how crown spread ought to be measured, or what metric should be used.

3. Proximity Exemptions

Recommendation: The existing proximity exemption of ten (10) metres to a dwelling or swimming pool be significantly reduced.

The South Australian regulatory framework currently provides that a tree that would otherwise be protected based on its trunk circumference may be removed (without the need for development consent) if it is within ten (10) metres of an existing dwelling or an existing in-ground swimming pool (regulation 3F(4)(a) of the PDI Regulations). This exemption currently does not apply to Agonis flexuosa (Willow Myrtle) or Eucalyptus (any tree of the genus).

As is identified in the Research Report, the existing ten (10) metre proximity *"is likely to effectively remove protections for many urban trees in Adelaide, given ongoing urban infill".* [55] However, in circumstances where we are seeking to prioritise the retention and increase of tree canopy cover, it follows we should equally be making it more difficult to remove protected trees.

On this basis, the Panel **recommends** the existing ten (10) metre proximity exemption is significantly reduced to ensure protection is afforded to a far greater number of protected trees, and better aligns the protections provided in South Australia with interstate practices, community expectations and the State's tree canopy target.

The Panel has chosen not to recommend what reduction to the proximity exemption will constitute it being 'significantly reduced'. However, the reduction should aim to better align South Australia's regulatory regime with other jurisdictions, noting most councils studied in the Research Report (78.2%) did not list proximity to a structure as a legitimate reason for removing a protected tree. In circumstances where clearance distances were specified, those distances were modest by comparison to our existing regime, with majority requiring a tree to be within three (3) metres of a building and even closer to other structures.

Importantly, irrespective of what the proximity exemption is reduced to (should the Minister accept the Panel's recommendation), the Panel iterates that there would remain the opportunity for a development application to be made to facilitate a tree removal in appropriate circumstances, which would include (but not be limited to) a tree causing substantial damage to a major structure such as a dwelling.

Separately, albeit relevant to the application of proximity exemptions, the Panel received several submissions which raised practical issues pertaining to how an exclusion zone is measured. For example, queries were raised as to:

- what part of a dwelling should be included in the measurement i.e., should a measurement be taken from an alfresco or porch which is integrated in the main dwelling slab, but not be taken from a verandah addition?;
- what part of the tree should be included in the measurement in circumstances where, on some trees, it is difficult to ascertain where the trunk stops, and the root base begins; and
- how you accurately measure the distance between a tree and a dwelling/swimming pool when there are obstructions between them i.e., how would you measure the distance between a tree and a neighbour's house when there is a fence in between?

Whilst the Panel acknowledges some guidance is provided in Regulation 3F(5), there may be benefit in providing further guidelines and clarity on this matter in future, particularly in circumstances where the exemption is reduced.

54. Belder, Delaporte & Caddy-Retalic, Urban Tree Protection, 24.
55. Belder, Delaporte & Caddy-Retalic, Urban Tree Protection, 60.

4. Pruning

Recommendation: Pruning of protected trees only be permitted to occur at a rate of 30% once in every five (5) years.

Regulation 3F(6) of the PDI Regulations currently provides that, for the purposes of the definition of tree damaging activity in the PDI Act, pruning –

a. that does not remove more than 30% of the crown of the tree; and

b. that is required to remove —

i. dead or diseased wood; or

ii. branches that pose a material risk to a building; or

iii. branches to a tree that is located in an area frequently used by people and the branches pose a material risk to such people

is excluded from the ambit of that definition.

The Panel is of the view this approach to pruning is too broad and does not adequately protect trees. Anecdotally, and notwithstanding the qualifying requirements in Regulation 3F(6)(b)(i) – (iii), the Panel has heard that there are instances of people 'gaming the system' whereby they repeatedly prune 30% of a tree's canopy to a point at which it is no longer viable. The Panel is told this occurs particularly in circumstances where a tree is unlikely to be granted approval for removal.

To afford greater protection, and to ensure the permission to prune 30% of the canopy on each occasion is not taken advantage of, the Panel proposes a time limitation is also imposed upon the frequency at which 30% of the canopy is able to be removed.

The Panel considers permitting a frequency of 30% removal every five (5) years would act as a reasonable deterrent to those people that are otherwise 'gaming the system' as it currently stands.

If pruning is required more frequently than every five (5) years, there remains the ability for a development application to be made to achieve the same. There also remains the ability for urgent work relating to trees to be undertaken in accordance with section 136 of the PDI Act, if necessary.

The Panel anticipates there is capacity for this proposed regulatory measure to be enforced through utilization of the advanced LiDAR data capture that is slated for release later this year.

5. Species

Recommendation: The Government investigate and re-consider the need for the inclusion of an exempt species list in the Regulations.

Whilst the Panel appreciates there are certain 'nuisance' tree species that can have negative impacts on riverine and rural environments, as well as in National Parks, it equally recognises if the State's objective is to increase canopy, urban cooling, and biodiversity, it is imperative we encourage the retention of all trees. This is particularly in recognition of the fact all trees contribute, in some way or another, to those objectives.

To this end, the Panel queries what purpose or benefit is derived from having a lengthy exempt species list (currently found in regulation 3F(4)(b) of the Regulations) and recommends the Government investigate and reconsider the need for the same.

In the Panel's view, providing education on different species and encouraging the planting of appropriate species in appropriate locations is more important than providing exemptions permitting the wholesale removal of certain species. In this regard, the Panel acknowledges the collaborative efforts of DEW and PLUS in delivering the *'Adelaide Home Garden Guide for New Homes'.*

6. Off-set Fees

Recommendation: The off-set fees for the removal of regulated and significant trees are significantly increased, with that increase acknowledging the cost to local government of planting and maintaining replacement trees.

The Panel does not consider the current offset fees associated with the removal of regulated or significant trees ($312 per regulated tree and $468 per significant tree) are adequate and **recommends** the fee is significantly increased, with that fee appropriately reflecting and acknowledging the cost borne by society through the loss of the tree, and by local government in planting and maintaining

replacement trees. The Panel is also mindful of the additional cost to development and in particular, to the delivery of social and affordable housing.

The Panel has elected not to determine what dollar value ought to be assigned to the offset fee associated with the removal of a regulated or significant tree, noting the same will need to be considered in the context of economic analysis and various calculation methodologies.

However, as noted in its Discussion Paper on the Code, the Panel acknowledges the overall cost to amenity, history, biodiversity, and the urban heat effect is unlikely to be appropriately compensated by any offset fee imposed following the removal of a regulated or significant tree. This is because although the fee is intended to act as a deterrent and/or disincentive to removing trees, it does not necessarily truly appreciate the intrinsic value of the tree.

7. Interim Measures

Recommendation: The Government consider whether there are any interim measures able to be implemented to prevent a rush on tree removals.

It is acknowledged that the Panel's above mentioned early recommendations will, if accepted, result in substantial change to the current regulatory landscape and will result in significantly more trees being afforded protection from removal. This is, of course, the intention of the recommendations.

However, it is equally important to recognise that upon publication of these early recommendations, and/or any Regulation package that may be progressed pertaining to tree regulations, it is highly likely that there will be an influx of tree removals seeking to 'beat' the legislative changes.

To this end, the Panel **recommends** the Government consider what, if any, mechanisms are available to it in the interim to reduce the likelihood and/or significance of this occurring.

The Panel provided its early recommendations to the Minister on Monday 23 January 2023.

Recommendation 36

The State Government review and refine the intersection between the *Planning, Development and Infrastructure Act 2016* and *Native Vegetation Act 1991* to remove confusion within the community and development sector, to ensure native vegetation is retained.

A common theme raised throughout the public consultation was whilst the relationship between development and native vegetation has improved under the new planning system, it remains fraught with misaligned and/or overlapping requirements which make the intersection of the two (2) extremely difficult to navigate. Indeed, the Panel heard this is not only difficult for the community, but also for practitioners working in the field. Consequently, this results in conflicting information being provided by different agencies and authorities.

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.[56]

This feedback was wide-ranging but was particularly relevant to the application of exemption criteria across the two (2) systems and which will prevail in what circumstance.

It became apparent to the Panel that further investigation needs to be undertaken by the appropriate Government agencies (namely the Department and DEW) to better align the exemption criteria which exists within the planning regime and the *Native Vegetation Act 1991* (Native Vegetation Act).

This was further enforced by the provision of the Country Fire Service's (CFS) *'Position Statement: risk management of mature/large trees on residential properties'* (the Position Statement) to the Panel. The Position Statement is **Appendix 6** and was provided to the Panel upon its request for advice from the CFS regarding the removal of trees on the guise of bushfire protection.

Notably, the CFS advised *'mature trees located within 20m of a building, if maintained correctly, do not pose a significant fire risk to a building'.* Despite this, an exemption currently exists in the PDI Regulations whereby a regulated or significant tree may be removed, as of right, if it is within 20 metres of a dwelling when located within a Medium or High Bushfire Risk area within a Hazards (Bushfire Protection) Overlay of the Code (regulation 18(1)(b)).

The Panel received suggestions as to what improvements could be made, including designing the system such that one (1) takes precedence over the other in all circumstances (rather than situationally) to avoid duplication of approvals and processes and stopping the application of the Native Vegetation Act at township boundaries. There is merit in these propositions and the Panel supports the further consideration and investigation of the same, noting there are circumstances where a review of township zones would assist to ensure significant areas of native vegetation remain protected if currently within township boundaries. The current Regional Planning process provides an opportunity for these boundaries and areas of environmental value to be considered.

Anecdotal feedback from relevant authorities indicates that in order to work out what controls apply, a general understanding of the application of the Native Vegetation Act and Regulations is needed...This can lead to misinterpretation about when a development application is or is not required. To provide clarity for relevant authorities and applicants, there would be benefit in amending the legislation or releasing a Practice Direction together with preparing supporting material that clearly explains the relationship between the two controls.[57]

In the interim, there is also a need for further educative work to be done on both an industry and community basis to improve the understanding. The Panel considers that one (1) aspect of this could include the preparation of coordinated information documentation by PLUS and the Native Vegetation Branch of DEW as a single 'source of truth' on how the interaction between the systems works.

56. Mount Barker, 4.
57. Native Vegetation Council, Submission December 2022, 2.

Recommendation 37

The Planning and Design Code policy should support design innovation to enable the retention of trees.

As can be gleaned from the Panel's recommendations and the submissions it received to inform those recommendations, protecting, and retaining, trees is a high priority for the State. On that basis, the Panel considers there is a need to facilitate a mantra of *'keep the trees, achieve the yield'* to encourage applicants to retain trees using incentive policy.

The Panel makes this recommendation in recognition of the fact the retention of trees on a site often requires innovative approaches which are not currently reflected in the Code. Indeed, the way the Code policy is currently constructed, it is somewhat geared towards the wholesale clearance of a development site, as opposed to encouraging the retention of trees.

Accordingly, incentive could be provided through the flexible application of the Code policies in circumstances where an applicant seeks to retain trees on their site. This approach is consistent with a performance-based planning system which prioritises achieving the best outcomes for the site.

For example, as shown in Figure 2, the Panel considers in this scenario, where two (2) of the three (3) proposed allotments are smaller than that called for by the Code with regard to the allotment widths, the Code should facilitate concessions being made on the allotment widths to enable the retention of the two (2) large trees on this site.

This flexible approach could be emulated as necessary across Code policies (i.e., side and rear setbacks, access) to enable an applicant to achieve the same yield it otherwise would if the site was cleared of trees.

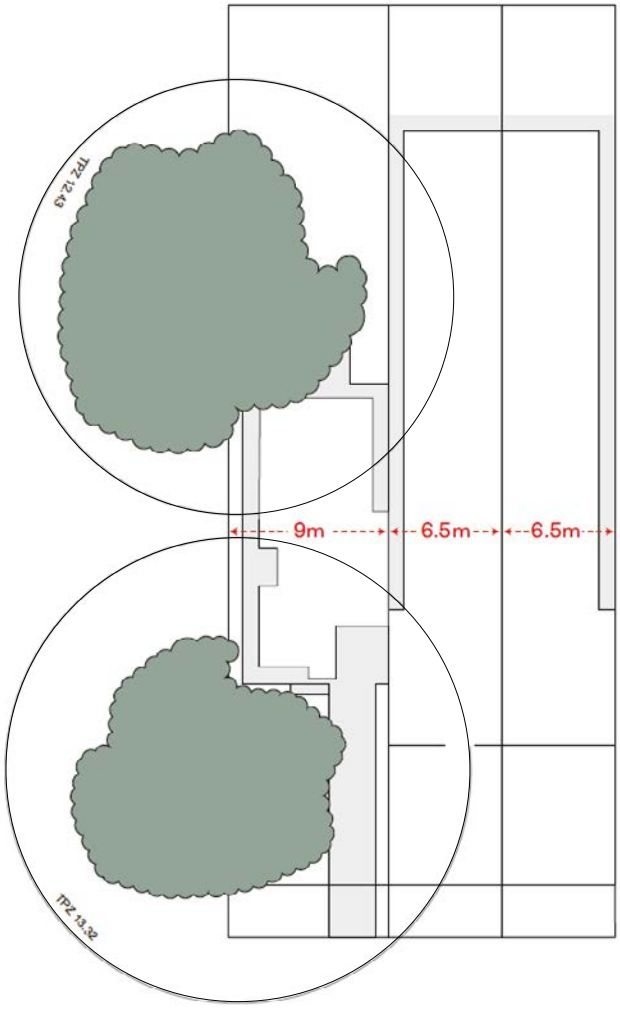


Figure 2: *An example of how incentive policy could apply where an application proposes to retain trees. TPZ means 'Tree Protection Zone'.*

Recommendation 38

Extend the application of the Urban Tree Canopy Overlay to all new allotments in the Master Planned Neighbourhood Zone.

The Urban Tree Canopy Overlay in the Code does not currently apply to the Master Planned Neighbourhood Zone. The initial rationale was those developments would provide sufficient open space and greening at master plan level, through parks and road reserves, such that there was no need to also require additional tree planting at allotment level.

However, as has been heard by the Panel, this is not meeting community expectations, particularly as the State is not expected to meet its tree canopy targets and is experiencing increased urban heat island effects across broader urban areas.

It follows that the Panel recommends, with near universal community support, the Urban Tree Canopy Overlay be applied to all new developments within the Overlay, inclusive of those established in the Master Planned Neighbourhood Zone. This will ensure that at least one (1) tree is planted on every new dwelling site where the Overlay applies.

In its Discussion Paper, the Panel also queried whether there should be a requirement for the tree to be planted in the rear of a dwelling site, to increase the potential for it to provide passive shade to neighbouring allotments. The feedback indicated there was no appetite to prescribe where the tree ought to be planted – its location was largely irrelevant so long as it was being planted and more importantly, checked upon to ensure ongoing growth and retention.

The Panel has consequently refrained from making a recommendation as to where the tree ought to be planted.

Recommendation 39

Extend the Urban Tree Canopy Overlay and the Regulated and Significant Tree Overlay to townships and address any anomalies in current township mapping for this purpose.

The Urban Tree Canopy Overlay and the Regulated and Significant Tree Overlay only currently apply to a portion of the Greater Adelaide Area. Maps demonstrating the coverage of the Overlays were included in the Panel's Discussion Paper on the Code.

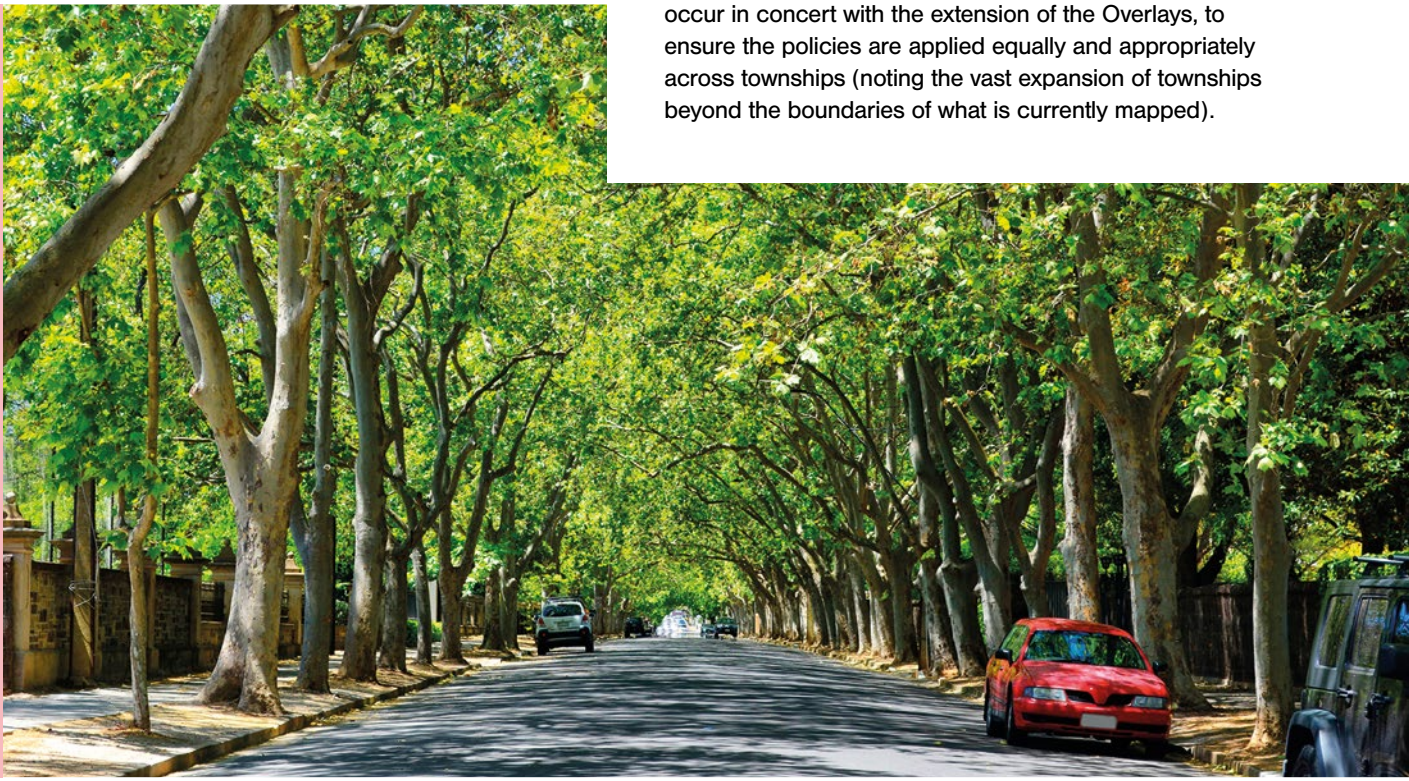
The application of the Overlays in the urban infill areas was intentional, being to target the locations where the most development activity was occurring, ensuring tree canopy was being protected where appropriate, but also provided alongside new developments. However, the Panel heard there is a desire for the Overlays to be extended into the regions noting:

> *The topic of tree canopy, safeguarding existing canopy and increasing overall tree canopy is just as applicable in rural townships as it is in urban areas and the implementation of the Urban Tree Canopy Overlay in rural townships would be beneficial to increasing tree canopy throughout these townships.*[58]

The Panel agrees there is merit in extending not only the Urban Tree Canopy Overlay, but both Overlays into townships to give those local authorities increased power and confidence that tree canopy is being protected, managed and (hopefully) increased in their communities. This is particularly pertinent noting the intrinsic value trees provide to a community and the known mental and physical wellness benefits communities experience in appropriately greened environments.

To this end, the Panel recommends the Urban Tree Canopy Overlay and the Regulated and Significant Tree Overlay be extended beyond the current metropolitan infill areas and applied to townships. The Panel has determined the Overlays should only apply within township boundaries.

However, in making this recommendation, it also notes many of the established township boundaries are out of date and additional mapping is required to be undertaken to update the same. The Panel considers this should occur in concert with the extension of the Overlays, to ensure the policies are applied equally and appropriately across townships (noting the vast expansion of townships beyond the boundaries of what is currently mapped).



58. Clare & Gilbert Valleys, 3

Recommendation 40

The Urban Tree Canopy Off-set Scheme fees are increased.

The Urban Tree Canopy Off-set Scheme (the Scheme) is an off-set contribution scheme established under Section 197 of the PDI Act and which has been established to support the Urban Tree Canopy Overlay in the Code.

The Scheme allows payment into the Urban Tree Canopy Off-set Fund (the Off-set Fund) in lieu of planting and/or retaining the required trees on site in designated areas where tree planting is not feasible.

The funds paid into the Off-set Fund are to be used for the planting, establishment, and maintenance of trees within reserves or public land anywhere within a designated local government area. It can also be used to purchase land within a designated local government area for the preservation or establishment of trees in areas with lower urban tree canopy levels or demonstrated loss of tree canopy.

The rate of payment into the Off-set Fund is determined by the Scheme and is currently calculated on the following basis:

Tree Size	Rate ($ per tree)
Small - minimum mature height of 4 metres and minimum mature spread of 2 metres	$300
Medium - minimum mature height of 6 metres and minimum mature spread of 4 metres	$600
Large- minimum mature height of 12 metres and minimum mature spread of 8 metres	$1,200

Table 7: *Current Off-set Scheme fees.*

The Panel noted in its Discussion Paper that it does not consider the costs associated with electing not to plant a tree (and instead paying into the Scheme) are high enough. This is particularly as they do not reflect the actual costs borne by local government in having to plant and maintain replacement trees elsewhere. The Panel maintains the view there is scope to refine the fees associated with the Scheme to better reflect this.

This proposition was supported by local government, who noted the costs to plant and maintain a replacement tree for a three (3) year period (the time required for it to establish) well exceed the current rates, with one (1) council advising it costs a minimum of $500.00 to plant and maintain a small tree.

The Panel made early recommendations to the Minister, one (1) of which included reviewing and increasing the costs associated with offsetting the removal of regulated and significant trees. The Panel did not recommend the dollar value that ought to be attributed in that circumstance, noting the varying methodologies and societal economics to be factored into that decision (which are beyond the expertise of this Panel). It similarly refrains from recommending what dollar value would be appropriately attributed to the Urban Tree Canopy Off-set Scheme.

Recommendation 41

The Government investigate what additional and/or alternative penalties are available for tree damaging activity to disincentivise poor behaviour.

Tree damaging activity relates to regulated trees and is currently defined in the PDI Act as:

a. the killing or destruction of a tree; or

b. the removal of a tree; or

c. the severing of branches, limbs, stems or trunk of a tree; or

d. the ringbarking, topping or lopping of a tree; or

e. any other substantial damage to a tree,

and includes any other act or activity that causes any of the foregoing to occur but does not include maintenance pruning that is not likely to affect adversely the general health and appearance of a tree or that is excluded by regulation from the ambit of this definition.

The penalty for tree damaging activity is incorporated into the general offences provision of the PDI Act (section 215) which attracts a maximum penalty of $120,000 with a default penalty of $500.

Whilst these are relatively high penalties, the Panel heard from several councils that the difficulty of successfully prosecuting a tree damaging offence is limited and currently not viewed as being an appropriate use of council resources.

In this regard, it is also appropriate for the Panel to acknowledge that section 225 of the PDI Act enables a designated entity to recover a civil penalty as an alternative to criminal proceedings. This can occur by negotiation or application to the ERD Court. To date, two (2) civil penalties have been imposed by metropolitan councils, both which relate to tree offences.

Whilst civil penalties attract a lesser burden of proof (balance of probabilities rather than beyond reasonable doubt), in the absence of an agreement to negotiate a civil penalty, there are still high costs associated with pursuing these proceedings in Court.

To this end, the Panel considers it would be beneficial for the Government to explore what additional and/or alternative penalties may be available for tree damaging activity to disincentivise poor behaviour.

This may include the creation of a stand-alone offence provision for tree-damaging activity, together with an expansion of the definition to more specifically include damage to tree roots, poisoning and/or excessive pruning.

The Panel has also considered how councils may be more empowered to pursue tree damaging offences. This could potentially include:

- increasing the maximum penalty for tree damaging activity, such as is imposed in other Australian jurisdictions (in Victoria it is a maximum penalty of $218,088, Western Australia $200,000 and New South Wales $1.1 million);
- enabling expiation notices to be issued 'on the spot' where council officers are aware of tree damaging activity occurring. It is thought this could be in addition to the power to issue an enforcement notice pursuant to section 213 directing a person to refrain from undertaking the tree damaging activity; and
- in light of section 225 above, investigating reversing the burden of proof in civil penalty proceedings that proceed to the ERD Court with a view to encourage more penalties by negotiation; and/or
- investigating reversing the burden of proof for tree damaging offences noting the complexities associated with a reverse burden, and equally, the appropriateness of introducing the same in South Australia.

Considering the raised community expectation around trees and tree retention, the Panel considers an alteration to these provisions would greatly assist in disincentivising the unauthorised removal and/or alteration of trees and would equally assist councils in pursuing enforcement action against those that do the wrong thing.

Separately, albeit relatedly, the Panel notes the Commission is currently responsible for authorising councils as designated entities for the purposes of section 225. However, in the interests of promoting and enabling councils to pursue enforcement action, the Panel supports consideration being given to the automatic designation of all councils by virtue of their status as an enforcement authority.

Recommendation 42

Investigations be undertaken to establish an independent arboriculture advisory body to provide advice on applications pertaining to significant trees.

The Panel heard there is increasing community and industry concern pertaining to the regulation of arborists and more specifically, to the appropriateness of the tree assessments that are being undertaken. The Panel was advised that:

> *... there is no independent way of determining if a tree assessment, lodged with a development application for example, is accurate. A scheme could be introduced to provide for* ***independent expertise*** *but some kind of accreditation process would be needed to determine who was appropriately qualified and trained to provide the expert advice...The Panel is asked to investigate the best way of providing independent tree advice* ***(potentially incorporating a tree advisory panel).***[59]
>
> (our emphasis)

The Panel understands an advisory body of the nature referred to above was attempted to be established some years ago by the Horticultural Media Association of South Australia. However, in the absence of a State based mandate, it was unable to commence.

Notwithstanding, the Panel considers it is now an appropriate time for the State to investigate the merits of establishing an independent arboriculture advisory body for the purpose of (potentially amongst other things) independently assessing development applications pertaining to significant trees.

It is thought this advisory body could be identified as a referral body within the PDI Regulations, which would afford it an ability to comment on development applications pertaining to significant trees. This comment could be in the form of advice as to whether it would or would not endorse the tree-damaging activity proposed in the application.

The Panel does not have a view as to what this advisory body would, should, or could look like. However, it has identified that the Botanic Gardens and State Herbarium of South Australia could have a role to play in the provision of advice as to how the advisory body operates and what skills would make a person appropriate to be appointed to it.

The intent of this idea for reform is to provide an independent advisory body to:

- assist local government in its requirement to resource qualified arborists to assess these types of applications;
- increase transparency in the assessment process; and
- increase consistency in the assessment process.

Separately, these investigations may also warrant consideration of whether a State based registration of arborists is warranted, together with auditing requirements, to ensure that appropriate, reasonable and well documented decisions are being made. This particularly arises from the anecdotal evidence that some arborists will recommend a tree be removed or retained in circumstances which do not support the same.

59. Green Adelaide, Submission December 2022, 10

Recommendation 43

Apply the tree regulations to all State Government projects.

Schedule 13(2)(1)(w) of the PDI Regulations provides State agency exemptions from requiring planning approval for tree damaging activity in relation to a regulated tree located on the site of a public school (or proposed site) or a State controlled road (or proposed road) and railway land.

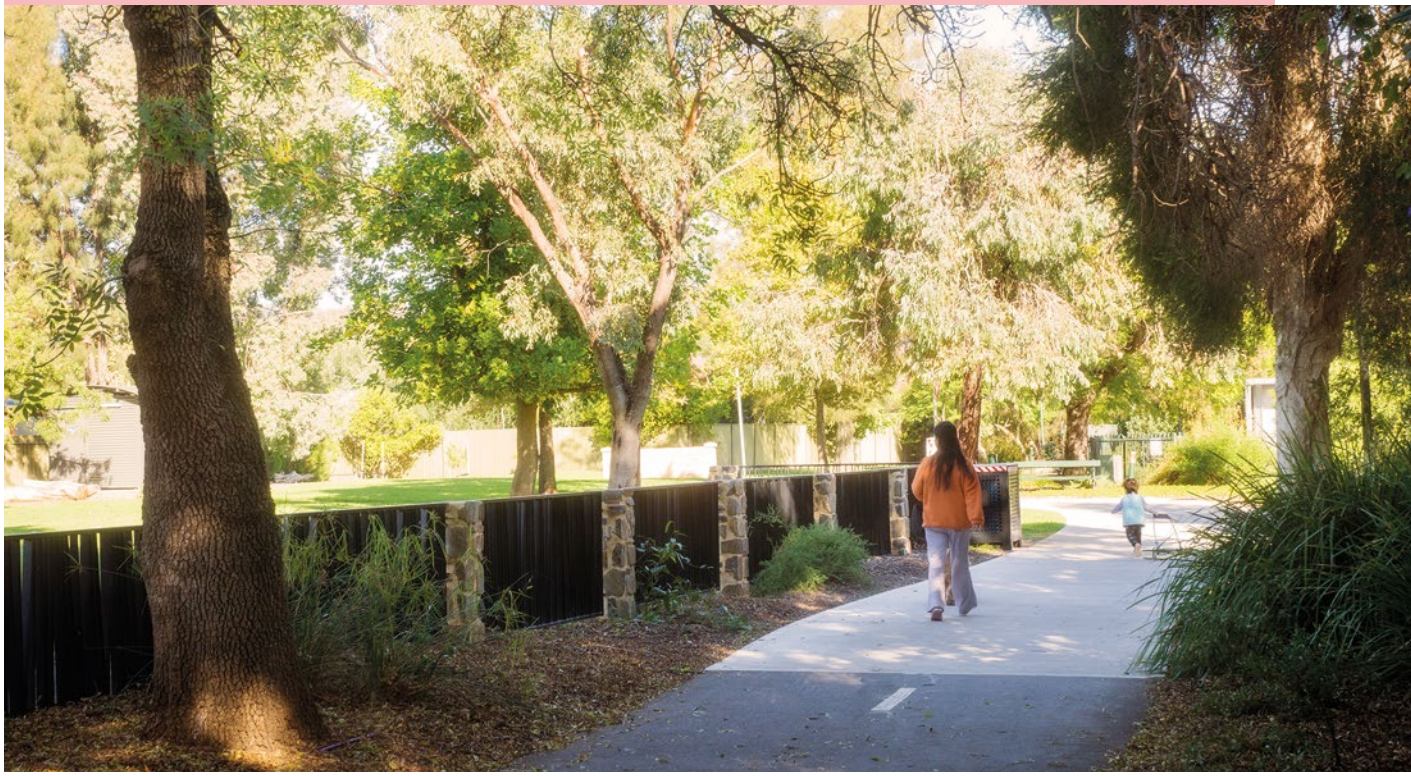
The effect of this exemption is to enable State led infrastructure projects and school expansions to remove regulated trees in the absence of considering the value of retaining the tree and (possibly) alternative proposals which may enable tree retention.

It is also noted that the exemption criteria are not tied to a new project, which provides the power for removal of a regulated tree in these locations for any reason the State deems necessary. Anecdotally, the Panel understands this often occurs on school sites in connection with trees which have falling limbs and are considered dangerous to children.

The Panel received submissions requesting it consider recommending removal of this exemption clause from the PDI Regulations, to ensure that Tree Damaging Activity be assessed with Crown Development applications.

It is apparent this exemption clause does not meet community expectations and is viewed as a 'double standard', particularly in circumstances where, as a State, we are seeking to encourage the retention and planting of trees.

In the Panel's view, the State needs to value tree retention in its Crown Developments as much as any other applicant and should aim to lead by example where possible.



Recommendation 44

The Government investigate what opportunities and mechanisms are available to encourage tree retention and planting on private land.

The Panel was asked to consider how there can be greater retention of trees on private land in light of the City of Unley's proposal to introduce its own tree offset scheme. The Panel has considered the Council's proposal and, recognising its intent is to increase tree canopy, notes the above mentioned recommendations made in this Final Report will, if implemented, provide greater tree protection and result in increased canopy.

Notwithstanding, the Panel also recognises there is an inherent need to 'share the load' and shoulder the responsibility of increasing tree canopy not only on applicants and Government (both local and State) but also on landowners that are not undertaking development.

To this end, the Panel considers there is opportunity to explore how these landowners are able to contribute to the expansion of our State tree canopy through a range of incentives. This could include, for example (and as identified for exploration in the Code Discussion Paper), the use of the Planning and Development Fund and/or other grant programs to provide funding for the:

- greening of car parking;
- greening of hardstand areas;
- greening of commercial industrial sites; and/or
- maintenance of regulated and significant trees.

The Panel recommends the Government undertake to investigate what opportunities and mechanisms may be available at a State level (including but not limited to mechanisms in the Code and the PDI Act) to encourage tree retention and planting on private land. In the Panel's view, this should consider not only opportunities associated with development, but also more generally. The Panel recognises DEW may also have a role to play here.

However, in making this recommendation, the Panel also opines the need for both levels of government – local and State – to invest in this significant issue. It is apparent to the Panel that tree canopy, greening and urban heat island effects are important to the community and further investment is required.

It is also appropriate for the Panel to recognise there are likely several additional incentives that may be implemented to encourage tree retention. Indeed, notwithstanding the Panel's above mentioned suggestions, incentives of this nature may better be determined at a local level, in recognition of the issues that are of importance in local communities.

In this regard, the Panel understands some councils are already doing this through grant programs and assistance funds. For example, it was advised one (1) council reimburses landowners up to 75% of the value of tree work, capped at a maximum of $2000, for the maintenance of regulated and significant trees on private land.

The Panel encourages and supports these types of community level incentives being rolled out across all councils.

Observations and Comments

Water Sensitive Urban Design and Biodiversity Sensitive Urban Design

The Panel received numerous submissions which referred to, or otherwise called for, greater recognition of water sensitive urban design (WSUD) and biodiversity sensitive urban design (BSUD) principles in the planning system.

WSUD can and will be achieved through the Urban Water Directions Statement and Greening Strategy. Indeed, the principles pertaining to WSUD are not new and are embedded in the Code.

In addition, in relation to BSUD, it is relevant to acknowledge the Government made an election commitment to introduce a Biodiversity Act in South Australia to ensure:

> *conservation outcomes are fully integrated into how we all live sustainably and prosper for the long-term. This legislation will integrate the goals of the Native Vegetation Act, the National Parks and Wildlife Act and the Landscapes SA Act and put the protection of biodiversity for the long-term at the centre of these laws. The Biodiversity Act will incorporate the knowledge of Aboriginal South Australians in the management of land and respect for its ecosystems.* [60]

The Panel considers it is premature for it to make recommendations in relation to the application of BSUD and the Biodiversity Act to the planning system.

60. South Australian Labor, *Plan for Biodiversity Protection* (Adelaide: 2021), 5

Infill Policy

The Panel's approach to infill and infill development policy is largely predicated on strategic planning outcomes being undertaken and achieved through the Regional Plans and local strategic plans. Its views on the need to prepare strategic plans are documented earlier in this Report.

Notwithstanding, the 30 Year Plan for Greater Adelaide (as prepared in 2017) sought 85 per cent (%) of all new housing in metropolitan Adelaide be built in established urban areas by 2045.

As noted in the Panel's Discussion Paper, minor infill was identified as the **single greatest provider** of new housing in Greater Adelaide in the then Department of Transport and Infrastructure's summary of minor infill activity in Greater Adelaide 2012-2018 report. This report found that minor infill development contributed to 39 per cent of the region's net dwelling increase in this time period, as compared with major/other infill (32 per cent) and broad hectare (29 per cent) sites.

In addition, based on data within the Department's Land Supply Report for Greater Adelaide (published June 2021), between 2010 and 2020, a gross total of 96,900 dwellings were constructed across Greater Adelaide, at an average rate of 9,200 completions a year. Taking into account demolitions over the same period, this has resulted in a net increase of 76,700 dwellings, at an average annual rate of 7,300. [62]

We know that a place to call home offers an undeniable sense of safety, security, and stability — a fundamental human need as defined in Maslow's Hierarchy of Needs — and is a proven pathway to intergenerational prosperity.[61]

Of the 9,200 dwellings across Metropolitan Adelaide, approximately **54% are built in general infill areas,** including on sites where demolitions have occurred (being 4,968 per annum gross). Approximately 2,500 lots per year are subdivided for development (demolitions and re-subdivisions). These are replaced at an average of 1.85 (an additional 0.85 dwellings per demolition).

Considering these trends, it is unsurprising one (1) of the key intentions of the new planning system was to create efficiencies in development assessment, specifically for minor infill in locations where that form of development was sought and envisaged. This was to be delivered through the DTS pathway in the Code.

Between March 2021 and October 2022, a total of 79 DTS development approvals were granted for two (2) or more dwellings. The General Neighbourhood Zone accounted for over 75% of these development approvals, as highlighted in Table 8.

Interestingly, over the same period there were a total 431 development approvals granted under the PA pathway for two (2) or more dwellings within metropolitan Adelaide. Therefore only 15% of total development approvals granted for two (2) or more dwellings over this period were assessed under the DTS pathway. As mentioned earlier in this Report, this number is significantly lower than what was anticipated would occur on the transition to the new planning system.

61. Urban Development Institute of Australia, Submission December 2022, 2.

62. Attorney-General's Department, *Land Supply Report for Greater Adelaide – Background and Context* (Adelaide: 2021), 18.

ZONE	NUMBER OF DEVELOPMENT APPROVALS	NUMBER OF NEW DWELLINGS
General Neighbourhood	60	139
Housing Diversity	11	40
Master Planned Neighbourhood	1	2
Suburban Neighbourhood	4	8
Urban Renewal Neighbourhood	1	3
Waterfront Neighbourhood	2	4
TOTAL	**79**	**196**

Table 8: *DTS development approvals granted for 2+ new dwellings since 19 March 2021 – October 2022, by Zone.*

In its Discussion Paper on the Code, the Panel acknowledged it was interested in understanding the development outcomes being achieved through the new infill policies, and whether those approved developments were compliant with the same. It advised in the Discussion Paper that it had requested additional data analysis be undertaken on development applications that had received approval to enable it to ascertain and report upon what percentage (%) of those applications comply with the infill criteria.

To facilitate this analysis, PLUS undertook a curb-side audit of infill developments assessed against the DTS pathway.

A site audit of 36 of the 79 development approvals was undertaken by PLUS in October 2022. This audit visually identified that six (6) sites had been completed; however, two (2) additional sites were identified in the e-Planning system as also being complete.

The eight (8) completed sites were further analysed to determine whether those developments complied with the relevant DTS provisions in the Code. This curb side assessment identified that six (6) of the eight (8) demonstrated non-compliance with the DTS infill policies for reasons including:

- Front landscaping and provision of suitable small tree (4 approvals);
- Boundary to boundary development (2 approvals); and
- Dual vehicle access and driveway widths (1 approval).

In addition to the site audit, PLUS also undertook a desktop analysis of ten (10) approved infill development applications (resulting in two (2) or more dwellings) which were assessed using a PA pathway. This investigation analysed:

- the zone the application site was within;
- the nature of the application proposed (e.g., two (2), two (2) storey dwellings);
- whether the approved plans met the four (4) key Code policy areas for infill development being:
  - landscaping provision;
  - site coverage;
  - design features; and
  - car parking.

In summary the findings of these investigations revealed:

- five (5) applications were considered to fully meet the relevant infill policies;
- three (3) applications either partially met or were otherwise unclear whether it met one (1) of the four (4) relevant policies; and
- two (2) applications displayed a failure to meet three (3) out of the four (4) relevant policies (yet were approved on balance regardless).

The more detailed findings can be viewed in **Appendix 7.**

These assessments lend themselves to the recommendations the Panel has made regarding the capacity of Accredited Professionals to make decisions on minor variations and DTS assessments, as well as the acknowledgment work needs to be done to enable more DTS assessments. However, they equally indicate the need for additional training and/or guidance material to be made available regarding both the assessment of DTS development applications, and the application of infill development policies.

To this end, the Panel sees benefit in the Commission undertaking a comprehensive review of completed infill projects sometime after 2025, so that there is a larger pool of projects to analyse.

Recommendation 45

General infill design guidelines should be prepared in conjunction with industry to demonstrate and promote different styles and types of infill development.

In its Discussion Paper on the Code, the Panel identified and drew attention to the design improvements introduced through the new residential infill policy to improve the streetscape appearance of dwellings. Those included:

1. a minimum of three (3) design features (out of seven (7) design options) on front façades, including eaves, porches, balconies, different materials, stepping, etc., to improve visual interest and building articulation;
2. entry doors visible from the primary street boundary to create a sense of address;
3. a minimum 2m^2 habitable window area facing the street to improve street appeal and increase passive surveillance; and
4. allocation of a dedicated area for bin storage behind the building's façade.

However, it also identified the limitations of this design guidance and the capacity for more specific general infill design guidelines to be prepared. Unsurprisingly, the Panel received public feedback in support of enhanced design guidelines, in a hope this would improve the aesthetics of the infill housing stock being developed in our suburbs.

When the Panel was considering this matter, it had cause to contemplate and reflect upon the 2016 draft Residential Design Guidelines (the 2016 Design Guidelines) which were prepared by ODASA and released for public consultation.

At that time, it was envisaged the 2016 Design Guidelines would provide best practice design guidance for new developments and would equally assist applicants and planners in determining design quality.

However, following widespread concern from several industry bodies (specifically in the development sector) that the 2016 Design Guidelines would become a statutory requirement (rather than guidance material), they were shelved. As it stands, those 2016 Design Guidelines are no longer publicly accessible.

The Panel reviewed the 2016 Design Guidelines. The Panel considered it prudent to consider them, recognising any recommendation pertaining to the creation of new, or otherwise re-introduction of the former, design guidelines would likely result in a conflict of views amongst various stakeholders.

The 2016 Design Guidelines was a comprehensive and lengthy document, which canvassed the same types of issues the Panel is being asked to consider, including:

1. Neighbourhood and site context;
2. Access and movement;
3. Built form;
4. Open space and landscaping;
5. Building design (including internal spaces); and
6. Appearance, materials and services.

Further, the 2016 Design Guidelines identified:

> *The provision of well-designed higher density housing will also diversify Adelaide's housing stock which is currently dominated by detached dwellings. It will provide greater housing choice to support our ageing population and increase the number of single and two person households. New housing choices will also unlock opportunities for innovative and accessible housing developments.*
>
> *As **infill development increases, good design outcomes will ensure that new higher density housing complements existing neighbourhoods** and is embraced by communities.*
>
> *Good design will support a successful transition to more compact, sustainable urban forms.*[63]
>
> (emphasis added)

63. Office for Design and Architecture South Australia, *Draft Residential Design Guidelines* (Adelaide: 2016), introduction page.

At the time the 2016 Design Guidelines were consulted upon, little was known or understood about the Code and how guidelines would be reflected in it. This uncertainty was a source of the resistance to their implementation. However, the Panel considers it is now appropriate to reconsider the introduction of design guidelines noting we have now experienced, and understand, how guidelines interact with the planning regime.

As the Panel opined in the Discussion Paper, infill development does not necessarily need to be provided only through narrow, typically detached, often abutting housing. There are a broad range of infill development outcomes and designs that are available for exploration and further consideration in South Australia.

In this regard, whilst the Panel had foreshadowed an idea of additional infill design guidelines in its Discussion Paper, by virtue of the submissions received and public consultation undertaken, it has become apparent an additional body of work is required to ascertain what types of development the State wants to encourage. It is only once the typologies are agreed and determined that substantive guidance material should be prepared in acknowledgement of the same.

Typology identification has been undertaken in several jurisdictions. Indeed, one example is the City of South Bend, Indiana in the United States of America which has recently published a typology guideline titled *'South Bend Neighborhood Infill: Pre-approved, ready to build housing'* (the South Bend Guideline). The South Bend Guideline provides a series of 'pre-approved' buildings to be used as:

> *...a tool to encourage infill development on vacant lots, calibrated especially for urban neighborhoods where social and economic factors may be unfavorable to new investment.*
>
> *The architecture and scale of each building is intended to fit seamlessly into existing residential neighborhoods, filling in the gaps created by vacant lots and gently increasing the density where possible. This type of development plays a critical role in supporting locally-serving retail and public transportation options while also providing key solutions for housing affordability.* [64]

Whilst the Panel appreciates the style and types of general infill development suitable in Greater Adelaide are unlikely to be the same as those identified in the South Bend Guideline, it serves as an example of the type of guidance material (and assessment material) that could be incorporated into the Code.

Similar to the South Bend Guideline, the Panel envisages any infill typology guidelines developed for Greater Adelaide to be analogous to a 'look book' – examples of what design outcomes are possible on different allotment sizes, with associated graphics demonstrating exemplar infill.

The Panel understands this will be an extensive exercise. However, the 'look book' for housing models does not need to identify every possible option; or serve as a 'pre-approved' model akin to the South Bend Guidelines. Rather, there is opportunity for it to be utilised as guidance material in the first instance, not dissimilar to the Adelaide Garden Guide.

Equally, it is recognised that alternative infill development typologies are not currently supported by the Code. However, in saying this, the Commission initiated 'Future Living' Code Amendment demonstrates how alternate typologies can be incorporated into the Code, noting it seeks new forms of housing and housing diversity in established suburbs. If approved, this Code Amendment would go some way to diversifying the types of infill development that are being established.

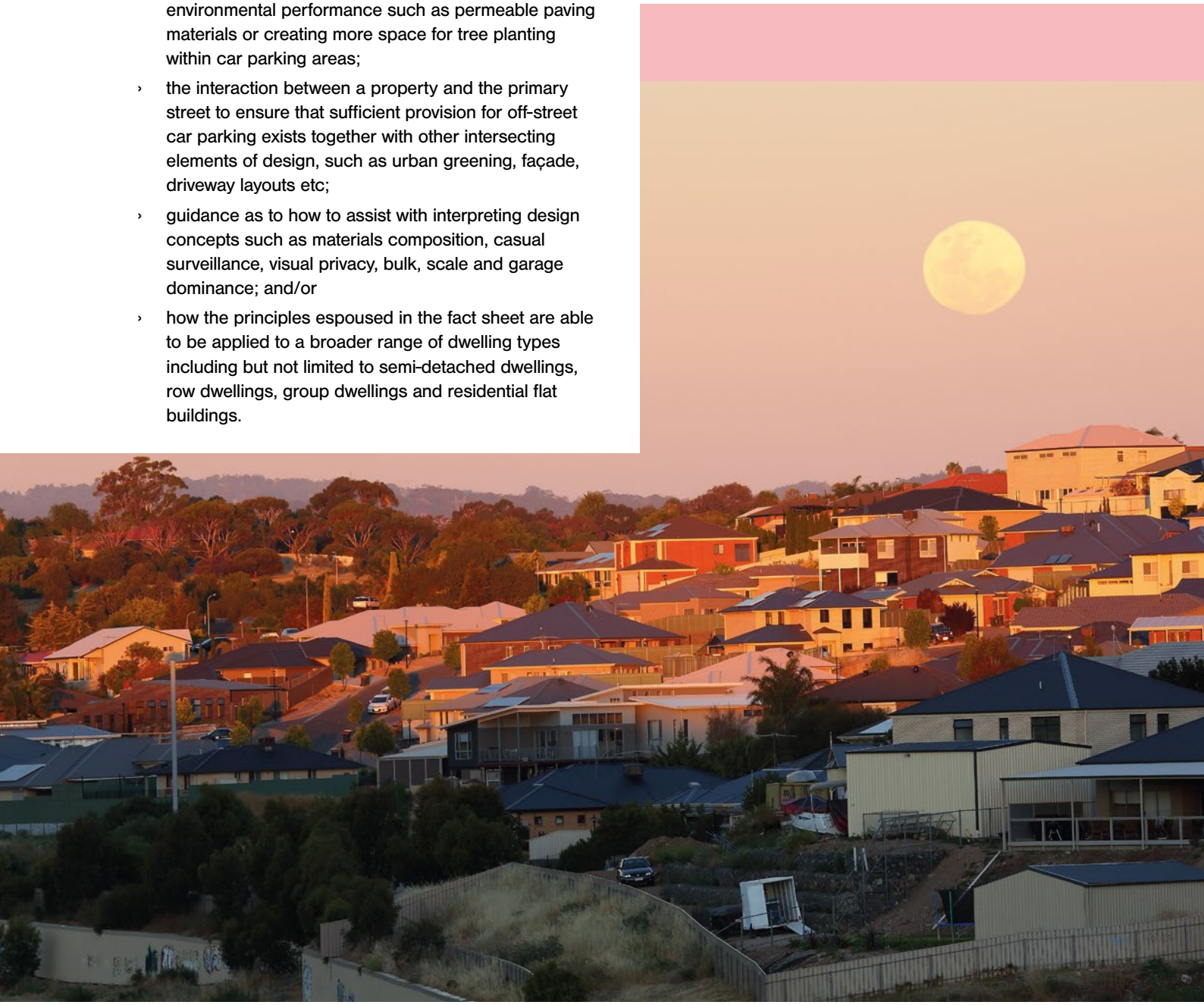
In support of this work, and to ensure all stakeholders appreciate the benefit to be obtained from alternate infill typologies, the Panel also encourages the Government's consideration of funding demonstration sites, as has historically occurred in areas such as Woodville West.

64. The City of South Bend, Indiana, *South Bend Neighborhood Infill: Pre-approved, ready-to build housing* (South Bend, Indiana, 2022), 3

Notwithstanding the above, in the interim, the Panel considers there is merit in reviewing the Commission's fact sheet Raising the Bar on Residential Infill in the Planning and Design Code and potentially adding a more detailed, practical assessment guide to sit alongside it. The review of the fact sheet could consider, amongst other things:

- means by which the planning system could encourage an uptake of design solutions to support improved environmental performance such as permeable paving materials or creating more space for tree planting within car parking areas;
- the interaction between a property and the primary street to ensure that sufficient provision for off-street car parking exists together with other intersecting elements of design, such as urban greening, façade, driveway layouts etc;
- guidance as to how to assist with interpreting design concepts such as materials composition, casual surveillance, visual privacy, bulk, scale and garage dominance; and/or
- how the principles espoused in the fact sheet are able to be applied to a broader range of dwelling types including but not limited to semi-detached dwellings, row dwellings, group dwellings and residential flat buildings.

In the Panel's view, it is necessary for guidance material to be provided which disrupts the type of general infill currently being provided. Put simply, nothing changes if nothing changes. Until communities, Relevant Authorities and the development industry understand what typologies are available and considered suitable in different locations, we will continue to see the same outcomes.



Recommendation 46

The Planning and Design Code policy pertaining to strategic sites should be reviewed, and non-planning mechanisms should be investigated to assist with creating strategic sites.

The Panel heard throughout its consultation period that 'haphazard' general infill is causing angst amongst communities throughout South Australia. This angst arises from the increased (whether real or perceived) pressures infill places on existing infrastructure, the disruption associated with construction and, importantly, the adverse change to the character of suburbs and streets.

The pressure associated with general infill extends throughout established suburbs, and can, in part, be attributed to the lack of strategic planning undertaken by local authorities as to where and how they envision the redevelopment of their areas, as well as to some policy that was in the former Development Plans. This is discussed in greater detail earlier in this Report on page 20.

Strategic infill development has contributed 30% of Greater Adelaide's net dwelling increase from 2010-2019.[65]

Although the overall lack of strategic planning is one (1) contributor, the Panel also acknowledges there has been limited work undertaken to identify potential and appropriate strategic infill sites throughout Adelaide.

A strategic infill site is one that, when redeveloped, results in the creation of a new community with high yield residential development. As noted in the Department's Land Supply Report for Greater Adelaide (published June 2021):

> *Strategic infill land supply comes from sites in the CBD, in locations zoned Urban Corridor and on large repurposed sites (often called brownfield sites). Development at these sites results in residential outcomes of more than 10 additional dwellings, often at a higher density than that achieved on general infill*

Examples of strategic sites that have been established or otherwise already identified for redevelopment include but are not limited to Bowden, Lightsview, Glenside and St. Clair sites. [66]

By comparison to general infill, it is broadly accepted that strategic infill typically produces better outcomes for the community because this is usually undertaken using a master planned approach. However, the Panel considers there are currently not enough 'levers' being pulled to incentivise land parcelling.

The Panel has identified there is opportunity and indeed, necessity, to review the Code policy pertaining to strategic infill sites to ensure the planning system is encouraging and providing sufficient incentive for their creation. This review should also consider what non-planning mechanisms may be incorporated as an incentive for developers to create strategic sites and could include, for example, tax concessions.

In addition to the above, the Panel understands there is appetite to identify where there is opportunity for the creation of as-yet-unknown strategic sites and to develop policy to enable the redevelopment of those sites. The Panel considers and recommends the Commission, through the Regional Plans, should have an integral role in the identification of strategic sites and opportunities for strategic infill. However, it equally recognises local government has a role to play and encourages councils to identify where strategic sites may be available in their areas and present those opportunities to the Commission for consideration.

Importantly, if these locations are not identified in a strategic way, the State will end up with 'spot rezonings' as a consequence of developer led Code Amendments. In the alternative, if managed strategically by the Commission through the Code, this should mitigate the need for ad hoc rezoning to occur, as the policy will be in place and available to facilitate this form of development.

Alternative forms of infill development need to be considered in order to support housing diversity and choice and support the delivery of affordable housing. Generally, such should primarily remain within the realm of strategic infill, as we are of the view that master planned developments provide the best opportunity to manage issues of sensitivity to the community.[67]

65. Attorney-General's Department, *Land Supply Report for Greater Adelaide – Part 2: Urban Infill* (Adelaide: 2021), 15.
66. Attorney-General's Department, *Land Supply Part 2: Urban Infill*, 33.
67. Urban Development Institute of Australia, 9.

Recommendation 47

The Planning and Design Code provisions pertaining to Private Open Space should be revised.

The Panel received several submissions in relation to Private Open Space (POS) in the Code, and how the same is determined and assessed. The Panel has contemplated these submissions and considers there is opportunity to revise the provisions pertaining to POS in the Code.

The first opportunity the Panel has identified relates to the POS requirements for dwellings.

Part 4, Table 1 – Private Open Space of the Code provides that for a dwelling at ground level, the following total POS areas apply:

- Site area <301m^2 : 24m^2 located behind the building line
- Site area >301m^2 : 60m^2 located behind the building line

Minimum directly accessible from a living room: 16m2 /with a minimum dimension 3m.

The Panel heard the amount of POS required between site areas increases quite dramatically and does not result in the most positive development outcomes. It was suggested it would be appropriate to introduce a third category of POS to alleviate this; an idea which the Panel sees benefit in.

On that basis, whilst the Panel does not propose to recommend the precise number that should be included in the Code, it suggests that ranges similar to the following may be appropriate for the Government to consider:

- Site area <301m^2 : 24m^2 located behind the building line;
- Site area 301m^2 – 500m^2 : 40m^2 located behind the building line; and
- Site area >501m^2 : 60m^2 located behind the building line.

The Panel does not consider that the minimum POS directly accessible from a living room requires amendment.

In addition to the above, the Panel also considers there is opportunity for the Code definition of POS to be updated to provide more certainty and clarity to Relevant Authorities as to what can and/or should be accepted as POS.

POS is currently defined by the Code as:

> *Means a private outdoor area associated with a dwelling that:*
>
> *a. is for the exclusive use of the occupants of that dwelling*
> *b. has a minimum dimension of 2.0m for ground level areas and 1.8m for balconies*
> *c. is screened from public view by a building, fence, wall or other similar structure with a minimum height of 1.8m above ground level and a maximum transparency of 20%.*
>
> *Private open space may include verandahs, alfrescos, balconies, terraces, decks where not enclosed on all sides. Private open space does not include areas used for bin storage, laundry drying, rainwater tanks, utilities, driveways or vehicle parking areas.*

However, it was brought to the Panel's attention that there is a misunderstanding as to how to apply the POS provisions of the Code considering this definition.

In the Panel's view, the definition of POS would be clarified and made more definitive if it were updated to include the following (or words to the effect of):

> *Means a private outdoor area associated with a dwelling that:*
>
> *a. is for the exclusive use of the occupants of that dwelling*
> *b. has a minimum dimension of 2.0m for ground level areas and 1.8m for balconies*
> *c. is screened from public view by a building, fence, wall or other similar structure with a minimum height of 1.8m above ground level and a maximum transparency of 20%.*
>
> *Private open space may include verandahs and alfrescos (must not cover more than 20% of the POS provided i.e. 24m^2 POS = 4.8m^2 covered, 40m^2 = 8m^2, 60m^2 = 12m^2), balconies, terraces, decks where not enclosed on all sides. Private open space does not include areas used for bin storage, laundry drying, rainwater tanks, air conditioning units, hot water tanks, utilities, driveways or vehicle parking areas (including for caravans and trailers).*

There is also an opportunity to amend the definition to include a diagram which could demonstrate and make clear how to appropriately calculate POS.

Recommendation 48

The storage policy identified for apartments should apply to all forms of residential development.

The lack of storage in new dwellings was raised with the Panel by both Relevant Authorities and the general public. This was regularly raised in the context of garages being used for storage or as an additional recreation room (i.e a gym) rather than for vehicle parking, which resulted in more vehicles being parked on the street.

The Panel has recognised in recommendation 50 that the prescribed minimum garage dimensions are no longer fit for purpose. However, there was also a suggestion the homes that are being constructed are equally not fit for purpose if there is insufficient storage being provided therein.

It is apparent insufficient storage is being provided in new dwellings (particularly those smaller, infill dwellings) as currently, most residential developments are not subject to any Code policy mandating minimum storage provision within a dwelling. The exception to this is in multi-level buildings, where the Design in Urban Areas General Development Policy 28.4 requires a minimum amount of storage to be provided per dwelling to provide residential amenity to those forms of development.

The Performance Outcome for 28.4 requires:

> *Dwellings are provided with sufficient space for storage to meet likely occupant needs.*

The associated DTS/Designated Performance Feature (DPF) 28.4 criteria is:

> *Dwellings (not including student accommodation or serviced apartments) are provided with storage at the following rates with at least 50% or more of the storage volume to be provided within the dwelling:*

1. *studio: not less than 6m^3*
2. *1 bedroom dwelling / apartment: not less than 8m^3*
3. *2 bedroom dwelling / apartment: not less than 10m^3*
4. *3+ bedroom dwelling / apartment: not less than 12m^3.*

In the Panel's view, there is no logical reason this policy should not be extended to all forms of residential development. Indeed, the provision of adequate storage within all dwellings may assist in mitigating the associated car parking issues that are being experienced.

The Panel therefore recommends a storage policy be applied to all forms of residential development, but equally notes the requisite amount of storage should be proportionate to the size of the dwelling. In this regard, it may be appropriate to require a minimum percentage (%) of the dwelling footprint to be provided as storage, rather than a set amount as identified in DTS/DPF 28.4 above. For example, if the minimum percentage (%) was set at 10 per cent (%), a 200 square metre dwelling would be required to provide 20m^3 of storage, with at least 10m^3 within the dwelling.

Recommendation 49

A basic landscaping plan should be provided for all infill developments to document how the soft landscaping requirements of the Planning and Design Code are to be adhered to.

As part of 'Raising the Bar' on residential infill, the Commission introduced soft landscaping requirements into the Code which seek:

- minimum soft landscaping of 10-25 per cent (%) over the whole site;
- percentage (%) of soft landscaping in front yards of low-rise housing established at a minimum of 30%; and
- garden beds to be at least 0.7 metres wide to ensure the area is viable for plant growth.

This policy works in concert with the Urban Tree Canopy Overlay to require new dwellings to plant trees and be landscaped. The amount of landscaping and the number and size of trees required by the Urban Tree Canopy Overlay are scaled based on allotment size, as shown in Figure 3.

However, despite being two (2) years 'down the track', it is apparent new infill dwellings are not appropriately establishing and maintaining the soft landscaping sought by the Code, as demonstrated by DTS infill assessment on page 123 of this Report. Further, albeit anecdotally, it appears Relevant Authorities are not imposing conditions of consent in connection with landscaping, and when they are, they are not seeking to enforce the same.

On that basis, the Panel sees merit in requiring a basic landscaping plan to be provided for all infill developments to which the soft landscaping policies apply. The Panel does not intend for this to be a prohibitive additional cost to proponents and does not propose that the landscaping plan would need to be prepared by a landscape architect. Instead, it envisages something basic that is potentially created with reference to the Adelaide Garden Guide and other useful resources.

The intent of the provision of the plan is for it to form part of the package of 'approved plans' associated with the development, such that the soft landscaping can be enforced.

The Panel acknowledges (as it has earlier in this Report) the enforcement obligations on local government. However, in circumstances where there is a growing community expectation related to greening our suburbs, the Panel iterates it is incumbent upon councils to undertake enforcement of this nature to encourage and ensure future greening.

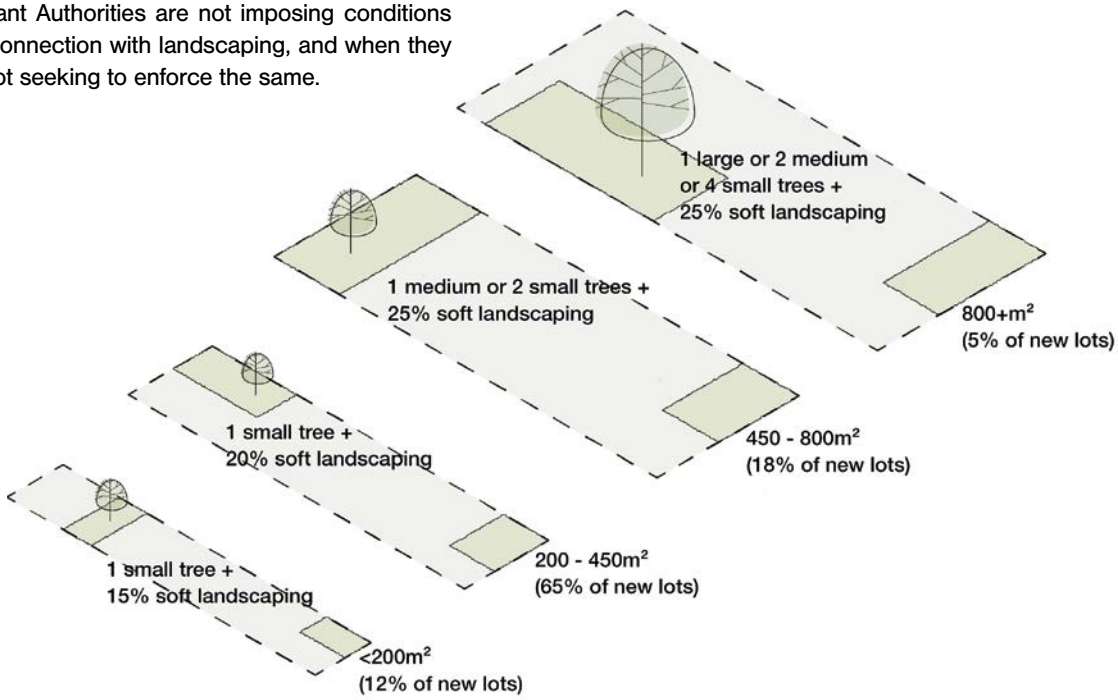


Figure 3: *Soft landscaping requirements and tree planting, as scaled by allotment size; Source: Raising the Bar on Infill Development.*

Observations and Comments

Walkable Neighbourhoods

The Panel received several submissions relating to the desirability of walkable neighbourhoods. However, there is a fundamental disconnect between what is being sought by the community, how that can be delivered practically and what the community tend to oppose.

For example, for a neighbourhood to be deemed 'walkable', it must have all necessary amenities for daily use – retail, commercial, educational, and recreational facilities – within less than a one (1) kilometre radius. In practical and economic terms, this requires dwelling densities of approximately 30-35 dwellings per hectare. It also requires:

- a variety of dwelling types and sizes to accommodate a wide range of household types and stages of life;
- average allotment size of 333m^2 (at 30 dwellings per hectare); and
- approximately 5000 – 7500 people living in the locality to ensure the viability of social infrastructure (for example a supermarket and school) and public transport.

By contrast, in many existing Adelaide suburbs, the current dwelling density is typically between eight (8) and twelve (12) dwellings per hectare, with an average allotment size of approximately 600m^2.

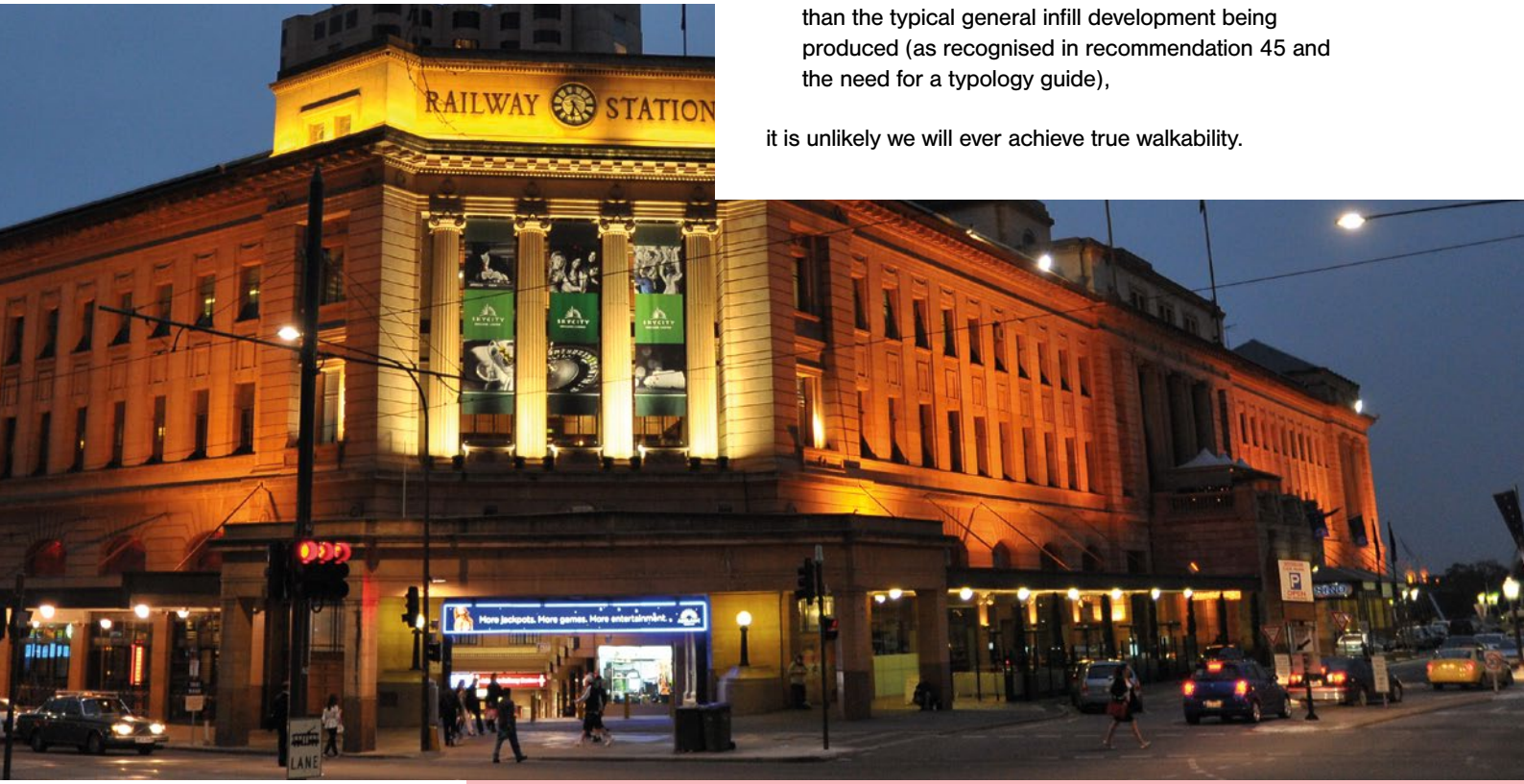
It follows that, to have walkability, neighbourhoods are required to be higher density (approximately three (3) times the current provision), which tends to also involve higher buildings, although that may only be two (2) or three (3) storey buildings. As acknowledged earlier in this Report, the height and scale of buildings (particularly in residential areas) is one of the most contentious issues in the planning system.

This is a tension that seemingly exists across all western cities, specifically the need to re-develop existing low-density areas into medium density locales, albeit a desire to retain the existing suburbs as they are.

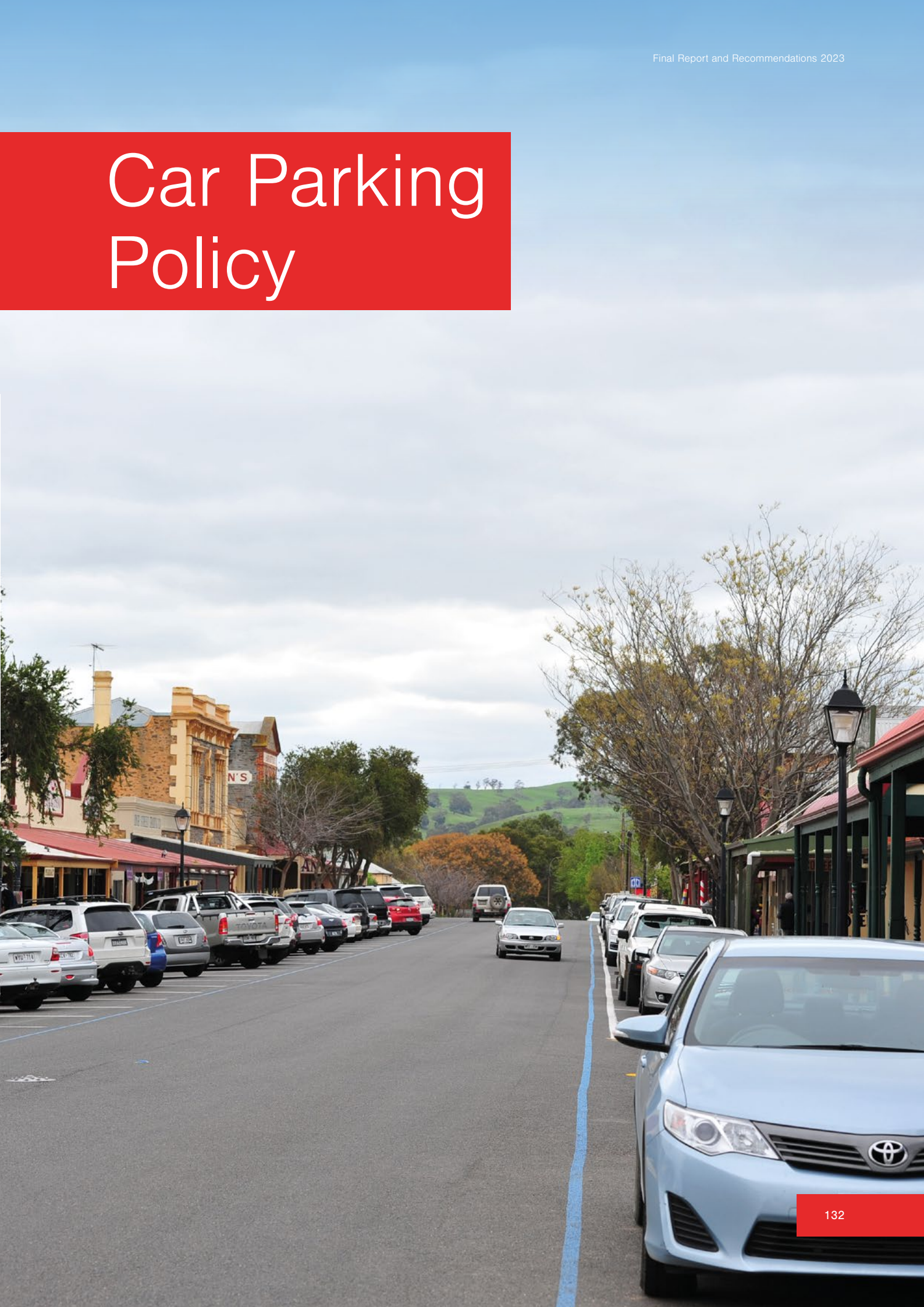
Accordingly, in the absence of:

- planning policy being amended to enable higher densities in residential areas (and community attitude toward higher densities also changing); and
- the improvement of built form outcomes to be better than the typical general infill development being produced (as recognised in recommendation 45 and the need for a typology guide),

it is unlikely we will ever achieve true walkability.



Car Parking Policy



In its Discussion Paper on the Code, the Panel recognised car parking is a legitimate issue for South Australians, but also expressed a view that it did not consider there is significant work to be done in the Code to remedy the issue. Instead, it advised it considered work needs to be undertaken in the appropriate management of both on and off-street car parking and local road design. This view has not been altered through the public consultation period.

These matters largely fall to local government authorities to manage and enforce, and the Panel encourages councils to utilise their powers under the *Road Traffic Act 1961* and the *Local Government Act 1999* to manage particularly problematic parking on local roads.

Notwithstanding the above, the Panel acknowledges there can be revisions to the Code that would assist with the perceived congestion issue, both which were identified by it in its Discussion Paper, and which have come to light throughout the public consultation. These matters are identified in the recommendations that follow.

However, at the outset, and prior to providing its recommendations on this policy topic, the Panel considers it is appropriate to identify that whilst the term 'congestion' was frequently used by stakeholders when outlining their car parking related concerns, it does not appear to the Panel that a true congestion issue is present in South Australia.

Importantly, the term 'congestion' when utilised from a traffic engineering perspective, is measured by the parameters of travel time, travel speed and queue lengths, specifically those queues caused by the number of vehicles on a road exceeding the available capacity. The other notable (albeit somewhat unavoidable) causes are planned and unplanned incidents that obstruct traffic flow, including but not limited to road works, vehicle collisions, unlawful parking (i.e., parking in clearways) and burst water mains.

This definition of congestion can be distinguished from the manner in which the general public are using the term, as it appears the public are using congestion to describe situations where local roads are 'full' of parked vehicles, which they perceive to be obstructing the movement of traffic. This is further exacerbated by the expectation that the on-street parking space outside of a dwelling is 'reserved' for the visitors or occupants of that dwelling. Whilst the presence of parked vehicles on a road can be a cause of congestion, this will only apply if there is an actual impact on traffic movement which impedes travel time, travel speed and queue lengths.

Importantly, given local roads are generally for low volume traffic movements (and noting that most local roads would rarely reach their physical capacity), with low speed and shorter trips, the potential for congestion to arise is reduced.

Recommendation 50

The minimum garage dimensions should be increased.

The Code sought to promote the use and sufficiency of on-site car parking by introducing several car parking related policies, including minimum garage dimensions. As it stands, the minimum garage dimensions prescribed in the Code are those which accord with Australian Standard 2890.1:2004 - Parking facilities – Off-street car parking (the Australian Standard). The Australian Standard requires the following garage dimensions:

Garage Type	Width	Length
Single Garage	3000	5400
Double Garage	5400	5400

Table 9: *Garage dimensions required by the Australian Standard.*

These dimensions were determined using a standard B85 vehicle as a baseline. A B85 vehicle is 1870mm wide and 4910mm long.

The intent of using the Australian Standard was to ensure garages were large enough to park a car. However, noting the Standard was last reviewed in 2004, it is unsurprising to note that South Australian (and indeed, Australian) vehicle preferences have changed such that it is now 'out of touch' with reality.

Indeed, statistics from the Federal Chamber of Automotive Industries (FCAI) show that in 2022, between January and November, the top ten (10) selling vehicles in South Australia were: [68]

Vehicle Make		Number Sold
1.	Toyota HiLux	3507
2.	Toyota RAV4	2429
3.	Ford Ranger	2386
4.	Mitsubishi Triton	2051
5.	Mazda CX-5	1888
6.	Isuzu D-Max	1683
7.	Toyota Corolla	1506
8.	Toyota LandCruiser Prado	1296
9.	Mitsubishi Outlander	1295
10.	MG ZS	1211

Table 10: *Top 10 selling vehicles in South Australia, 2022; Source: www.drive.com.au.*

Of the top ten (10), eight (8) are Sports Utility Vehicles (SUVs) or 4x4 Utility vehicles (utes). The minimum dimensions of South Australia's top ten (10) vehicles (2022 models) are:

Vehicle Make		Width	Length
1.	Toyota HiLux	1800mm	5325mm
2.	Toyota RAV4	1855mm	4600mm
3.	Ford Ranger	1850mm	5110mm
4.	Mitsubishi Triton	1815mm	5295mm
5.	Mazda CX-5	1840mm	4550mm
6.	Isuzu D-Max	1870mm	5265mm
7.	Toyota Corolla	1780mm	4375mm
8.	Toyota LandCruiser Prado	1885mm	4825mm
9.	Mitsubishi Outlander	1800mm	4695mm
10.	MG ZS	1809mm	4314mm

Table 11: *Minimum dimensions of South Australia's top 10 selling vehicles.*

The above dimensions indicate that four (4) of the top ten (10) selling vehicles exceed the length provided in the Australian Standard, with the Isuzu D-Max (#6 top seller) meeting the width but exceeding the length.

The Panel also notes the above mentioned dimensions do not account for the addition of tow ball (common on SUVs and utes) on the length of the vehicle (a standard tow ball is 50mm) or for the additional width associated with side-vision mirrors.

The data evidences the Australian Standard is at odds with contemporary vehicle purchasing preferences, with South Australian's now opting to drive larger vehicles than ever before. Consequently, the Panel received several submissions advising the prescribed garage dimensions were not fit for purpose as development applicants did not opt to exceed the minimum requirements, irrespective of the fact that a number of the most popular vehicles simply do not fit in the garages that are being (or will be) constructed under the Code.

68. Jordan Mulach, *Top 10 cars in every Australian state and territory,* Drive.com.au, 25 November 2022

The effect of this inconsistency is more vehicles being parked on the street and garages instead being used for storage or as additional living space. This is exacerbated by the limited storage provided in new infill dwellings as discussed earlier in this Report at recommendation 48.

Accordingly, whilst the Panel cannot make recommendations pertaining to a review of the Australian Standard, it can and does recommend the minimum garage dimensions prescribed in the Code are revised to align with contemporary purchasing preferences more appropriately.

The Panel recommends the Code is revised to require minimum dimensions no less than the following:

Garage Type	Recommended Width	Recommended Length
Single Garage	3000mm	6000mm
Double Garage	6000mm	6000mm

Table 12: *Recommended increased garage dimensions.*

Recommendation 51

The requirement to provide undercover car parking should be removed from the Planning and Design Code, but provision of space for a covered car park should still be made available behind the face of the dwelling.

In its Discussion Paper, the Panel queried the necessity for an undercover carpark to be required with new dwellings and invited responses as to whether this policy should be retained in the Code.

The feedback on this issue was varied, with some respondents noting there may be affordability benefits associated with removing this requirement, and others (namely local governments) concerned that failing to provide undercover car parking at the time of building would ultimately result in unfavourable development outcomes in the future. This concern was largely borne from the likelihood a future development application would be received seeking to establish a carport in front of the dwelling.

The Panel has considered the submissions received and has determined, on balance, there is merit in recommending the removal of this requirement from the Code. In doing so, it recognises the concerns of local government and recommends that policy be crafted to ensure, where an undercover car park is not provided, there is provision for a covered car park to be established in future behind the face of the dwelling.

The Panel acknowledges irrespective of this no longer being a requirement, it is more than likely developers will continue to provide covered on-site car parking. However, the removal of this policy will ensure flexibility is provided to those who do not want (or perhaps cannot afford) to build covered parking at first instance.

> ***If a development is designed with no covered car parking it is likely that a future owner will apply for covered parking which, depending on the development design, may result in carports forward of the dwelling which is not desirable and not supported by Code policy.***[69]

69 Adelaide Hills Council, Submission January 2023, 31.

Recommendation 52

The State Planning Commission consider producing Local Road Design Standards for local roads.

The Panel heard concerns pertaining to the width and form of local roads being developed as part of master planned estates. This primarily concerns narrow streets and an inability or otherwise difficulty for residents to traverse the same, coupled with concern emergency services vehicles will not be able to use them.

The Panel understands there are minimum requirements a road must adhere to. However, to provide clarity and certainty to the community, the Panel considers there is merit in the Commission producing local road design standards for developers to observe.

The design standards should address matters such as street design and layout, ensuring appropriate rates of on-street car parking are provided to complement off-street car parking, while retaining high levels of amenity, preserving traffic flow and maximising pedestrian safety.

It is thought these design standards would and should sit alongside the design standards for driveway crossovers currently being prepared by the Commission.

Recommendation 53

Electric Vehicle charging stations should generally be an exempt form of development, but investigations should be undertaken to determine in which locations they will be considered development.

The Panel recognises Electric Vehicles (EVs) are the way of the future and will only increase in popularity and prevalence in the coming years. It follows that consideration ought to be given to how (or if) the provision of EV charging infrastructure is going to be managed in the planning system. This was a question posed by the Panel during its public consultation.

The feedback received indicated there was a view EV charging stations should be considered development in certain circumstances, but not all. Those identified circumstances largely aligned with the Panel's suggestions in the Discussion Paper, namely consideration ought to be given to requiring a development application for the establishment of an EV charging station in and/or adjacent to State and local heritage areas.

It was also acknowledged that EV charging stations are increasingly being established with associated advertising; a matter which may be problematic in specific locations. In addition, there may be associated matters of safety that trigger planning and/or building assessment, as reflected in the South Australian Metropolitan Fire Service's (MFS) Position Statement on EVs & EV Charging Stations in Buildings.

On this basis, whilst the Panel does not intend to overregulate or otherwise provide barriers to the installation of EV charging stations, it recognises there are locations in which they ought to be regulated. Accordingly, the Panel recommends EV charging stations are identified as an exempt form of development for the purposes of Schedule 4 of the PDI Regulations, but that consideration is given as to where it would be appropriate to deem the same development requiring application and assessment.

Separately, the Panel notes some submissions called for it to recommend multi-level residential buildings be built with the infrastructure capacity to install EV charging stations in resident carparks (whether personal chargers or shared). This arises as a consequence of older multi-level residential and commercial buildings not having the power capacity to install EV chargers and the expense associated with retrofitting that infrastructure. This can also be attributed to the concerns raised by the MFS and CFS in respect to their ability and capacity to respond to emergency incidences associated with charging facilities if they are inaccessible.

The Panel has not made any recommendation on this matter noting the updated National Building and Construction Code slated for commencement in South Australia in October 2024 will require all multi-level residential buildings (class 2 buildings) have this capacity.

Recommendation 54

Car Parking Offset Funds should be permitted to be used to build active travel infrastructure.

Part 15, Division 2 of the PDI Act enables councils to establish off-set schemes and associated funds for particular purposes. This mechanism can be utilised to establish a car parking fund as referred to in Table 1 General Off-Street Car Parking Requirements and Table 2 – Off-Street Car Parking Requirements in Designated Areas of the Code.

Payments into a fund created for this purpose can be utilised to off-set shortfalls in car parking provided for a development, by enabling a council to construct public car parking facilities in lieu of provision by an applicant.

In its Discussion Paper, the Panel queried the value of car parking funds in the planning regime, noting the disproportionality between the fee to be paid into a fund and the cost of constructing a multi-level car park.

On this basis, the Panel queried whether the car parking fund should be able to instead be used for active transport initiatives such as separated bike lanes, improved footpaths/shared paths, or other initiatives that may assist to reduce the demand for car parking.

Relevantly, car parking funds were a concept of the former Development Act. Under that statute, a car parking fund could be established pursuant to section 50A and was able to be distributed in accordance to subsection 50A(8):

a. *to provide car parking facilities within the designated area; or*
b. *to provide funds for (or towards) the maintenance, operation or improvement of car parking facilities within the designated area; or*
c. *to provide funds for (or towards) the establishment, maintenance or improvement of transport facilities within the area of the council with a view to reducing the need or demand for car parking facilities within the designated area.*

Schedule 8, clause 33 of the PDI Act provides transitional provisions for car parking funds established under the Development Act. It provides:

1. *A car parking fund in existence under section 50A of the repealed Act immediately before the designated day **will continue as a fund** under section 197 of this Act.*
2. *In connection with the operation of subclause (1) —*
   a. *it is **unnecessary for the fund to form part of a scheme** established under section 197 of this Act; and*
   b. *insofar as may be relevant, any provision made by a Development Plan under the repealed Act can continue to apply in relation to the fund.*

(emphasis added)

There have not yet been any car parking funds established under section 197 of the PDI Act. Accordingly, all car parking funds in existence are those continuing under the transitional provision and exist in isolation of a scheme.

However, the Panel heard there is an ambiguity in the transitional provisions as it is unclear whether section 50A of the Development Act continues to apply for the distribution of monies in a car parking fund established under the former legislation. The Panel considers there would be benefit in clarity being provided.

This is particularly relevant noting section 50A(8)(c) of the Development Act allows for the use of funds for *'transport facilities... with a view to reducing the need or demand for car parking facilities'.* This could arguably enable the use of funds for active travel infrastructure purposes. However, there would also be benefit in this being clarified (likely via a communique of some description as changes cannot be made to repealed legislative instruments) if it is confirmed section 50A(8) continues to apply to the distribution of funds.

Irrespective of the complexities associated with the transitional provisions, the feedback received by the Panel indicated support for car parking funds being used for infrastructure other than car parking, specifically recognising the broad community benefit to be derived from improved active travel infrastructure.

In the Panel's view, using the off-set funds for the provision of active travel infrastructure is both appropriate and reasonable, and should be envisaged in any scheme established for the purposes of section 197 of the PDI Act. However, it cautions that any scheme set up for this purpose should also set appropriate limitations on the use of the fund to ensure it is appropriately managed.

> ***Bike Adelaide would support investment in infrastructure to promote alternative transport choices including: walking and cycling access to public transport, bikeways along roads and greenways, raised intersections, wombat and zebra crossings, shared use paths, arterial road pedestrian-actuated crossings, pedestrian and cycling overpasses, bicycle parking, better bus stops with shade and greening, electric bicycle subsidies, wayfinding signage for walking and cycle ways, reduced cost of public transport, better public transport provision.[70]***

70. Bike Adelaide, Submission December 2022, 5

Observations and Comments

On-site Car Parking

The Panel recognised the anecdotal desire to increase the off-street car parking rates prescribed in the Code in its Discussion Paper, but equally identified it does not consider it reasonable or practical to increase the rate to above two (2) off street car parks for homes of two (2) or more bedrooms.

Whilst this issue was frequently raised through the submissions received, interestingly, the responses were balanced between those that supported raising the prescribed rate in the Code and those that supported lowering it.

Those that supported increasing the rate believed the South Australian 'car culture' was alive and well and asserted, with the cost-of-living increases, we could expect there would be more adults with vehicles residing at a singular address (i.e., children are living with parents longer and have their own vehicles to park).

Alternatively, the support for lowering the car parking rate came from those that seek to encourage active travel and reduced vehicle reliance.

Notwithstanding the above, neither party provided sufficient evidence to indicate the prescribed rate should be altered. On that basis, the Panel has determined not to make a recommendation on this topic.

Dispensation for On-site Car Parking

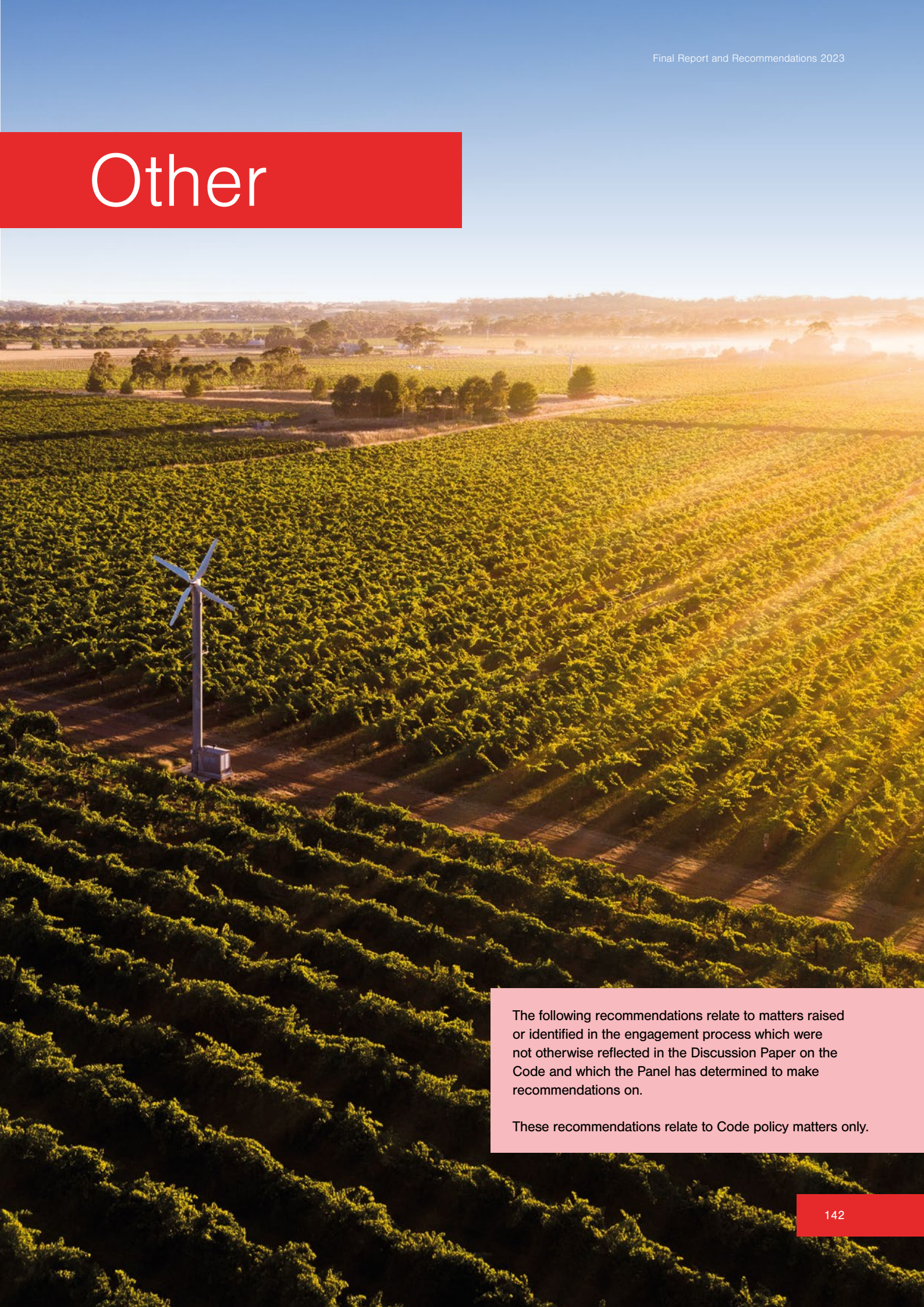
In its Discussion Paper, the Panel queried whether the Code should offer more generous car parking rate dispensation for a broader number of land uses based on proximity to public transport or employment centres.

The Panel recognises this policy already applies to most high-density zones in the Code. However, its query was primarily in relation to providing additional dispensation in general neighbourhood zones near to public transport and employment centres, in recognition of likely lessened vehicle reliance.

As with the above on-site car parking commentary, responses to this query were mixed and there was not overwhelming support (or argument) from either those supporting or opposing the additional dispensation.

On that basis, the Panel has determined not to make a recommendation on this topic and instead opts to retain the status quo.

Other



The following recommendations relate to matters raised or identified in the engagement process which were not otherwise reflected in the Discussion Paper on the Code and which the Panel has determined to make recommendations on.

These recommendations relate to Code policy matters only.

Recommendation 55

The Affordable Housing Overlay should apply to all residential, neighbourhood and activity centre zones.

The Affordable Housing Overlay of the Code provides incentive policy in the development of affordable housing. This includes dispensation on allotment sizes, building heights and number of car parks to be provided in circumstances where a development proposes to incorporate affordable housing.

Currently, the Affordable Housing Overlay applies to 19 zones in the Code and requires development proposing to create 20 or more dwellings or residential allotments to provide a minimum of 15 per cent (%) affordable housing. However, the Panel considers there is capacity for the State to take a more uniform approach to the application of affordable housing policy.

As noted earlier in this Report, South Australia is experiencing a housing affordability crisis. Whilst the Government is seeking to manage this crisis in a variety of ways, the Panel recognises there is more which can be achieved through the planning system. This includes, but is not necessarily limited to, extending the Affordable Housing Overlay across greater Adelaide to all residential, neighbourhood and activity centre zones.

In the Panel's view, applying the Overlay on a uniform basis across all zones where residential development may be anticipated will not only ensure more affordable housing is created in South Australia, but equally captures additional locations where it may be appropriately established.

In addition, the Panel recommends consideration be given to revising the threshold for application of the affordable housing policy, as well as the incentive policy associated with it.

As noted above, the policy currently only mandates the inclusion of affordable housing for developments creating 20 or more dwellings or residential allotments. The Panel understands anecdotally that developers will often elect to create 19 dwellings or allotments to escape the affordable housing requirements. On this basis, there may be utility in considering the application of a lower threshold.

Of course, whilst lowering the threshold may still result in the policy being avoided, subject to what it is reduced to, it may not be financially viable to commence a project unless it incorporates affordable housing. There is also an opportunity to investigate coupling a lower affordable housing threshold with an off-set scheme or similar, whereby developers can make a contribution to an Affordable Housing Fund rather than provide the same.

In the Panel's view, the avoidance of the housing affordability policy can be attributed to the fact the incentive policy does not provide sufficient incentive. That is, it does not go far enough to provide a genuine value proposition to developers. This could be reviewed in consultation with industry bodies to understand and ascertain what dispensations they consider would be appropriate in the provision of affordable housing.

Recommendation 56

The State Planning Commission prepare guidance material which indicates the role of planning in managing climate change and identifying how climate change is already included in Planning and Design Code policy.

The Panel received a significant number of submissions which referred to climate change, climate change policy in the Code and the purported lack thereof.

It appears to the Panel what is being sought by various community, industry and special interest groups is the identification of specific, highlighted, climate change policy in the Code. However, the Code, in its current form, includes numerous policies which contribute to climate change management and mitigation. This is found in policies which relate to trees, WSUD, building orientation, hazard management and stormwater, amongst others. It was also identified that not all development applications trigger these provisions.

In this regard, it is appropriate to again acknowledge the importance of SPPs in our planning system. SPPs establish State directions around specific issues and are the highest order policy documents in the planning system.

Importantly, SPP five (5) is specifically titled *'Climate Change'* and acknowledges:

> *Climate change will impact all areas of our society. Our future prosperity, the liveability of our cities and towns, the health and wellbeing of our communities and the resilience of our built and natural environment all depend on how well we adapt to and mitigate the impacts of climate change.* [71]

SPPs are required to be considered while preparing designated planning instruments such as Regional Plans. Of course, as identified earlier in this Report, the Commission has commenced preparing the Regional Plans. On that basis, we are yet to see how the SPPs will influence the creation of those planning instruments and the impact they will have.

Despite this, it is noted that an objective of SPP 5 relates directly to the Regional Plans and requires:

> *Regional Plans should include performance targets for urban greening and tree canopy enhancement in Greater Adelaide and regional townships.* [72]

In the Panel's view, this inclusion further reinforces the earlier point that climate change policy is already reflected in the Code, noting amongst other things, the application of tree policy and greening requirements.

The Panel received feedback throughout the engagement process regarding the location of climate change related policy in the Code. This has led to an acknowledgement that relevant policy exists within the 'General Development Policies' section of the Code, but this is at times not being applied to full effect.

Whilst this may, of itself, indicate a language and/or prominence issue within the Code about how the policies are expressed, in the Panel's view, it indicates a need for greater education and guidance as to how climate change is already addressed in the Code and how those policies ought to be considered when undertaking planning assessments.

To this end, the Panel recommends the Commission undertake to prepare guidance material which identifies what policies already exist within the Code which are related to climate change management and mitigation and to review the triggers associated with calling up the relevant provisions for different forms of development. It equally recommends this guidance material include commentary pertaining to how those policies ought to be applied.

71. State Planning Commission, State Planning Policies, page 38.
72. State Planning Commission, State Planning Policies, page 39.

PART FOUR:
E-PLANNING AND THE PLANSA WEBSITE

Early Recommendations to the Minister for Planning

PlanSA engaged independent survey and research consulting firm, Action Market Research group (AMR), to conduct a survey of anyone who had contact with the e-Planning system between 19 March 2021 and 15 June 2022.

The key aspects of this survey were:

1. the survey separated respondents into user groups: Community, Decision Makers, and Industry; and
2. a total of 14,785 emails were sent out, each with a unique survey link and a total of 1,502 surveys were completed.

AMR presented its final report and findings to the Department on 17 August 2022. The results of the survey were published on the PlanSA website and are available for public consideration.

The Panel was able to consider the results of the AMR survey early in its appointment. Noting the AMR survey data was current and there were a significant number of responses received, the Panel was satisfied it was able to make early recommendations to the Minister on certain e-Planning and PlanSA matters.

The matters the Panel made early recommendations on are those it understands have been the subject of feedback (through both the AMR survey and to PlanSA directly), and are able to be implemented by mid-2023 within existing budget forecasts.

Importantly, the early recommendations were all related to user experience and are intended to enhance the useability and functionality of both the e-Planning system and the PlanSA website.

The Panel's early recommendations to the Minister were as follows:

1. Subscription Service Improvements

The e-Planning Portal currently includes several subscription options for users and the community to subscribe to alerts related to Code Amendments and development applications lodged within the public register.

The Panel **recommends** these subscription services are refined to include additional opportunities for the community to subscribe to receive notification of:

- applications for certain types of development (i.e., tree removals); and
- changes to the status of applications.

2. Development Application Map

To enable the community to visualise the location of development applications more easily, the Panel **recommends** a feature be added to the PlanSA website whereby development applications are shown on an interactive map.

The development application point should show key attributes of the development application and provide both a link to the detailed development application public register and a link to the public notification page (if the development application is under consultation).

3. Builders Database

To assist applicants, the Panel **recommends** a centralised database of Builder's information (or access to Consumer Business Services data) is integrated into the e-Planning portal to remove the requirement for Builder's data to be re-entered for each individual application.

4. Refined Submission Process

The current development application form in the DAP could be improved to make it easier for applicants to understand and use. This arises from feedback relating to the submission form, specifically regarding the:

- management and entry of contacts;
- addition of project reference numbers;
- builder contact details; and
- ongoing access to a development application.

This would provide efficiencies for applicants, particularly those organisations who submit applications on behalf of applicants and low volume applicants.

The Panel **recommends** the application form is revised to address these concerns, with such improvements potentially including:

- simplifying the application process by reducing the number of clicks and pages;
- increasing the use of predictive selections determined by the organisation information or user signed in;
- providing the ability to save and reuse common contacts; and
- recording a project reference number to assist application management for high volume applicants.

5. Conditions and Notes by Element Type

In the existing system, conditions and notes must be applied to each consent separately. There is the ability to record standard conditions and notes for each organisation, that can then be selected for a consent. There is also no ability to integrate and populate consents with conditions and notes that are typically applied to that element type (i.e., standard conditions that are typically applied to a development application for a shed) or other grouping.

The Panel **recommends** enhancements are made to the e-Planning system to enable relevant authorities to:

- group standard conditions and notes by element type or other grouping, to enable relevant authorities to apply them on a consistent and typical basis;
- rename, add, view, order and search conditions and notes, to improve how relevant authorities manage conditions and notes;
- allocate Reserved Matters to a specific building stage; and
- set standard Reserved Matters, including a preamble, if required.

6. Code Rules as a Checklist

The Development Assessment Processing (DAP) system has the existing capability to generate a PDF document of the relevant Code provisions associated with a development application. However, the Panel **recommends** this is enhanced to enable a checklist to be generated with each application, which identifies the relevant assessment criteria.

This will provide efficiencies to assessors and consistency to the assessment process. It is recommended the first phase of this project ('Phase One') deals with Deemed to Satisfy applications.

7. DAP Homepage

To assist users of the DAP (namely relevant authority assessors and team leaders) to better manage their workloads, the Panel **recommends** PlanSA develop a new user interface to enable applications to be quickly searched and located within the DAP system.

It is envisioned a homepage and dashboard interface within the DAP could identify:

- application workloads;
- outstanding tasks;
- assessment clocks;
- outstanding fee management; and
- referral management.

The Panel was pleased to provide these early recommendations to the Minister on 11 October 2022.

The Minister accepted the Panel's early recommendations and PlanSA was directed to commence their implementation.

At the time of submitting this Final Report, the Panel understands that three (3) of the above mentioned recommendations have been fully implemented, with four (4) expected to be implemented in the near future.

Improvements Identified in Discussion Paper

The Expert Panel was tasked with reviewing the e-Planning system, with a key focus being to ensure the system is delivering an efficient and user-friendly process and platform. As identified earlier in this Report, the Panel made early recommendations to the Minister namely pertaining to user experience improvements which could be implemented.

For the purposes of the public consultation, and to assist in the generation of discussion, the Panel identified a series of medium term (6-12 months to implement) and long-term ideas (ideas which would require legislative amendment) for enhancement, in its e-Planning/PlanSA Discussion Paper. These ideas were formulated following the Panel's consideration of the AMR survey results and feedback from PlanSA directly.

The Panel received a significant number of submissions in relation to the Panel's ideas for reform, some of which were supported and others which the feedback indicated there was no appetite for at this time.

Following the Panel's consideration of the public submissions, it has determined to support and recommend the progression of some of the ideas. The related recommendations appear in Table 13. Where the Panel has determined not to proceed with a recommendation on a matter identified in the Discussion Paper, it provides a brief comment as to why it arrived at that decision.

Idea	Supported?	If yes, related recommendation	If no, comment
Medium Term			
Website Re-Design	Yes	Recommendation 57	
Mobile Application for Submission of Building Notifications and Inspections	No		The Panel has not made a specific recommendation about this idea, noting its related recommendation (Recommendation 64), pertaining to the investigation of mobile accessibility for the whole of the e-Planning portal.
Online Submission Forms	Yes	Recommendation 58	
Increase Relevant Authority Data Management	Yes	Recommendation 59	
Inspection Clocks	Yes	Recommendation 60	
Long Term			
Collection of lodgement fee at submission	Yes	Recommendation 61	
Combined Verification and Assessment Processes	Yes	Recommendation 62	
Automatic Issue of Decision Notification Form			
Building Notification through PlanSA	No		The Panel heard it is necessary to retain the option of providing building notifications directly to the council by phone or email. This was related to on-site accessibility constraints and familiarity with the portal.
Remove Building Consent Verification	No		There was limited support for this idea. It was suggested there is still a place for building consent verification and that it ought to be retained.
Concurrent Planning and Building Assessment	No		There was limited support for this idea. This was namely in recognition of variations which may occur during the planning assessment which may directly impact the final building rules assessment.
Innovation			
Automatic Assessment Checks for DTS Applications	Yes	Recommendation 63	
3D Modelling for Development Application Tracker and Public Notification	No		Whilst there was general support for the idea and recognition of the system's capacity to implement this technology, the general sentiment was there are more pressing improvements to e-Planning/PlanSA users would like to see happen prior to exploring innovations of this nature.
Augmented Reality Mobile Application	No		Whilst there was general support for the idea and recognition of the system's capacity to implement this technology, the general sentiment was there are more pressing improvements to e-Planning/PlanSA users would like to see happen prior to exploring innovations of this nature.
Accessibility through Mobile Applications	Yes	Recommendation 64	

Table 13: *Status of e-Planning/PlanSA Discussion Paper ideas.*

Recommendation 57

An independent user experience review of the PlanSA website is undertaken, following which the website interface is updated to be more user friendly and intuitive, acknowledging the various capabilities of users.

The Panel had initially proposed the PlanSA website be re-designed with the intention to improve:

- search functionality;
- access to information; and
- available resources, including tailoring the level of information available to the public and key industry users of the system.

This proposed improvement was identified following feedback received in the AMR survey which demonstrated low respondent satisfaction in response to questions whether the:

- website was easy to navigate; and
- information was presented concisely.

The feedback received by the Panel supported the proposal and indicated a website re-design was warranted and desired. However, throughout the public consultation period, it also became increasingly apparent the user experience of the PlanSA website is poorer than initially thought.

Whilst the Panel received submissions consistent with the AMR survey results, the feedback indicated the difficulties associated with the website were not just related to its functionality (i.e. search functions, navigation, layout etc), but also extended to the accessibility of the information contained thereon.

The primary 'user' concern in this regard was that a high degree of planning literacy is required to understand any information that gets extracted from the Code. This can be exemplified in the fact the extracts that apply to a specific address are not accompanied with any explanatory information as to the hierarchy of policy, or how to read them. This has also been commented on by the ERD Court in judgments handed down relating to the Code.

Whilst the Panel acknowledges that planning is by no means simple, it considers there is a fundamental need to ensure information pertaining to the system and how it operates is accessible to the masses, and not just those that interact (or are otherwise familiar with) it. The website as currently presented creates (and indeed, has resulted in) the potential for misunderstanding, misinterpretation, and frustration for the public.

To this end, the Panel recommends the PlanSA website be subjected to an independent user experience review to ascertain what, where and how the website can be enhanced to ensure the requisite accessibility.

One (1) potential improvement thought of by the Panel is to create a 'practitioner' and 'general' interface, that can be selected at the landing page of the website.

Recommendation 58

Create a simplified online submission form which does not require an applicant to have a PlanSA account and login.

To lodge a development application within the DAP system, an applicant must first have a PlanSA account and login. This subsequently results in potential one (1) time users having to create an account for this purpose. There is a separate organisation-based user account setup for volume applicants (e.g. home building companies).

To simplify the application process, the Panel proposed the creation of a new (optional) online submission form which would allow an applicant to submit a development application, without a login.

This idea was supported by the submissions received, with many citing it would improve the user experience of infrequent users of the system. Feedback also agreed this would benefit those applicants who do not want to track their application through the portal or interact with the full assessment system.

Recommendation 59

Increase relevant authority data management within the Development Application Processing system.

As the Panel identified in the Discussion Paper, Relevant Authorities, as decision makers, should have the ability to make an informed judgment to alter certain information within the DAP system if it determines a change is required.

The submissions received by the Panel indicated there is significant appetite to increase the ability for Relevant Authority users to 'self-service' changes to development applications in the DAP, to reduce (or potentially remove) the need for PlanSA to provide validation of any amendments. This proposition was supported by Relevant Authorities, specifically in the context of relieving the administrative challenges associated with having to revert to PlanSA to facilitate minor changes.

Notwithstanding, and as recognised in its earlier Paper, whilst the Panel supports the provision of increased data management capabilities for Relevant Authorities, it also recommends this be accompanied by a comprehensive application audit history, to ensure system stability and integrity.

Recommendation 60

Build Inspection Clocks into the Development Application Processing system.

The PDI Regulations and Practice Direction 9 both outline that councils must undertake inspections of different stages of development of certain building works.

Currently, there are no inspection clocks built into the DAP to assist councils in the oversight of this area. The Panel received support for introducing inspection clocks of this nature, noting it would only seek to provide a further efficiency for councils.

The Panel therefore recommends inspection clocks are added to the e-Planning portal to improve the management, monitoring, and reporting on inspection compliance.

Recommendation 61

A non-refundable lodgement fee should be paid at submission of a development application to 'lock in' the version of the Planning and Design Code to be used for assessment.

An applicant is only currently required to pay all the 'appropriate fees' associated with their development application following verification. This means an applicant can submit a development application and require a Relevant Authority to verify it, with no financial obligations imposed upon them. This can result in the lodgement of frivolous applications.

To reduce the likelihood of frivolous development applications being submitted, the Panel recommends the lodgement fee (currently $184.00) be required to be paid upon an application being submitted into the portal. It also considers this fee should be non-refundable. The imposition of a financial commitment to the application will likely result in only those properly considered development applications being submitted for verification.

In addition to the above, the Panel also considers the relevant version of the Code should be 'locked in' when a fee is paid at the time of submission.

However, to achieve this outcome, the PDI Act would require amendment to clarify at what point a development application is 'made' and thus the version of the Code is 'locked in'. This arises on the basis:

- section 132 of the PDI Act provides where a development application is made, the law that applies in deciding the application is the law *'in force at the time the application was made'*. This equally applies to the provisions of the Code *'in force at the time the application was made'*. The wording of this provision was the same under the corresponding provision of the repealed Development Act (section 53) in all material respects;
- section 119(1)(d) of the PDI Act provides *'an application to a relevant authority for the purposes of this Part must...be accompanied by the appropriate fee';*
- the ERD Court has previously held in relation to section 39(1) of the Development Act (the analogous words which now appear in section 119(1)) that an application was not *'properly made', 'validated'* or *'enlivened'* (such that it was required to be decided by the Relevant Authority) until the requirement of s.39(1)(d) (now s.119(1)(d)) that the *'appropriate fee'* accompanying the application had been satisfied; [74]
- it follows that the relevant version of the Code is therefore not 'locked in' until the *'appropriate fee'* has been paid. The Panel understands the 'appropriate fee' is intended to encompass all relevant planning and building assessment fees; and
- under the former system, this requirement tended to be achieved on submission of an application, noting it needed to be submitted in person at the relevant council offices and fees were (more often than not) also paid at that time. However, under the e-Planning system and the allowance for verification to occur over several days, there is concern delays in verifying and issuing a fee notice will result in an applicant 'missing out' on utilising the provisions of the Code which were in effect at the time of submission.

On this basis, in order to provide certainty to applicants and Relevant Authorities, the Panel considers there is value in amending the PDI Act to clarify that an application is 'made' for the purposes of section 132 when the lodgement fee is paid, which, if this recommendation is accepted, would be at the time of submitting the application into the e-Planning portal.

This is strongly supported. This will enable the application to be considered as lodged rather than just submitted and not create any confusion as to what version of the P&D Code shall be used for assessment purposes.[73]

73. Light Regional Council, Submission January 2023, 11
74. See in particular *Pt Vincent Progress Assn & Ors v DAC & Colmion Pty Ltd* [1999] SAERDC 7, paragraphs 6-8

Recommendation 62

Enable elective concurrent verification and assessment for Deemed-to-Satisfy development applications.

In recognition of the resourcing pressures being faced by Relevant Authorities (namely councils) and equally, the desire for more efficient assessment processes, the Panel queried whether there was support for enabling concurrent verification and assessment of DTS development applications.

Whilst some submissions were concerned with undertaking an assessment prior to receiving the relevant fees, the Panel does not envisage a concurrent assessment would occur for all applications, nor would it be mandatory.

Instead, the Panel sees merit in offering Relevant Authorities the flexibility to undertake an assessment immediately following verification in circumstances where the assessment is straightforward, and the assessing officer has everything they need to make a decision.

This process could be facilitated through the e-Planning portal by enabling a planner to determine in the 'back end' (through the click of a checkbox or similar) that they are electing to concurrently verify and assess an application. If this were implemented, it is thought a notification could then be issued to the applicant advising that a decision had been made and upon payment of the requisite assessment fee, the DNF could be automatically issued.

...the opportunity to combine verification and assessment processes would be a significant step forward. Especially for deemed-to-satisfy developments. Assessment Officers are often frustrated by the fact that they could complete an assessment but have to wait for fees or other matters to be resolved prior to the decision being made.[75]

Importantly, the capacity for this recommendation to be implemented would be contingent upon the requisite PDI Act amendments being made as identified in recommendation 61.

The Panel therefore recommends that updates are made to the e-Planning portal that enables the concurrent verification and assessment of DTS applications.

75. City of Port Adelaide Enfield, Submission on e-Planning January 2023, 7.

Recommendation 63

Investigate the implementation of automatic assessment for Deemed-to-Satisfy development applications.

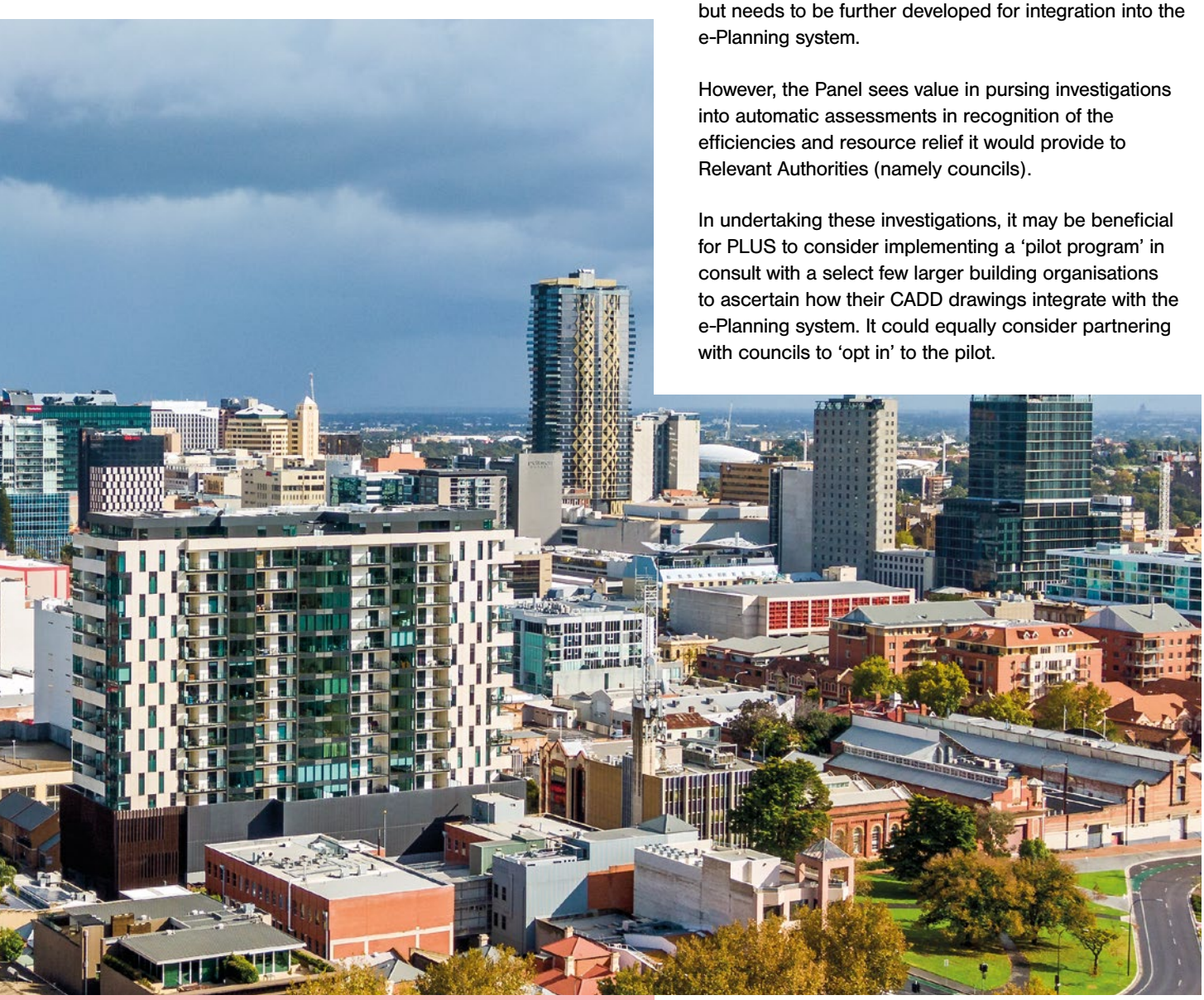
As noted in the Panel's Discussion Paper, technology exists to automate the assessment of development applications with clearly defined rules. That is, for certain applications, particularly basic development applications such as DTS developments, it may be possible for the e-Planning system to read a computer-aided design and drafting (CADD) drawing for a proposed development and based on strict parameters, undertake the development assessment.

An automatic development assessment would also bypass the need to undertake verification (as it would be expected the system would do this) and would substantially reduce assessment timeframes. If an assessment is being undertaken automatically, it should, theoretically, be submitted, assessed, and approved within a matter of minutes.

The Panel understands this technology already exists but needs to be further developed for integration into the e-Planning system.

However, the Panel sees value in pursing investigations into automatic assessments in recognition of the efficiencies and resource relief it would provide to Relevant Authorities (namely councils).

In undertaking these investigations, it may be beneficial for PLUS to consider implementing a 'pilot program' in consult with a select few larger building organisations to ascertain how their CADD drawings integrate with the e-Planning system. It could equally consider partnering with councils to 'opt in' to the pilot.



Recommendation 64

Investigate the development of a mobile application to improve the mobile accessibility of the e-Planning system and PlanSA website.

As noted in its Discussion Paper, neither the e-Planning system or PlanSA website are particularly mobile friendly, and currently expect the user to be on a computer to use it to its full capacity.

However, in a world that is becoming increasingly mobile, the Panel queried whether there was merit in investigating adapting these systems to be more mobile friendly in the future. The Panel posed this query as an innovative idea, recognising it may take a significant amount of time and resources to implement.

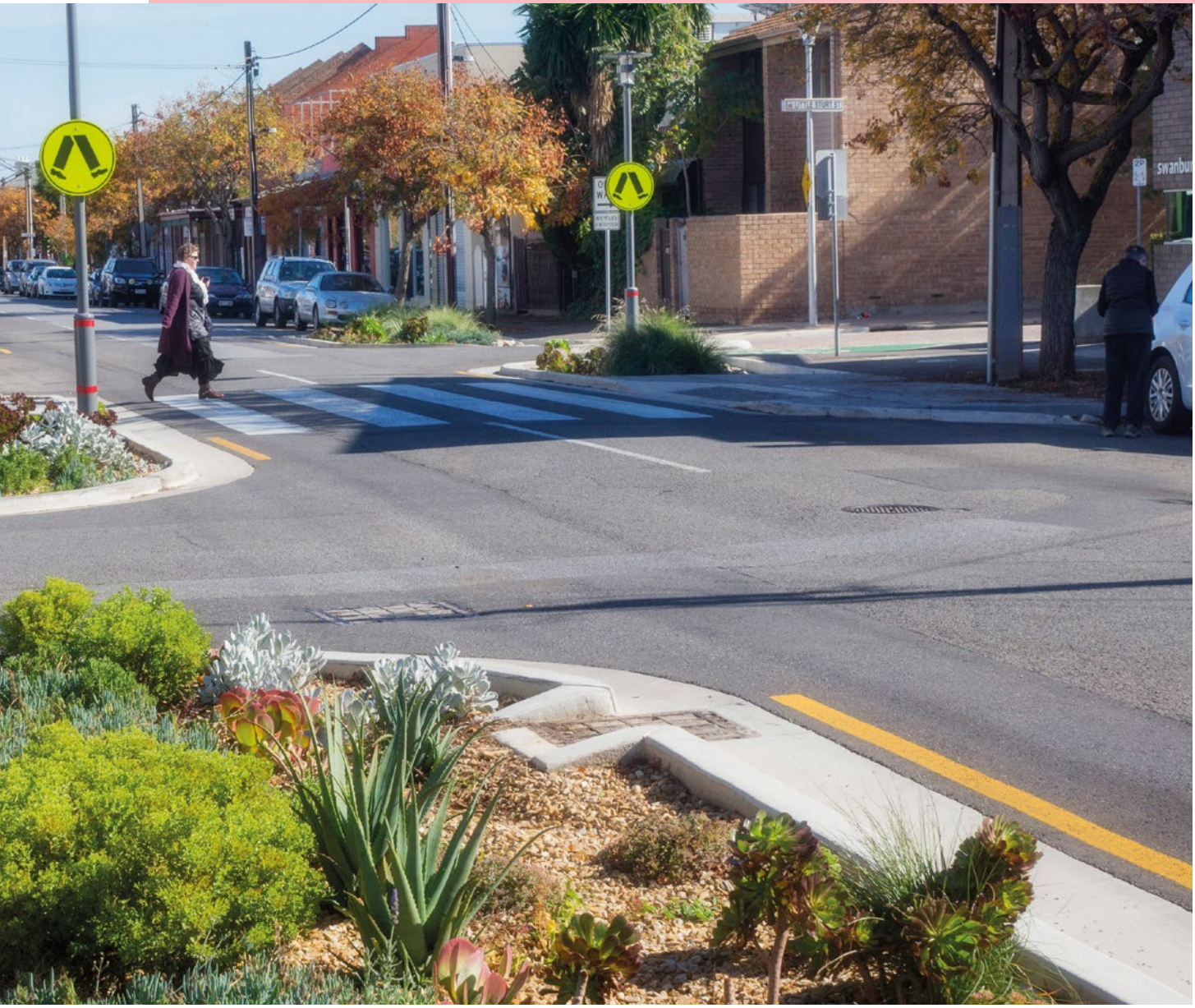
Despite this, the feedback received demonstrated a broad appetite for the system to be functional on mobile sooner rather than later. Unsurprisingly, this related largely to building notification requests, SAPPA, and Code search functionality.

The Panel acknowledges the development of a mobile application – particularly one which would need to be as sophisticated as an e-Planning application – is not a quick or cheap process. On that basis, it recommends investigations are undertaken pertaining to the development of a mobile application, so that it may be appropriately resourced for future implementation.

Additional e-Planning Improvements Identified Through Public Consultation

As with the PDI Act and Code, the public consultation yielded several additional valuable matters for the Panel's consideration.

The suggestions identified by practitioners and industry groups were particularly valuable, noting their frequent use of the system.



Recommendation 65

Build into the e-Planning system an option for an assessing officer to record why a development moved from Deemed-to-Satisfy into Performance Assessed.

As noted earlier in this Final Report, the Panel understands Relevant Authorities are being burdened by additional resource requirements in circumstances where developments that ought to be assessed as DTS are falling into the PA pathway.

This anomaly appears to be causing significant inefficiencies in the system. However, in order for it to be remedied, there first needs to be an understanding of what specific triggers are causing this to occur, where it is occurring most frequently and if there are any trends associated with the same.

The Panel determined the most efficient, reasonable, and equitable way to obtain this data is by enabling an assessing officer to record the reason for this occurrence within the portal. This will create a dataset that can then be analysed by the Commission, which can then inform a Code Amendment.

Recommendation 66

The online version of the Planning and Design Code should be reviewed by an editor and graphic designer.

The online version of the Code needs to be reviewed by an editor and graphic designer to make it simpler and easier to read.

The Panel expects this review would include:

- emphasising major headings i.e. with the largest font, in bold, underlined etc; and
- ensuring it is easy to navigate through the inclusion of hyperlinks, identifiers, footers and/or markers on each page i.e the top of each page, when downloaded, should have the relevant headings (overlay or zone or General Development Policy heading).

This review should result in the Code being more functional to browse, as suggested by the ERD Court in Evanston and concurred with by many submissions received by the Panel.

Recommendation 67

PlanSA undertake further engagement with Relevant Authorities to develop a more flexible workflow within the e-Planning portal.

A consistent critique of the e-Planning portal is that is it too linear and does not provide Relevant Authorities with flexibility when undertaking assessments. Specifically, the Panel heard the linear nature of the platform results in:

- double or triple handling of development applications;
- the need to work between multiple tabs;
- issues progressing certain workflows (such as variations); and
- an inability for staff to 'work ahead' in anticipation of busier periods, or when an application is placed on hold.

In this regard, submissions called for the Panel to make recommendations pertaining to improving the workflow for this purpose.

Noting the substantial number of submissions which raised this issue, it is apparent to the Panel it is an efficiency concern that is directly impacting the Relevant Authority user experience of the platform. The Panel therefore recommends a more flexible workflow is developed, but also recommends this occur in conjunction with Relevant Authorities to ensure the workflow enhancements are fit for purpose and capture the desired improvements.

Recommendation 68

Document management capabilities should be introduced into the e-Planning portal.

As development applications are required to be wholly managed through the e-Planning portal, it is unsurprising Relevant Authorities have identified limitations in its document management capacity.

The Panel is advised it is possible for some document management features to be built into the portal to improve efficiencies, but also that some features are able to be provided more readily than others.

The most notable and frequently requested improvement was the ability to directly upload email correspondence into the portal without first needing to convert it to a PDF file. The Panel understands that this can be achieved and PlanSA is already working to 'iron out' the cyber security issues associated with the same. The Panel understands that these concerns largely arise in connection with emails that may contain a 'virus'.

Other document management related capabilities requested were:

- file search functions within a development application;
- integration with third-party systems;
- ability to change document category, and creation of a document category guide;
- ability to upload additional documents between submitting and verifying an application; and
- standardised naming protocols for files when uploaded by applicants.

The Panel recognises the need for document management capabilities to be introduced into the portal, and equally the efficiencies which even minor improvements in this capacity could make. However, the introduction of these capabilities needs to be finely balanced with the security of the system.

On this basis, the Panel recommends document management capabilities be built into the e-planning system, albeit only at such a time as they are wholly secure and will not pose any material risk to the portal.

Much communication with clients is by email but emails cannot be uploaded into the portal. Instead emails have to be saved as a PDF and then uploaded. This creates an unnecessary administrative workload.[76]

76. Alexandrina Council, Submission January 2023, 3.

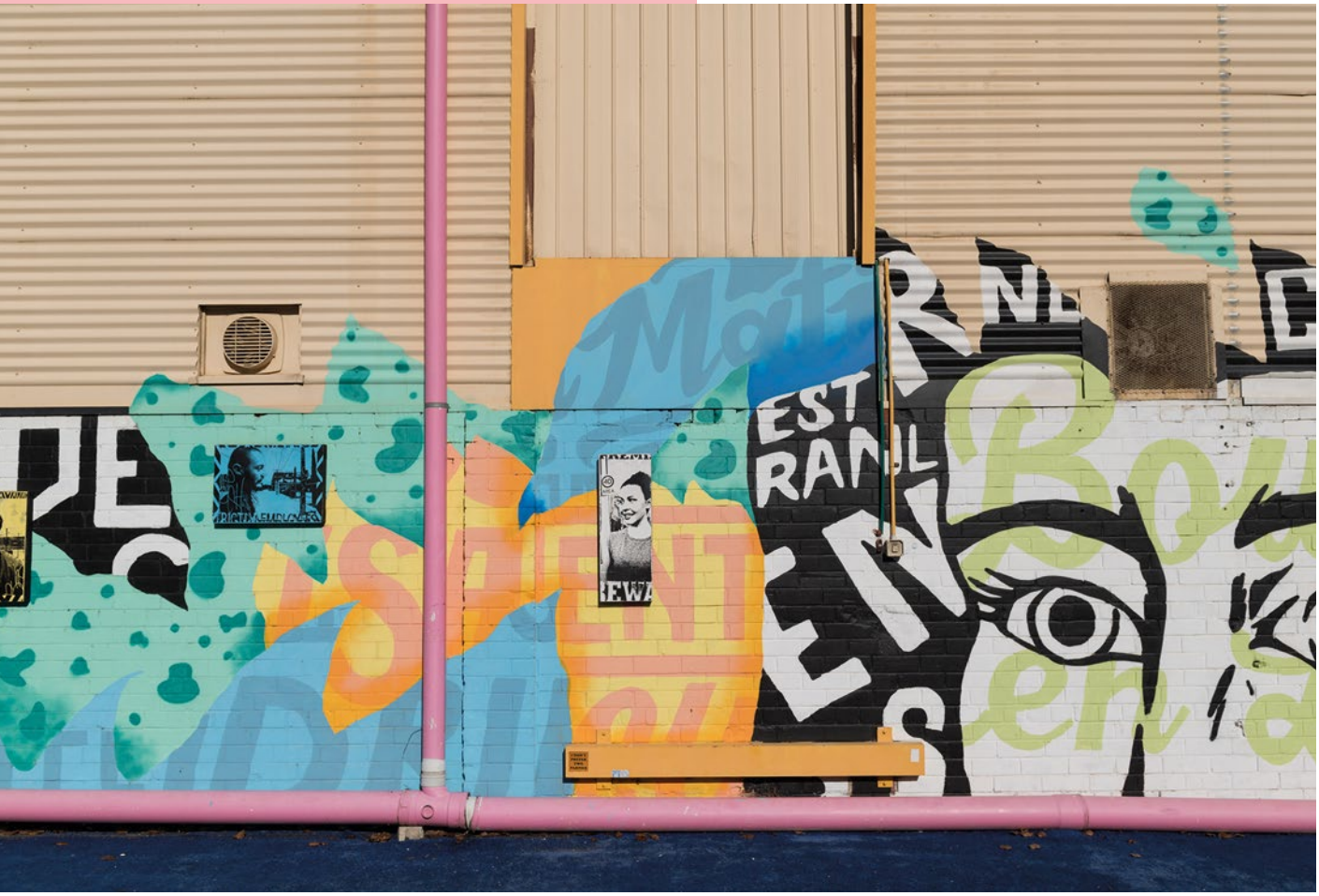
Recommendation 69

Increase the file upload capacity of the e-Planning portal.

The Panel heard regularly throughout the engagement period and through many submissions, that the file upload capacity of the e-Planning portal was insufficient and causing significant administrative burden to Relevant Authorities. The Panel heard a specific example of it taking an Assessment Manager two (2) hours to upload all relevant documentation into the portal (in small sections) because of how large (and significant) the application was. In circumstances where the e-Planning portal was intended to increase efficiencies, this is an example of where it is having the opposite effect.

Through discussions with PlanSA, the Panel understands there is currently a technical limitation arising from software connectivity. This is not insurmountable but will require time and resources to be invested into reconfiguring the 'back end' architecture of how files are uploaded and stored in the portal. The Panel is supportive of this investment and considers this would provide substantial value to all users of the portal.

Whilst many submissions called for the file upload capacity to be unlimited, the Panel has determined not to include this as a component of its recommendation. This is because there are cyber security implications that would arise from an unlimited upload capacity that would be inconsistent with the security framework the e-Planning portal (as a State based system) must adhere to.



Recommendation 70

Referral agency advice should only be published on the public register following a decision being made for non-publicly notifiable development applications.

The current approach to development applications referred to referral agencies (i.e EPA, Native Vegetation Branch) is for the referral advice to be published on the public register. This occurs in accordance with section 122(12) of the PDI Act, which provides:

> *A relevant authority must ensure that a response from a prescribed body under this section is published on the SA planning portal and available for inspection and downloading without charge* ***as soon as is reasonably practicable after the response is received*** *by the relevant authority.*
>
> (emphasis added)

However, this practice may have unintended consequences where the advice provided is contrary to community opinion, particularly when a development application is not publicly notifiable.

The Panel was advised this has occurred on numerous occasions to the detriment of the applicant but was provided with a recent example regarding a proposed land division resulting in the removal of 400+ trees. In that example, the development was not subject to public notification, but was subject to a number of referrals, which referral advice was then published on the public register. The referral advice did not oppose the development application but did impose conditions. The relevant council and State Government were then lobbied by community interest groups to intervene and prevent the development, in circumstances where those authorities had no power to do so.

It is also important to distinguish between a development application that is being publicly notified for community awareness and comment, and an application that is not publicly notifiable. In the Panel's view, an applicant should not be prejudiced by the publication of referral advice in circumstances where the application is not otherwise publicly notifiable.

Importantly, the Panel is not opposed to the referral agency advice being published on the public register *'as soon as is reasonably practicable after the response is received'* for publicly notifiable developments. It is equally not opposed to publication of referral advice for non-notifiable developments, albeit considers this should occur after a decision is made on the application.

It therefore recommends section 122 of the PDI Act be amended to clarify that for non-notifiable development applications, referral agency advice is only published on the public register following a decision being made on a development application.

Recommendation 71

The e-Planning system be reviewed to ensure fees are being consistently applied and appropriately distributed.

The Panel heard assessment fees are not being consistently applied by Relevant Authorities through the e-Planning portal. It was advised there have been circumstances where Relevant Authorities are significantly overcharging applicants by virtue of misapplying the applicable fees. The Panel considers if there are circumstances where applicants are being overcharged, there may also equally be circumstances where they are being undercharged.

To alleviate this confusion, and to ensure fees are being consistently applied, the Panel recommends the e-Planning system be reviewed and consideration be given to the preparation of a Practice Direction on the application of fees.

In addition to the above, the Panel also heard there were issues arising with the distribution of fees in the e-Planning portal, particularly in relation to referral bodies.

The Chief Executive of the Department is required to develop a scheme regarding the distribution of fees pursuant to regulation 18 of the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019* (the Fee Regulations).

The scheme established for this purpose currently provides that referral fees are paid directly to the relevant agency (per Table 1, Item 8 of the scheme) within five (5) business days of receipt of the fees by the SA Planning Portal.

However, the Panel heard whilst the fees are distributed to the relevant agency, the fees are not reconciled by sub-agency and are required to be manually identified and redistributed by the agency itself. For example, if a referral is made to the Native Vegetation Branch of DEW, the referral fee is received by DEW and manual identification and redistribution of the fee then needs to occur to ensure the fee is ultimately collected by Native Vegetation Branch.

This is causing administrative difficulties and results in misidentification and distribution of fees.

The Panel therefore recommends the e-Planning system be reviewed to ensure it is appropriately identifying, on a consistent basis, to which sub-agency referral fees are to be allocated. It also recommends investigations be undertaken as to whether the scheme established for the purposes of the Fee Regulations may be reviewed to require distribution by sub-agency.

Observations and Comments

Section 56 – e-Planning Levy

The Minister requested the Panel consider and comment on the e-Planning levy imposed on councils by virtue of section 56 of the PDI Act.

Section 56 of the PDI Act enables the Chief Executive of the Department, with the approval of the Minister, to impose fees and charges with respect to the e-Planning portal, including imposing a requirement on councils to contribute to the cost of establishing and/or maintaining the same.

The financial contribution made by each council is based on total development cost averaged over the previous three (3) years. This is broken down as shown in Table 14.

Average Total Development Cost	
Group A	>$100 million
Group B	$50 – $100 million
Group C	$10 – $50 million
Group D	< $10 million

Table 14: *Average Total Development Cost groupings.*

Each council is assigned a grouping based on its Average Total Development Cost. Each group is then assigned an annual contribution fee. The annual contribution fee, together with the number of councils in that group and the percentage (%) contributed by that group for the 2021/2022 financial year, are shown in Table 15.

The model has been established on the advice of a senior economist and recognises the councils which are experiencing the highest level of development in their areas are also (more likely than not) the most frequent users of the e-Planning system.

In considering the section 56 levy, the Panel was advised the e-Planning system costs approximately $8.6 million to maintain annually. Accordingly, the council contribution to the maintenance of the system is approximately 17% of the total operation cost. The balance of the funding is derived from lodgement fees and the system seeks to operate on a revenue neutral basis as far as reasonably practicable.

The Panel has recommended an extensive list of improvements which reflect the feedback from local government and a range of stakeholders. Accordingly, the Panel considers it is appropriate for the cost of the system to continue to be shared between State and local government as provided for in section 56.

To reduce the cost impacts of the new system, Section 56(2) of the PDI Act should be repealed to reduce the financial burden on local government. If this is not recommended, the Chief Executive of the Department of Trade and Investment should be required to enter into a Service Level of Agreement with the LGA, that establishes an agreed project plan, priorities and pathways for the improvement of the eplanning system which are a priority for local government.[77]

Levy Group	Annual Contribution	Number of Councils in Group	Percentage of total each council in the Group pays	Percentage of total paid by Group	Total $ value of contribution per Group
Group A	$60,200	21	4.01%	84.29%	$1,264,200
Group B	$18,600	4	1.24%	4.96%	$74,400
Group C	$6,200	26	0.41%	10.75%	$161,200
Group D	$0.00	17	-	-	
Total					**$1,499,800**

Table 15: *Levy Group contribution totals.*

77. Local Government Association of South Australia, Submission August 2022, 14.

User Logins

As identified earlier in this Report, many councils are outsourcing their planning work to private Accredited Professionals due to resourcing constraints. An interesting by-product of this outsourcing is the request of private Accredited Professionals (particularly building Accredited Professionals) to have a single user login for the e-Planning portal, rather than a login for each council they are undertaking work for. This request is borne from a desire for the Accredited Professional to be 'assigned' files within the portal by each individual council, which would then be accessible from a single user login.

This request was put to the Panel for consideration. However, following consultation with PlanSA, the Panel understands this is not possible for cyber security reasons. Namely, giving consultants access to multiple applications across multiple councils on one (1) dashboard compromises the integrity of the system and the security of the Relevant Authority.

Accordingly, in circumstances where councils outsource their planning work, it will continue to be appropriate for those Relevant Authorities to provide their consultants access to their dashboards via a separate login.

Direct Debit Payment Option

The Panel received a number of submissions which referenced the inability to pay for development application fees by direct debit, with the portal currently only accepting credit cards as a suitable payment option.

The Panel is advised that PlanSA is appraised of this concern and is currently working through the intricacies associated with alternative payment forms, such as clearance of payments and how that integrates with assessment clocks. It is anticipated an alternative payment method will be available later this year.

Crown Developments

The Panel heard there was concern crown developments are not subjected to the same application process as other applicants. The Panel also heard there were transparency concerns on the basis crown developments are not made in the same manner as all other development applications.

There is a separate, stand-alone electronic system for crown developments. However, this has not yet been integrated into the core system. PlanSA is currently undertaking analysis as to how crown development applications can be safely integrated, albeit noting crown developments are often sensitive, there are cyber security concerns which arise with the same.

Indeed, there is concern integrating crown developments into the DAP may consequently make the DAP more vulnerable to cyberattack, namely due to the data classification associated with crown developments. On this basis, the integration of crown developments into the core system needs to be carefully considered and should not be done hastily.

PART FIVE:
OTHER

Recommendation 72

All matters identified in the Minor and Operational Recommendations table be referred to the Department for Trade and Investment for further investigation and implementation, where appropriate.

The Panel has identified a number of minor and operational issues raised in the submissions which require further investigation and implementation by the Department, where appropriate. The Panel has presented these minor and operational recommendations in a table found in **Appendix 8** to this Report. As can be seen from the matters identified therein, these recommendations canvas a broad range of issues.

The Panel determined it would be remiss of it not to identify all of those issues it has determined require further investigation and implementation by the Department, as failure to do so would not acknowledge the significant amount of time and effort put into the submissions received by the Panel.

It is not intended that every issue raised with the Panel is identified either in this Report or in **Appendix 8** However, this does enable a broader range of legislative and policy reforms to be advanced.

Summary of Recommendations

Recommendation		Page Reference
***Planning, Development and Infrastructure Act 2016* – Public Notification and Appeals**		
1.	Proposed developments which exceed the maximum height identified in the Planning and Design Code (including any affordable housing incentive) should attract third-party appeal rights.	42
2.	Greater education needs to be provided on public notification and how to make a submission on a development application.	43
3.	Extend the public notification zone in rural areas outside of townships to align with separation zones identified by the Environment Protection Authority, based on proposed land use.	44
4.	An additional 'on boundary' category of public notification should be created such that only directly affected neighbours are notified of on boundary developments by the Relevant Authority.	45
***Planning, Development and Infrastructure Act 2016* – Accredited Professionals**		
5.	*Phase 1* The Accredited Professionals Scheme and associated Regulations should be amended to remove the ability for building professionals to issue planning consents.	51
	Phase 2 Only Planning Accredited Professional Level 1 (Assessment Manager) practitioners may determine minor variations.	52
6.	The Government, through Planning and Land Use Services, works with Assessment Managers to identify, and develop guidelines for minor variations which may be implemented by the State Planning Commission.	53
7.	The e-Planning system should require a Relevant Authority to record when a minor variation has occurred.	54
8.	There should be automatic mutual recognition for related professional bodies.	55
9.	Accredited Professionals must be audited more frequently than once in every five (5) years.	56
***Planning, Development and Infrastructure Act 2016* – Impact Assessed Development**		
10.	Impact Assessed (Declared) development assessment is returned to a whole of Government process.	59
***Planning, Development and Infrastructure Act 2016* – Infrastructure Schemes**		
11.	A Government business unit should be established to manage and implement infrastructure schemes.	61
***Planning, Development and Infrastructure Act 2016* – Local Heritage in the PDI Act**		
12.	Local heritage should be removed from the *Planning, Development and Infrastructure Act 2016* and incorporated into the *Heritage Places Act 1993,* thus aligning State and local heritage listing processes.	64
13.	Section 67(4) and 67(5) of the *Planning, Development and Infrastructure Act 2016* should be repealed, or otherwise never turned on.	65

***Planning, Development and Infrastructure Act 2016* – Deemed Consents**		
14.	Increase the assessment timeframe associated with Performance Assessed development applications to 30 business days for complex applications, thus increasing the time available before a Deemed Consent may be issued.	69
15.	The Deemed Consent provisions should apply to land division applications.	71
***Planning, Development and Infrastructure Act 2016* – Verification of Development Applications**		
16.	The State Planning Commission should prepare a Practice Direction regarding verification.	74
17.	The requirements of Schedule 8 of the *Planning, Development and Infrastructure (General) Regulations 2017* should be reviewed to ensure that a Relevant Authority is provided with sufficient information to assess the nature of the application and assessment pathway, at the time of verification.	75
18.	Increase the verification timeframe to align with development application complexity.	76
19.	*19.1* If an application is verified in less time than the legislated verification timeframe allows, any additional time available to verify the application should be added to the associated development assessment timeframe.	77
	19.2 If the legislated verification timeframe is exceeded, any additional time taken to verify the application should be deducted from the associated development assessment timeframe.	78
20.	Land division verification should be recentralised.	79
***Planning, Development and Infrastructure Act 2016* – Minor Variations to Development Approvals**		
21.	The State Planning Commission investigate the cumulative impact of multiple minor variations and provide further guidance as to when a minor variation should and should not occur.	82
22.	Minor variations to a planning consent once Development Approval has been issued should only be assessed by the relevant council.	83
***Planning, Development and Infrastructure Act 2016* – Other**		
23.	The State Planning Commission should review the size and purpose of catalyst sites.	85
24.	Demolition of all dwellings should be recorded on the e-Planning portal.	86
25.	Local government and State government collaborate to review and redevelop the Local Design Review Scheme.	87
26.	The State Planning Commission investigate implementing a land supply and demand monitoring program.	88
27.	The State Planning Commission should review and amend the Community Engagement Charter to provide guidance on First Nations engagement.	89
28.	The State Government should investigate and consider how planning is dealt with in out of council areas.	90
29.	The State Government, through Planning and Land Use Services, should aid and guide those Relevant Authorities struggling to verify and assess development applications within the prescribed timeframes.	91
Planning and Design Code – Character and Heritage		
30.	The State Government, through Planning and Land Use Services, prepare a template set of design guidelines for character and historic areas.	97
Planning and Design Code – Character		
31.	The Expert Panel supports the State Planning Commission's proposal to require a replacement building to be approved prior to demolition being able to occur in Character Areas.	99
32.	The role of Representative Buildings should be reviewed.	100

Planning and Design Code – Heritage		
33.	To facilitate greater adaptive reuse of heritage places, the Planning and Design Code should include a broader range of possible land uses for heritage places than those listed in the relevant zone or subzone.	102
34.	The State Government resource the identification and assessment of heritage that is not within a council area.	103
35.	On the basis that local heritage is transitioned to the *Heritage Places Act 1993,* the places currently identified as local heritage should be reviewed to ensure they meet all relevant criteria.	104
Planning and Design Code – Tree Policy		
36.	The State Government review and refine the intersection between the *Planning, Development and Infrastructure Act 2016* and *Native Vegetation Act 1991* to remove confusion within the community and development sector, to ensure native vegetation is retained.	111
37.	The Planning and Design Code policy should support design innovation to enable the retention of trees.	112
38.	Extend the application of the Urban Tree Canopy Overlay to all new allotments in the Master Planned Neighbourhood Zone.	113
39.	Extend the Urban Tree Canopy Overlay and the Regulated and Significant Tree Overlay to townships and address any anomalies in current township mapping for this purpose.	114
40.	The Urban Tree Canopy Off-set Scheme fees are increased.	115
41.	The Government investigate what additional and/or alternative penalties are available for tree damaging activity to disincentivise poor behaviour.	116
42.	Investigations be undertaken to establish an independent arboriculture advisory body to provide advice on applications pertaining to significant trees.	117
43.	Apply the tree regulations to all State Government projects.	118
44.	The Government investigate what opportunities and mechanisms are available to encourage tree retention and planting on private land.	119
Planning and Design Code – Infill Policy		
45.	General infill design guidelines should be prepared in conjunction with industry to demonstrate and promote different styles and types of infill development.	124
46.	The Planning and Design Code policy pertaining to strategic sites should be reviewed, and non-planning mechanisms should be investigated to assist with creating strategic sites.	127
47.	The Planning and Design Code provisions pertaining to Private Open Space should be revised.	128
48.	The storage policy identified for apartments should apply to all forms of residential development.	129
49.	A basic landscaping plan should be provided for all infill developments to document how the soft landscaping requirements of the Planning and Design Code are to be adhered to.	130
Planning and Design Code – Car Parking Policy		
50.	The minimum garage dimensions should be increased.	134
51.	The requirement to provide undercover car parking should be removed from the Planning and Design Code, but provision of space for a covered car park should still be made available behind the face of the dwelling.	136
52.	The State Planning Commission consider producing Local Road Design Standards for local roads.	137
53.	Electric Vehicle charging stations should generally be an exempt form of development, but investigations should be undertaken to determine in which locations they will be considered development.	138
54.	Car Parking Offset Funds should be permitted to be used to build active travel infrastructure.	139

Planning and Design Code – Other		
55.	The Affordable Housing Overlay should apply to all residential, neighbourhood and activity centre zones.	143
56.	The State Planning Commission prepare guidance material which indicates the role of planning in managing climate change and identifying how climate change is already included in Planning and Design Code policy.	144
e-Planning/PlanSA – Improvements Identified in Discussion Paper		
57.	An independent user experience review of the PlanSA website is undertaken, following which the website interface is updated to be more user friendly and intuitive, acknowledging the various capabilities of users.	150
58.	Create a simplified online submission form which does not require an applicant to have a PlanSA account and login.	151
59.	Increase relevant authority data management within the Development Application Processing system.	152
60.	Build Inspection Clocks into the Development Application Processing system.	153
61.	A non-refundable lodgement fee should be paid at submission of a development application to 'lock in' the version of the Planning and Design Code to be used for assessment.	154
62.	Enable elective concurrent verification and assessment for Deemed-to-Satisfy development applications.	155
63.	Investigate the implementation of automatic assessment Deemed-to-Satisfy development applications.	156
64.	Investigate the development of a mobile application to improve the mobile accessibility of the e-Planning system and PlanSA website.	157
e-Planning/PlanSA – Additional e-Planning Improvements Identified Through Public Consultation		
65.	Build into the e-Planning system an option for an assessing officer to record why a development moved from Deemed-to-Satisfy into Performance Assessed.	159
66.	The online version of the Planning and Design Code should be reviewed by an editor and graphic designer.	160
67.	PlanSA undertake further engagement with Relevant Authorities to develop a more flexible workflow within the e-Planning portal.	161
68.	Document management capabilities should be introduced into the e-Planning portal.	162
69.	Increase the file upload capacity of the e-Planning portal.	163
70.	Referral agency advice should only be published on the public register following a decision being made on a development application.	164
71.	The e-Planning system be reviewed to ensure fees are being consistently applied and appropriately distributed.	165
Part 5 – Other		
72.	All matters identified in the Minor and Operational Recommendations table be referred to the Department for Trade and Investment for further investigation and implementation, where appropriate.	169 and Appendix 8

Glossary of Terms

2016 Design Guidelines Draft Residential Design Guidelines (2016)

AIBS Australian Institute of Building Surveyors

AP Amendment Regulations *Planning, Development and Infrastructure (Accredited Professionals) (Miscellaneous) Amendment Regulations 2023*

AP Regulations *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*

AP-BL1 Accredited Professional Building Level 1

AP-PL Accredited Professional Planning Level

APS Accredited Professionals Scheme

Australian Standard Australian Standard 2890.1:2004 - Parking facilities – Off-street car parking

BSUD Biodiversity Sensitive Urban Design

CAP Council Assessment Panel

CFS Country Fire Service

Character Guidelines Character Area Overlay Design Guidelines

Charter Community Engagement Charter

Code Planning and Design Code

Commission State Planning Commission

Committee Legislative Review Committee

CPD Continuing Professional Development

DAP Development Assessment Panel

Department Department for Trade and Investment

Development Act *Development Act 1993* (ceased)

DEW Department for Environment and Water

DNF Decision Notification Form

DPF Designated Performance Feature

DTS Deemed to Satisfy

EFPA Environment Food Production Area

ERD Court Environment Resources and Development Court

ERDC Environment Resources and Development Committee

Fee Regulations *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*

Fund Urban Tree Canopy Off-set Fund

Heritage Inquiry Environment Resources and Development Committee's 2019 Report *An Inquiry into Heritage Reform*

Heritage Places Act *Heritage Places Act 1993*

Historic Guidelines Historic Area Overlay Design Advisory Guidelines

LDRP Local Design Review Panel

LDRS Local Design Review Scheme

LiDAR Light Detection and Ranging

Minister Minister for Planning, the Hon. Nick Champion

MTECA Miscellaneous Technical Enhancement Code Amendment

Native Vegetation Act *Native Vegetation Act 1991*

OCA Outback Communities Authority

ODASA Office for Design and Architecture

PLUS Planning and Land Use Services

PA Performance Assessed

Panel The Expert Panel for the Planning System Implementation Review

PDI Act *Planning, Development and Infrastructure Act 2016*

PDI Regulations *Planning, Development and Infrastructure (General) Regulations 2017*

PIA Planning Institute of Australia

POS Private Open Space

RAP Regional Assessment Panel

Scheme Urban Tree Canopy Off-set Scheme

South Bend Guideline South Bend Neighborhood Infill: Pre-approved, ready to build housing

SPP State Planning Policy

TNV Technical Numerical Variation

ToR Terms of Reference

TPZ Tree Protection Zone

WSUD Water Sensitive Urban Design

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APPENDICES

Appendix 1
Terms of Reference

Terms of Reference

Expert Panel for the Implementation Review Project

1. Purpose

The purpose of the Expert Panel for the Implementation Review Project (the Expert Panel) is to deliver the Implementation Review Project (the Project). The scope of the Project will include review by the Expert Panel of:

a. the *Planning, Development and Infrastructure Act 2016;*
b. the Planning and Design Code (and related instruments) as it relates to infill policy, trees, character, heritage and car parking;
c. the e-planning system with a view to ensuring that it is delivering an efficient and user-friendly process and platform; and
d. the PlanSA Website with a view to ensuring its useability and access to information by the community.

2. Objectives

The Expert Panel will seek to achieve the following objectives through its delivery of the Project:

a. undertake a review of those legislative, policy and operational matters within the scope of the Project;
b. consult with the State Planning Commission and other stakeholders (including local government and industry) as required to effectively deliver the Project;
c. provide advice and make recommendations in the form of a report to the Minister for Planning (the Minister) on matters within the scope of the Project at the end of the 5 month term; and
d. provide early advice or recommendations as requested by the Minister or as considered appropriate by the Expert Panel, as well as final advice or recommendations at the completion of the Project.

3. Principles

The Expert Panel will operate consistently with the following principles:

a. taking an evidence and data based approach to review of information;
b. taking an open-minded and unbiased approach to consultation;
c. providing frank and fearless advice;
d. focusing on achieving pragmatic and quality outcomes and the delivery of results.

4. Membership

a. The Expert Panel will be comprised of four (4) Members who, as far as reasonably practicable, have combined expertise within the following areas:
   - statutory planning, including development assessment;
   - planning policy, which may include strategic planning, urban design or architecture;
   - local government, public administration or law; and
   - information technology systems or customer service systems or workflows.
b. Members of the Expert Panel will be appointed by the Minister, and on conditions determined by the Minister in writing.
c. The Minister will appoint one Member as the Presiding Member of the Expert Panel.

5. Remuneration

Sessional fees will be paid to Expert Panel Members in accordance with Department of the Premier and Cabinet Circular PC016 – Remuneration for Government Appointed Part-Time Boards and Committees (September 2016), and the Boards and Committees – Remuneration Framework (Approved by Cabinet on 10 December 2007).

6. Term

The Expert Panel will operate for a period of five (5) months, commencing 1 August 2022 to 31 December 2022.

7. Presiding Member

a. The primary role and function of the Presiding Member is to lead and manage the processes and practices of the Expert Panel, and to ensure the effective delivery of the Expert Panel's purpose.

b. In the absence of the Presiding Member, a Member chosen by the majority of Members present will preside at a meeting of the Expert Panel.

8. Conflict of Interest

a. Members must declare any conflicts of interest to the Expert Panel at the start of each meeting or before discussion of the relevant agenda item or topic. Details of the potential or actual conflicts of interest must be appropriately minuted.

b. Where Members at Expert Panel meetings are deemed to have a real or perceived conflict of interest, it may be appropriate that the Member is excused from deliberations on the matter.

9. Meeting Schedule

The Expert Panel will meet in person or via Microsoft Teams every month or as otherwise required to deliver the Project (as determined by the Presiding Member in consultation with the Executive Officer).

10. Agenda and Meeting Papers

An agenda and any associated meeting papers will be distributed by the Executive Officer five working days prior to each meeting of the Expert Panel.

11. Proceedings

a. If required, Expert Panel business may be conducted 'out-of-session' by electronic correspondence between the Presiding Member, Members and the Executive Officer (where appropriate).

b. Each Member has one vote, and the Presiding Member has a casting vote, if required to address an even vote.

c. Decisions of the Expert Panel are carried by the majority of votes cast. The minutes will only record the decision and not the votes for or against.

12. Quorum

For Expert Panel meetings, the quorum is three (3) Members (and no business may be transacted at a meeting of the Expert Panel unless a quorum is present).

13. Proxies

Proxy Members will not be appointed. Members are encouraged to attend via online meeting facilities if they are not available to attend in person, otherwise an apology is to be tendered.

14. Minutes

a. The Executive Officer will minute the meeting. The minutes will be concise and only record:

- The names of Members present
- Apologies received from Members
- Any disclosure of interest or conflicts made by a Member
- A high-level overview of discussion
- Details of any actions agreed to, and the responsibility for those actions.

b. The minutes will be distributed amongst members of the Expert Panel within five business days following the meeting and will be included on the agenda of the next Expert Panel meeting for noting.

15. Attendance of External Parties

a. Expert Panel meetings are not open to the general public or the media.

b. The Presiding Member may invite guests to attend specific meetings of the Expert Panel as required, including for the purpose of external parties presenting or advising on specific matters.

c. Officers from the Department for Trade and Investment may also attend meetings of the Expert Panel as required to support its functions. This will include the Executive Officer, a Project Manager as well as relevant Directors (or their proxies) with expertise in the subject matter to be considered by the Expert Panel at the meeting.

16. Advice to the Minister

The Presiding Member, as soon as practical after finalisation of the Panel advice and recommendations to the Minister, will present the Expert Panel's findings to the Minister.

17. Terms of Reference

These Terms of Reference may be amended, varied or modified by the Minister at any time by written notice from the Minister to the Presiding Member (through the nominated Executive Officer of the Expert Panel).

Appendix 2
What We Heard

What We Heard

> Engagement Approach
> Submissions to the Expert Panel
> Engagement Events

Engagement Approach

Community Engagement Charter

As this Review was an election commitment that falls outside of the purview of the *Planning, Development and Infrastructure Act 2016* (the PDI Act) (particularly as it is tasked with reviewing the same), the Panel was not bound to observe the Community Engagement Charter (the Charter) prescribed in the legislation in undertaking the engagement component of its Review.

However, noting the Charter is considered the best practice approach to engagement, the Panel sought to embody the principles contained within it when designing its approach to consultation.

The table below outlines the ways in which the Panel's engagement supported the five (5) principles of the Charter and the performance outcomes that it strived to achieve.

Charter principles	Performance outcomes	Engagement measures
(1) Engagement is genuine	People had faith and confidence in the engagement process	› Targeted at a wide range of stakeholders using a range of channels › Timeline sufficient for people to hear/see the opportunity to have their say (available for public submissions between August and December 2022, together with a nine (9) week active engagement period) › The Expert Panel will prepare its review for the Minister, including an outline of what was heard and how it was responded to and the evaluation of the engagement. It is recommended that this is released by the Minister and published on the Panel's webpage.
(2) Engagement is inclusive and respectful	Affected and interested people had the opportunity to participate and be heard	› Easy to digest information helped audiences understand why it was relevant to them and how they could have a say › Provided targeted information to practitioners and members of the public to enable them to have a say.
(3) Engagement is fit for purpose	People were engaged effectively and satisfied with the process. People were clear about the scope of the review.	› A variety of engagement opportunities were offered in a range of ways, to reach a wide pool of stakeholders (i.e written submission, online engagement event, in person engagement event) › The public were informed through a variety of communication channels to gain maximum reach – dedicated webpage, YourSAy, social media › Stakeholders known as 'interested' were directly notified by targeted eNews alerts from the Chair of the Panel › Stakeholders with a representative voice were invited to participate in deputations.
(4) Engagement is informed and transparent	All relevant information was made available for easy accessibility. People understood how their views would be considered prior to the delivery of the final recommendations to the Minister.	› Information clearly articulated key matters, what the Expert Panel was gathering feedback on, how participants could get involved and how feedback would be used › It is recommended that the Expert Panel's final report is released by the Minister through a variety of communications channels.
(5) Engagement processes are reviewed and improved	The engagement was reviewed and improvements recommended	› Measures of success are identified and have been evaluated at the conclusion of the Implementation Review › Any issues raised about the engagement during the process will be considered for future engagements of this nature.

Engagement Evaluation

To measure the satisfaction of the Panel's engagement, all persons that registered to attend an engagement event throughout the public consultation period received a survey asking them to rate their engagement experience. A total of 335 surveys were sent out, and 82 responses were received. This is a response rate of 24.47%.

The following is a summary of the evaluation responses against the principles of the Charter that the Panel sought to fulfill. The full results of the evaluation survey can be found in **Appendix 2.1** to this What We Heard Report.

The questions asked in the survey and their associated responses, were as follows:

1. Engagement is genuine

People had faith and confidence in the engagement process.

The Panel was clear and transparent with stakeholders about how and why the engagement was being undertaken, and that feedback was important in helping to shape the recommendations it would make to the Minister.

The below survey results show that the majority of respondents (over 75%) either somewhat or strongly agree that the consultation was genuine.

Evaluation statement	Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree	Number of responses
I feel that my input was genuinely sought to help determine which areas of the Planning System implementation required review, and where changes should be made	6.10%	6.10%	12.20%	35.37%	40.24%	82

2. Engagement is inclusive and respectful

Affected and interested people had the opportunity to participate and be heard.

The Panel facilitated engagement events both in person and online, ensuring anyone could participate irrespective of their location. The Panel sought to promote the engagement through a variety of channels and the engagement was undertaken over a period of nine (9) weeks, providing ample opportunity for interested people to participate and be heard.

The below survey results show most respondents (over 81%) either somewhat or strongly agree that they had adequate opportunity to be heard and to provide feedback.

Evaluation statement	Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree	Number of responses
I was given sufficient information to provide informed feedback on the Planning System Implementation Review	3.66%	4.88%	9.76%	45.12%	36.59%	82

3. Engagement is fit for purpose

People were engaged effectively and satisfied with the process.

People were clear about the scope of the review.

The Panel released its Discussion Papers in advance of commencing its active engagement period, to inform the community what it was reviewing and to promote discussion. It also released Summary Papers to ensure the Review was accessible to all stakeholders, not just those who regularly interact with the planning system.

The below survey results show that the majority of respondents (over 78%) either somewhat or strongly agree that they were given sufficient information about the Planning System Implementation Review.

Evaluation statement	Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree	Number of responses
I was given adequate opportunity to be heard and to provide feedback on the Planning System Implementation Review	4.88%	9.76%	7.32%	29.27%	48.78%	82

4. Engagement is informed and transparent

All relevant information was made available for easy accessibility.

People understood how their views would be considered prior to the delivery of the final recommendations to the Minister.

All communications about the Review emphasised that stakeholder feedback was important and would help inform the Panel's recommendations to the Minister.

The below survey results show that majority of respondents (over 80%) either somewhat or strongly agree that they were informed about why feedback was being sought and how it would be used.

Evaluation statement	Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree	Number of responses
I was informed about why I was being asked for my feedback on the Planning System Implementation Review, and how my feedback would be used	2.44%	7.32%	9.76%	42.68%	37.80%	82

In addition to the above, the survey also asked respondents how they heard about the engagement and enabled comments to be included in an 'Other' text box to identify any platforms that were not otherwise identified on the options list.

Whilst this was generally used for this purpose, as there was no 'general comments' text box provided, some respondents conveyed comments through this text box. One (1) comment advised the engagement made people feel listened to and thanked the Panel for the same.

The overall results demonstrated that the Panel's engagement was well received, and people felt genuinely engaged and able to participate in the Review.

Webpage

The Panel had (and continues to have) a dedicated webpage established to communicate an overview of the review process, contact details for submissions, meeting papers, policies and of course, information pertaining to its engagement program and its Discussion Papers.

The webpage has sought to serve as the Panel's single 'source of truth' throughout the Review, ensuring that all information that needed to be publicly communicated was published on the webpage in a timely manner.

It is intended that the webpage will stay live for the near future, and that the Final Report will also be published there.

Discussion Papers (and Summary Papers)

Following its initial meetings and determination of the key matters the Panel thought pertinent to address throughout the engagement program, the Panel prepared and released three (3) comprehensive Discussion Papers on Monday 17 October 2022.

The Discussion Papers were not exhaustive documents in that they did not seek to limit the matters that would be considered by the Panel. However, they sought to promote the types of issues that could be of importance to the community and stakeholders, and to provide questions to prompt further discussion and innovation.

The Discussion Papers were supported by seven (7) Summary Papers which sought to distil the issues identified in the Discussion Papers into easily understood and accessible documents for a wide audience.

The Discussion Papers and Summary Papers are available on the Panel's webpage and form a significant part of the Panel's work. It is recommended the Final Report is read alongside those papers for important contextual and background information.

Advertising

To ensure the community were aware of the appointment and work of the Panel and how they could participate in the Review, the following communications were deployed by (or on behalf of) the Panel:

- electronic direct mailouts were regularly sent to the Panel's mailing list providing updates on the progress of the Review in the form of messages from the Chair. A total of nine (9) mailouts were sent over the course of the Panel's appointment;
- a public notice was placed in the Sunday Mail on 20 November 2022 (reproduced at **Appendix 2.2**) advising of the community engagement opportunities;
- the Panel's YourSAy survey was promoted on the YourSAy Facebook page, as well as through direct electronic mailouts to persons that had subscribed to YourSAy's 'Transport/Planning' mailing list;
- the State Planning Commission promoted the Review on its LinkedIn page;
- an explanatory video was produced of the Chair and published on the Panel's webpage and Youtube; and
- flyers were sent out by several Members of Parliament to constituents in their electorates. Whilst the Panel is not wholly appraised of how many Members sought to promote the Review in this way, it gives thanks to those that did.

The Panel also understands that various Members of Parliament and local government elected members promoted the Review on their social media pages. It also gives thanks to those representatives.

The Review has been acknowledged and mentioned in various news articles published by various media since the Panel's appointment. This media exposure would have assisted in increasing the awareness of the Review.

In addition to the above, the Panel also recognises the efforts of both local government and industry stakeholders in promoting the Review and encouraging participation in the process.

Submissions to the Expert Panel

The Panel received a total of **816 submissions** in the course of its public engagement. This is inclusive of all email, postal and telephone submissions, the YourSAy responses and the correspondence referred to the Panel by the Minister. The formats the submissions were distributed across is detailed below.

Email Submissions

The Panel had (and continues to have) a dedicated email address (DTI.PlanningReview@sa.gov.au) established for the purposes of the Review. This email address enabled the Panel to receive submissions electronically, but also enabled it to communicate with stakeholders and the community where appropriate.

The Panel was 'open' to receiving general submissions on the Review from the date of its public announcement, being 5 August 2022. In addition, the Panel's email address was promoted during the formal period of community consultation to receive submissions from stakeholders and members of the public.

In total, throughout the period of 5 August 2022 until Friday 16 December 2022, the Panel received **636 email submissions** pertaining to the Review.

The Panel received an additional 58 email submissions between Friday 16 December 2022 and Monday 30 January 2022, being the final date for local governments to make their submission to the Panel. Of these 58, 32 were from councils (representing the views of 43 councils) and 26 were late submissions from people or groups that had not received an extension of time.

The Panel also received four (4) council submissions after the close of council submissions, one (1) which was an approved extension to accommodate a council meeting and the remaining three (3) submitted late without extension on 31 January and 1 February respectively.

The Panel gave thoughtful consideration to all submissions received based on the principles of listening.

Post

Throughout the course of the engagement period, the Panel received nine (9) written submissions by post. All postal submissions were received by 16 December 2022.

Phone

Whilst the Panel's direct telephone number received approximately 30 calls throughout the engagement period, only one (1) of these calls constituted a stand-alone submission to the Panel.

Instead, these calls were largely inquisitorial and were from members of the public and profession alike, seeking information about the Review and how to participate in the same.

Referrals

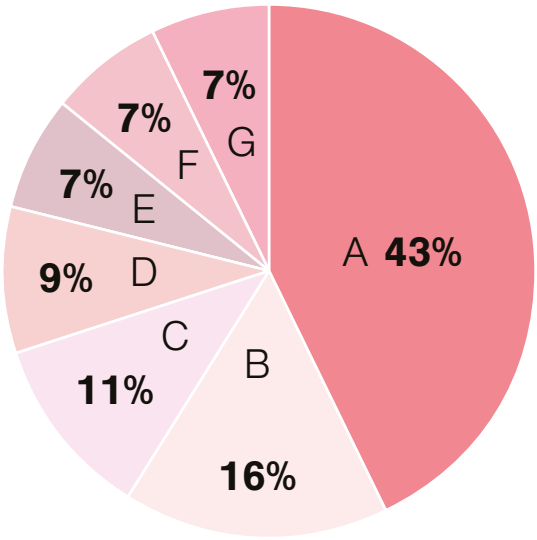
In addition to receiving submissions directly, the Minister also referred correspondence to the Panel for consideration.

This occurred in circumstances where the Minister received correspondence that related, directly or indirectly, to the work of the Panel, and which he considered would be of interest and/or relevance to the Panel.

The Panel ultimately received five (5) 'submissions' by way of referral from the Minister. On these occasions, the Panel was referred both the correspondence received by the Minister, together with his response. On all occasions, this occurred prior to 16 December 2022.

Distribution of Submissions

The graph shown at Figure 1 demonstrates the distribution of topics canvassed in submissions to the Panel, by reference to the Panel's Terms of Reference and the matters it was tasked to consider. It includes all submissions received by the Panel, inclusive of community and council submissions.



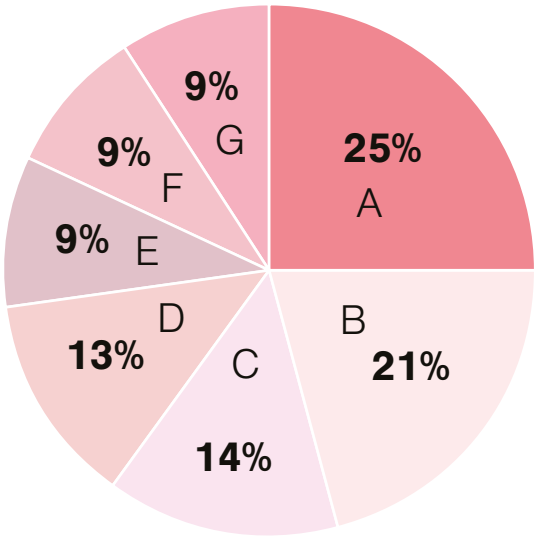
A: Tree Policy
B: PDI Act
C: Infill Policy
D: Character & Heritage
E: E-Planning & PlanSA Website
F: Car Parking Policy
G: Other

Figure 1: *Distribution of submissions received by topic, by reference to the Panel's Terms of Reference.*

Figure 1 is indicative of the issues most important to the community and the necessity for reform in these areas. Tree policy was clearly the topic garnering the most concern. However, the Panel notes the data is skewed as, of the 497 submissions which addressed tree policy in some aspect, 279 were identical (or near identical) submissions facilitated by the Conservation Council. It appears the Conservation Council created a 'standard form submission' on its website, whereby people need only enter their name and email address for the submission to be sent to the Panel.

The Panel took the volume of submissions received in this way to be indicative of the serious concern felt for the loss of tree canopy in South Australia.

However, if the 'standard' tree responses are excluded, the distribution of submissions is far more balanced across topics. This is shown in Figure 2 below:



A: Tree Policy
B: PDI Act
C: Infill Policy
D: Character & Heritage
E: E-Planning & PlanSA Website
F: Car Parking Policy
G: Other

Figure 2: *Distribution of submissions received by topic, by reference to the Panel's Terms of Reference, excluding 'standard' tree policy submissions.*

YourSAy

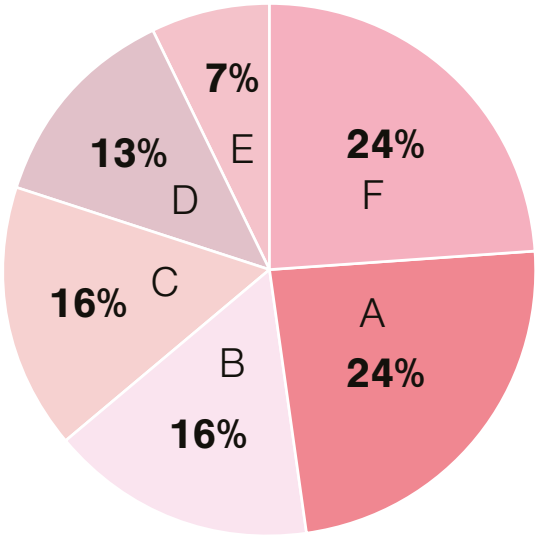
The Panel launched its YourSAy page – yoursay.gov.au/planning_review – on Monday 17 October 2022, being the date it also released its three (3) Discussion Papers.

The YourSAy page hosted the Discussion Papers (and the Summary Papers) for community consideration. It also provided an opportunity for members of the public to complete surveys on the topics being reviewed by the Panel. The survey questions were consistent with the questions posed in the Panel's Discussion Papers, and were 'themed' into six (6) topics (i.e. Tree Policy, Infill Policy, e-Planning etc) to enable a person to only complete surveys relating to their topics of interest.

In total, the Panel received 103 responses on YourSAy, with the following number of responses to each survey:

1. 16 responses to the ***Planning, Development and Infrastructure Act 2016*** **Reform Options** survey;
2. 7 responses to the **e-Planning and PlanSA** survey;
3. 17 responses to the Planning and Design Code – **Infill Policy** survey;
4. 25 responses to the Planning and Design Code – **Car Parking** survey;
5. 13 responses to the Planning and Design Code – **Character and Heritage** survey; and
6. 25 responses to the Planning and Design Code – **Urban Trees** survey.

It is noted that not all respondents answered all questions in the surveys they completed. The distribution of YourSAy responses is represented in Figure 3.



A: Tree Policy
B: PDI Act
C: Infill Policy
D: Character & Heritage
E: E-Planning & PlanSA Website
F: Carparking Policy

Figure 3: *Distribution of YourSAy responses by topic, by reference to the Panel's Terms of Reference.*

Engagement Events

Deputations

The Panel held three (3) deputation days on 28 November, 5 December, and 6 December 2022.

The Panel identified 27 representative and special interest groups that it wanted to invite to give a deputation. A list of the representative and special interest groups that were invited to give a deputation can be found in **Appendix 2.3.**

Of the 27 groups that received invitations, 23 presented to the Panel, 17 of which provided their full or summarised written submission in advance to enable Panel members to appraise themselves of the issues of relevance and importance.

Groups were provided with 15 minutes to make their deputation to the Panel, followed by additional time for questions and discussion. This process was independently facilitated by North Projects.

Thank you for the opportunity to provide feedback on the implementation of the new planning system, both through a facilitated workshop session (which I found to be a positive and well-delivered engagement exercise) and through this written submission.[78]

Workshops

Throughout its period of formal engagement, the Panel facilitated 14 engagement workshops. A list of the workshops and the dates they were facilitated is included in **Appendix 2.4.**

The Panel opened registration for its workshops on Monday 17 October 2022, alongside the release of its three (3) Discussion Papers.

A total of 375 people attended the workshops, seven (7) of which were held in person and seven (7) online.

The consultation workshops were designed to encourage a broad range of interested stakeholders to participate and to align the attendees' experience with (and understanding of) the planning system.

On this basis, the workshops were grouped as follows:

- Community;
- State Government Practitioners;
- Local Government Mayors and Chief Executive Officers (separate metropolitan and regional sessions were held in recognition of their differing experiences);
- Planning Professionals; and
- Building Professionals.

The following 'word clouds' were prepared by North Projects. They each contain the top 100 most used words in the notes taken during each engagement session. The word clouds have been prepared based on the above mentioned cohorts.

Importantly, the largest words are those that were used most regularly and assist in demonstrating the key topics of interest to each cohort.

78. Scott McLuskey, Submission September 2022, 1.

Community

The Panel held four (4) community events – three (3) in person and one (1) online. Overall, 95 members of the community registered to attend events, and approximately 40 people attended events without prior registration.

As can be gleaned from the word cloud, community feedback focused heavily on tree policy, character, heritage and car parking. The specific concerns included, but were not limited to:

- on trees, the:
  - number of trees being lost and equally, disappointment at the lack of trees being retained on newly developed blocks;
  - general belief the ten (10) metre rule is being abused by homeowners/applicants, which is contributing to poor tree retention; and
  - desire for the valuation of trees to include consideration of their value in terms of canopy cover (shade), amenity, climate change, and wildlife habitat;
- on character and heritage, the loss of character and heritage in the suburbs, and the need to retain the integrity of an area authentically, rather than have new houses emulate character;
- on car parking, the:
  - amount of car parking provided in the city is too high and there is a need to enable greater active transport options (e.g., bike lanes and bike parking);
  - lack of parking in residential areas, causing street congestion. There was widespread agreement the current standard for residential garages is too small for the most popular models of cars and needs to be increased;
- on infill, the amount of residential infill occurring, and particularly a view block sizes are too small, and front and side setbacks are diminishing;
- on the PDI Act, the:
  - removal of third-party appeal rights and a view this has created a system that is biased towards development applicants;
  - extent of public notification and a desire to increase the mandated the 60-metre notification boundary for notifiable developments; and
- on e-Planning, the quality of the new e-Planning system, despite many feeling it is hard to use for laypeople, and overwhelming for occasional users of the system.

State Government Practitioners

The Panel held one (1) online event specifically for State Government Practitioners. This was to ensure any matters of concern being experienced in State Government agencies were captured by the Review.

28 people registered to attend the State Government workshop.

The concerns State Government Practitioners raised with the Panel included but were not limited to:

- on character and heritage, the:
  - need for a more practical means of listing local heritage (noting it is more difficult to list a local heritage place than a State heritage place) and also a need for continued education pertaining to the difference between character and heritage for both the community and planning practitioners to ensure the terms are not confused in the assessment process;
- on tree policy, the:
  - need for Urban Tree Canopy Offset Scheme fees to be reflective of the cost to councils, as well as the Scheme needing to consider loss of cooling, amenity, biodiversity, character, and time for trees to get to maturity;
  - overlap between the *Native Vegetation Act 1991* and the planning system, and the need for clearer guidance around their interaction;
- on car parking, the:
  - on street congestion arising from garages being used for storage rather than parking;
  - need to anticipate an increase of electric vehicle parking on street and a need to stay ahead of the innovation occurring in this space; and
- on e-Planning, the:
  - desire to increase cross agency collaboration and to enable sub-agencies to have applications flowed directly to them without agency triage, increased visibility of progress of applications and remaining time to meet milestones (clocks); and an automatic clock to advise referral bodies when responses fall due; and
  - fee structure of the new planning system and more specifically, the ability to distribute fees to sub-branches within agencies, the inconsistency of when referral fees are paid and the ability to waive fees upfront (if applicable, rather than refunding).

State Government Practitioners also encouraged the Panel to consider acknowledging the voice of Aboriginal and Torres Strait Islander peoples in the legislation.

Local Government Mayors and Chief Executive Officers

The Panel held three (3) events for Local Government Mayors and Chief Executive Officers (CEOs), two (2) in person and one (1) online.

Of the in-person events, one (1) was specific to metropolitan councils and the other to regional councils. Both events were held on the same day, being Thursday 27 October 2022.

Prior to scheduling the workshops, the Panel consulted with the Local Government Association (the LGA) who recommended it align its in person Mayor and CEO engagement sessions with the LGA Annual General Meeting (AGM) being held on Friday 28 October 2022.

The Panel agreed to align the workshops with the AGM in a hope this would enable more regional Mayors and CEOs to attend in person, noting they would likely be in Adelaide for the LGA AGM.

Across both in person workshops and the online workshop, 57 Mayors and/or CEOs registered for the Panel's engagement events.

Local Government Mayors and CEO's raised the following issues with the Panel:

- on the PDI Act, the:
  - role of public consultation, the size of notification zone (particularly in regional areas) and increasing opportunity for comment from those impacted by development. There is a perception to residents that their voice is not being heard when they have no ability to appeal to the court, resulting in more adversarial representation occurring in the Council Assessment Panel environment as representors have nowhere else to go;
  - support for reviewing assessment timeframes to ensure the process is about producing quality outcomes rather than staff feeling pressured by a ticking clock to make decisions;
- on character and heritage, suggestions were made regarding the introduction of a requirement to maintain heritage buildings with a view to overcoming deliberate neglect for the purposes of demolition;

- on tree policy, the:
  - agreement tree protections should be revised to include height, canopy and root spread;
  - agreement there should be more consideration given to deterring tree removal, such as reducing the 10m rule;
  - tree removal offset fees (both for the removal of a regulated tree and for the purposes of the Urban Tree Canopy Offset Scheme) should be reflective of all costs associated with planting a replacement tree including the cost of purchase, maintenance, relocation of services, etc;
  - regional councils expressed a need to encourage preservation of trees outside of metropolitan areas and sought the extension of the tree policies to regional areas; and
  - native vegetation clearance for townships in fire prone areas, and the application of appropriate overlays for local considerations, need to be considered and/or addressed;
- on infill, participants sought design guidelines which consider impacts of ageing populations, small block implications (storage, number of vehicles, street design), and prioritise sustainability/environmental benefits;
- on e-Planning, they had received positive feedback from their council planning practitioners, but it was noted:
  - the user experience for novice users needs to be improved;
  - requiring all stakeholders to submit via PlanSA system will ensure consistency and transparency; and
  - fees should be reflective of effort and paid at lodgement to lock in the Code; and
- on other matters:
  - the lack of university pathways to become a built environment professional are concerning as there is already a significant skill shortage. Support was given to considering alternative, non-academic pathways into the professions; and
  - in terms of strategic planning, participants stated it was more important than ever for planning to reflect growth strategies using a local lens. It was suggested there was a need to increase consultation between the State, councils, and the wider community.

Planning Professionals

The Panel held four (4) events specific to planning professionals, two (2) in-person and two (2) online, to encourage both metropolitan and regional participation.

Planning professionals were the most represented cohort in the Panel's engagement workshops, with 109 practitioners registering to attend.

The key matters raised by planning professionals included but was not limited to:

- on trees:
  - the inadequacy of the Urban Tree Canopy Offset Scheme fees in covering the cost to councils for the purchase, planting, and maintenance of replacement trees;
  - the need for fees to reflect the value of the tree beyond its monetary value (i.e., amenity);
  - support for reducing the circumference required for regulated trees, reviewing the protected species list and ensuring tree protections consider biodiversity, canopy height and width;
  - support for applying the Urban Tree Canopy Overlay to the Master Planned Neighbourhood Zone;
  - a need for the legislation to more adequately deal with canopy pruning and to provide more clarity to assist with compliance issues; and
  - a need to expand the tree policies beyond the metropolitan area and apply regionally;
- on the e-Planning system, there was emphasis on the online Code requiring a more intuitive search function, greater document management capabilities and increased file upload sizes;
- on character and heritage, the need:
  - for more guidance around character areas;
  - to bring back desired character statements for character areas; and
  - to provide a clearer definition of the difference between character and heritage;
- on car parking, the need to revise the current minimum dimensions provided in the Code for residential garages as the current provisions are outdated and need to be increased to accommodate modern vehicles;
- on the PDI Act:
  - a broad consensus deemed consents should be removed from the legislative framework as the impact on workloads and the pressure on staff to compete with a clock is not providing good outcomes;
  - a need to increase the 60-metre public notification boundary in rural areas to ensure adequate notification to impacted parties;
  - agreement with the proposition building Accredited Professionals should not be undertaking planning assessments; and
  - agreement the local heritage places listing process ought to be simplified through consolidation with the *Heritage Places Act 1993;* and
- on other matters, recognition the resourcing constraints and the lack of education pathways for planning is resulting in less planners being available. There is a need to boost the sector with more staff.

Building Professionals

The Panel held two (2) online engagement workshops for building professionals. Across these two (2) events, 73 building professionals registered to attend.

The key matters raised by building professionals included but was not limited to:

- on e-Planning:
  - issues arising from the collection, lodgement, and distribution of fees, but more specifically the:
    - difficulties in collecting all the necessary fees up front without knowing what referrals will be required or what process the application will take. An application with multiple elements requires multiple assessment fees;
    - disparity between cost of building fees and planning fees (planning fees are higher, but building assessments carry greater risk if errors occur); and
    - issues with the distribution of fees when multiple entities are involved, and the lack of ease in reconciling those fees;
  - a need for greater functionality within the e-Planning portal; and
  - a request for building staff who work across multiple councils/employers to have a single login to the Portal which enables access to the dashboards of various Relevant Authorities;
- on the PDI Act:
  - a need to introduce penalties for breaching maximum verification timeframes. There was a view the lack of penalties results in an abuse of process which causes unnecessary delays; and
  - commentary on the opportunities which exist to better integrate private building professionals in mandatory inspections to take the burden off councils. This was particularly noting the staffing constraints being felt by regional councils; and
- on the Code generally:
  - building professionals expressed a desire for the Code to include more and/or better definitions to provide clarity to users. Suggestions of terms which would benefit were *'owner/builder', 'signage',* and introducing the concept of a *'neighbourhood'* rather than *'locality'*; and
  - there was a view there are too many overlays, and that these create confusion for users of the Code. Building professionals considered there was opportunity to simplify this process.

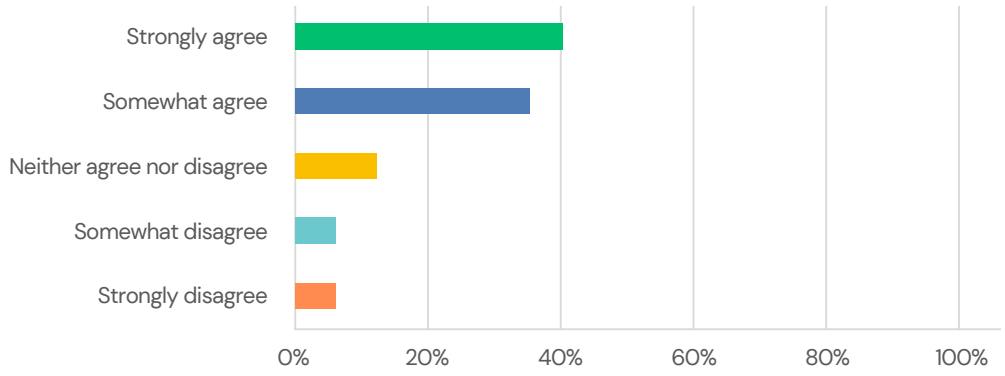
Appendix 2.1 Evaluation Survey Results

Evaluation of the public consultation process for the Planning System Implementation Review

(Survey Monkey)

Q1. I feel that my input was genuinely sought to help determine which areas of the Planning System implementation required review, and where changes should be made.

Answered: 820 Skipped: 0



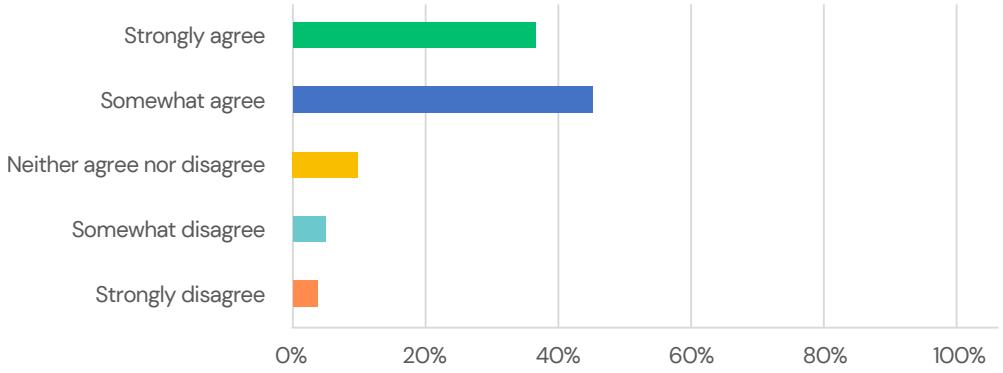
ANSWER CHOICES	RESPONSES	
Strongly agree	40.24%	33
Somewhat agree	35.37%	29
Neither agree nor disagree	12.20%	10
Somewhat disagree	6.10%	5
Strongly disagree	6.10%	5
TOTAL		82

Evaluation of the public consultation process for the Planning System Implementation Review

(Survey Monkey)

Q2. I was given sufficient information to provide informed feedback on the Planning System Implementation Review.

Answered: 820 Skipped: 0



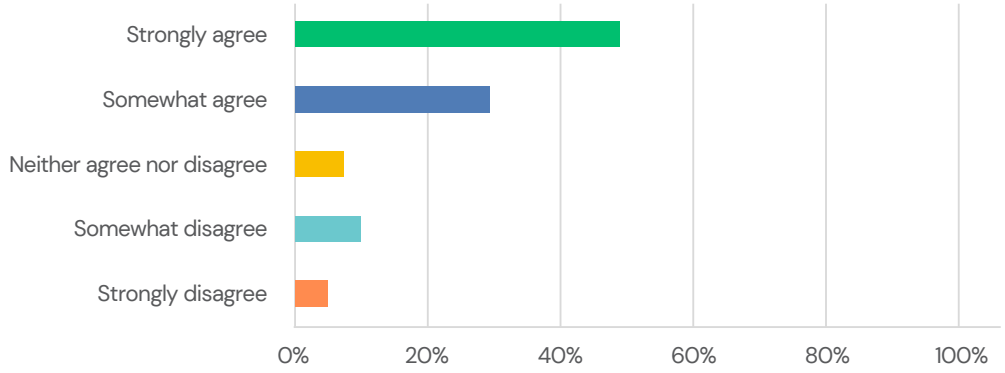
ANSWER CHOICES	RESPONSES	
Strongly agree	36.59%	30
Somewhat agree	45.12%	37
Neither agree nor disagree	9.76%	8
Somewhat disagree	4.88%	4
Strongly disagree	3.66%	3
TOTAL		82

Evaluation of the public consultation process for the Planning System Implementation Review

(Survey Monkey)

Q3. I was given adequate opportunity to be heard and to provide feedback on the Planning System Implementation Review.

Answered: 820 Skipped: 0



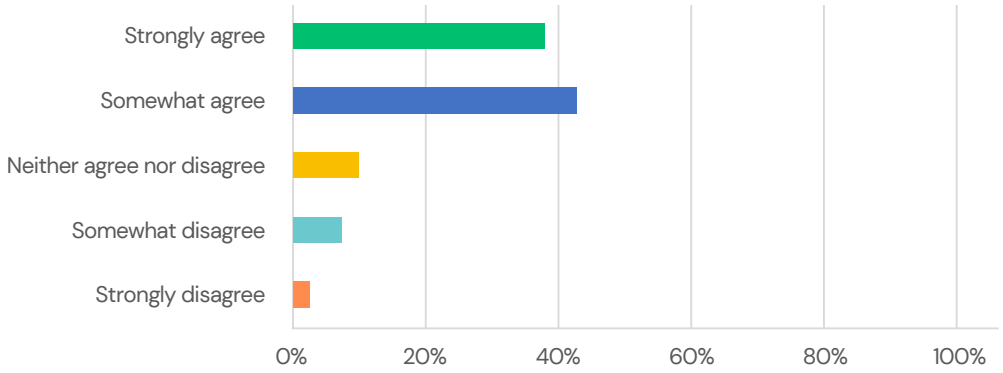
ANSWER CHOICES	RESPONSES	
Strongly agree	48.78%	40
Somewhat agree	29.27%	24
Neither agree nor disagree	7.32%	6
Somewhat disagree	9.76%	8
Strongly disagree	4.88%	4
TOTAL		82

Evaluation of the public consultation process for the Planning System Implementation Review

(Survey Monkey)

Q4. I was informed about why I was being asked for my feedback on the Planning System Implementation Review, and how my feedback would be used.

Answered: 820 Skipped: 0



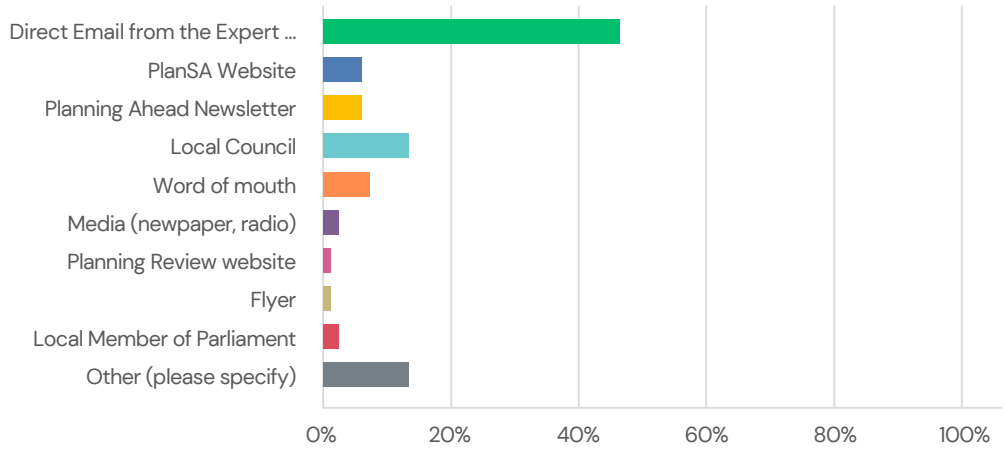
ANSWER CHOICES	RESPONSES	
Strongly agree	37.80%	31
Somewhat agree	42.68%	35
Neither agree nor disagree	9.76%	8
Somewhat disagree	7.32%	6
Strongly disagree	2.44%	2
TOTAL		82

Evaluation of the public consultation process for the Planning System Implementation Review

(Survey Monkey)

Q5. How did you find out about the Planning System Implementation Review consultation?

Answered: 820 Skipped: 0



ANSWER CHOICES	RESPONSES	
Direct Email from the Expert Panel for the Planning System Implementation Review	46.34%	38
PlanSA Website	6.10%	5
Planning Ahead Newsletter	6.1%	5
Local Council	13.41%	11
Word of mouth	7.32%	6
Media (newpaper, radio)	2.44%	2
Planning Review website	1.22%	1
Flyer	1.22%	1
Local Member of Parliament	2.44%	2
Other (please specify)	13.41%	11
TOTAL		82

#	OTHER (PLEASE SPECIFY)	DATE / TIME
1	There is no text box for general comments, so hope this is OK. This process was so much better than the consultation on the original Code. Instead of being lectured to, we were listened to. Thank you.	1/26/2023 5:26 PM
2	Your say	1/23/2023 12:11 PM
3	Industry Groups - Property Council & UDIA	1/23/2023 11:50 AM
4	LGA SA Email	1/2/2023 9:36 AM
5	Conservation SA, who has done fabulous work in educating the community the impacts our Planning Code has with the Removal of Signaficant Trees in this State and how SA lags significantly behind other States. All information about the Review of the Planning Code was generated via this channel.	12/22/2022 10:44 AM
6	This survey could have allowed for free from comments about any other improvements	12/22/2022 9:22 AM
7	Social media your say site	12/21/2022 10:00 PM
8	Community and residents Organisation	12/21/2022 7:51 PM
9	A number of the above	12/21/2022 12:23 PM
10	Very last minute I received an email from someone to attend this workshop. I thought I should have received an email about it as I sign up for the Plan ahead newsletter and I work for the Department	12/21/2022 10:41 AM
11	This survey should include a “any other comments box”, it is currently very limited/constrained in the type of feedback being sought. Will you be publicly releasing a post consultation summary report before going to the Minister with your findings and recommendations?	12/21/2022 9:36 AM

Appendix 2.2 Sunday Mail Public Notice

advertiser.com.au Sunday, November 20, 2022 | NEWS 25

Study proves to maintain health in older age ...

Sisters Patricia Moran, 80, and Dorothy Holland, 73, get their step count up with dog Maggie. Picture: Nicki Connolly

HOW TO AVOID FALLS IN LATER LIFE

- Walk more and keep fit at an earlier age with a combination of aerobic, resistance and high-intensity training
- Reduce the risk of cognitive decline by staying stimulated and socially engaged, and by avoiding cardiovascular of carrying excess weight, and treating conditions such as blood pressure and diabetes

Source: Professor Velandai Srikanth, National Centre for Healthy Ageing

STEP RIGHT UP, FOLKS

ROBYN RILEY

NEW Australian research shows that the number of daily steps older people take is a strong marker of health.

A team from the National Centre for Healthy Ageing, a partnership between Monash University and Peninsula Health, has studied the activity of more than 400 older people and found walking fewer than 5000 steps a day is an indicator of high falls risk.

The results of the study, led by Michele Callisaya and Velandai Srikanth from the NCHA and Oshadi Jayakody from the Albert Einstein College of Medicine in New York, has been published in the Journal of Ageing and Physical Activity.

Professor Srikanth says falls are the leading cause of hospitalised injuries and injury deaths among older Australians, and that using low-cost, low-tech devices such as pedometers or smart watches or phones to count steps can help identify earlier those who may need risk assessments and interventions.

He said the study also showed there were significant benefits if older people included resistance training in their exercise programs to strengthen their muscles.

"The message from the data suggests the less steps people take is probably a marker of frailty," Professor Srikanth said.

"We found people who walk less than 5000 steps had the maximum rate of falling and more cognitive impairment."

Professor Callisaya says identifying older people at greatest risk of falling is an important healthcare priority, and step counts help.

The study also highlighted that older people walking less were particularly at risk of cognitive impairment.

"Walking slowly in older age may indicate the brain is not working well or muscles are not strong enough," Professor Srikanth said.

Sisters Dorothy Holland, 73, and Patricia Moran, 80, have been "stepping it out" for years.

They also do pilates classes and line dancing together weekly, and have never had a serious fall.

"I read about 10,000 steps being the goal to aim for," Ms Holland said. "It is good to see now that research is backing that up."

The sisters agreed that doing regular exercise helped keep them feeling fit, mentally and physically.

"And it makes you feel good," Ms Holland said.

Professor Srikanth suggests older people who can should aim for 8000 to 10,000 steps a day and younger people should be doing more.

For those older people who cannot do that much, he says it is still important to walk as much as possible to keep muscles active.

Professor Srikanth said step count was one important marker, but that multiple interventions were needed including programs for older people they can easily adopt to strengthen muscles, provide social engagement and improve overall fitness.

The team also identified that mood played a role in falls risk, finding in those who were active and taking a higher number of daily steps, the presence of a low mood increased the risk of falling.

"The reason for this is not entirely clear, but in active people who fall it may be important to assess their mood and if necessary help them manage their psychological state as best as possible," the authors said.

The study also looked at the way cognitive, medical, and other factors such as poor muscle strength were associated with falls in those with higher versus lower levels of daily step count.

Protesters burn Khomeini home

PROTESTERS in Iran have set on fire the ancestral home of the Islamic republic's founder Ayatollah Ruhollah Khomeini as two months of anti-regime demonstrations show no letup, images show.

The house in the city of Khomein in the western Markazi province was shown ablaze with crowds of jubilant protesters marching past, according to images posted on social media. Khomeini is said to have been born at the house, which was later turned into a museum commemorating him, in the town of Khomein at the turn of the century.

He became a cleric deeply critical of the US-backed shah Mohammed Reza Pahlavi, moved into exile and then returned in triumph from France in 1979 to lead the Islamic revolution. Khomeini died in 1989 but remains the subject of adulation by the clerical leadership under successor Ayatollah Ali Khamenei.

Iran"s Ayatollah Ali Khamenei with a photo of Ayatollah Ruhollah Khomeini.

But Iran's Tasnim news agency later denied there had been a fire, saying the "door of the historic house is open to visitors".

The protests sparked by the death of Mahsa Amini, who had been arrested by the morality police, pose the biggest challenge from the street to Iran's leaders since the 1979 revolution. They were fuelled by anger over the obligatory headscarf for women imposed by Khomeini but have turned into a movement calling for an end to the Islamic republic itself.

Images of Khomeini have on occasion been torched or defaced by protesters, in taboo-breaking acts against a figure whose death is still marked each June.

V1 - ADVE012101MA

Appendix 2.3 List of Deputation Invitees

	Organisation/Group	Date of Deputation
1.	Association of Consulting Architects	28 November 2022
2.	Australian Institute of Architects	28 November 2022
3.	Australian Institute of Building Surveyors (SA)	Declined Invitation
4.	Australian Institute of Landscape Architects	28 November 2022
5.	Business SA	Declined Invitation
6.	Climate Action Working Group	6 December 2022
7.	Community Alliance SA	28 November 2022
8.	Conservation Council	6 December 2022
9.	Green Adelaide	6 December 2022
10.	History Trust of SA	No response to invitation received.
11.	Horticultural Media Association (SA)	6 December 2022
12.	Housing Industry Association	5 December 2022
13.	Local Government Assessment Manager Forum	28 November 2022
14.	Local Government Association	6 December 2022
15.	Mark Parnell (as a representative of community groups)	No response to invitation received.
16.	Master Builders Association	5 December 2022
17.	Outback Communities Authority	5 December 2022
18.	Planning Institute of Australia	6 December 2022
19.	Premier's Climate Change Council	6 December 2022
20.	Property Council of Australia	5 December 2022
21.	Resilient Groups	5 December 2022
22.	SA Accredited Professionals Association	5 December 2022
23.	SA Heritage Council	6 December 2022
24.	Stormwater Management Authority	5 December 2022
25.	Surveyors Board (SA)	28 November 2022
26.	Urban Development Institute of Australia	5 December 2022
27.	Urban Futures Exchange	28 November 2022

Appendix 2.4 List of Engagement Events

	Engagement Event	Format	Date
1.	State Government Practitioners	Online	24 October 2022
2.	Local Government CEOs and Mayors (Metropolitan)	In Person	27 October 2022
3.	Local Government CEOs and Mayors (Regional)	In Person	27 October 2022
4.	Local Government CEOs and Mayors	Online	31 October 2022
5.	Building Practitioners	Online	8 November 2022
6.	Planning Practitioners	In Person	16 November 2022
7.	Planning Practitioners	Online	21 November 2022
8.	Planning Practitioners	Online	23 November 2022
9.	Planning Practitioners	In Person	24 November 2022
10.	Building Practitioners	Online	30 November 2022
11.	Community Workshop	Online	1 December 2022
12.	Community Workshop (Metropolitan North)	In Person	8 December 2022
13.	Community Workshop (Metropolitan South)	In Person	13 December 2022
14.	Community Workshop (Metropolitan East)	In Person	13 December 2022

Appendix 3
Membership of the Built Environment Education Liaison Group

Membership

The composition of the Built Environment Education Liaison Group (BEELG) membership, as appointed by the Minister for Planning (the Minister), is outlined in the table below.

Organisation	Title	Role
Government (State and Local)		
State Government	Minister for Planning	**Chair**
State Government	Ministerial Adviser	**Provides advice** on alignment with strategy and direction from the Minister's office.
Department for Trade and Investment	Surveyor-General **(Deputy Chair)**	**Provide support and guidance** in relation to skills requirements and ways in which DTI might support tertiary students and courses.
Department for Trade and Investment	Registrar-General	
Department for Trade and Investment	Director, State Assessment	
Department for Trade and Investment	South Australian Government Architect	
Department for Trade and Investment	Valuer-General	
Department for Trade and Investment	Director, Land and Built Environment	
Department for Trade and Investment	Manager, Strategic Initiatives	
State Planning Commission	Chair	
City of Adelaide	Lord Mayor	
Local Government Association	Policy Advisor	
Department for Industry, Innovation and Science	Director, Higher and International Education	
Department for Trade and Investment	Senior Governance Officer	Undertakes role of **Executive Officer**

Organisation	Title	Role
Industry		
Joint working group: Surveying & Spatial Sciences Institute (SSSI-SA) and; Consulting Surveyors SA (CSSA)	Chair, SSSI-SA	**Provide support and guidance** in relation to skills requirements and ways in which industry might support tertiary students and courses.
Surveyors Board of South Australia (SBSA)	Chair	
Australian Institute of Conveyancers South Australia (AIC SA)	CEO	
Planning Institute of Australia (PIA)	SA President	
Architectural Practice Board of South Australia (APBSA)	Presiding Member	
Australian Institute of Architects, South Australia (AIA – SA)	Chapter President	
Australian Institute of Landscape Architects, South Australia (AILA – SA)	Chapter President	
Australian institute of Building Surveyors (AIBS)	President	
Australian Property Institute (API)	State Chair	
Tertiary Education		
University of South Australia (UniSA)	Representative for UniSA STEM Representative for UniSA Creative	**To work with industry bodies and government representatives** to address issues raised by BEELG.
Flinders University	Dean of Education College of Science and Engineering	
University of Adelaide	Head of School, Architecture and Built Environment	
TAFE SA	Education Manager – Advanced Building Studies, Electronics, Surveying & Higher Education	

Appendix 4
Accredited Professionals Scheme, Levels of Accreditation

PLANNING CLASSES OF ACCREDITATION

There are four classes of accreditation applicable to planning professionals, and a class for surveyors under the Regulations. Each class requires a different level of qualification and experience. The below table summarises the types of proposals they can assess.

PLANNING LEVEL 1

Planning, Development and Infrastructure (General) Regulations 2017

Deemed-to-satisfy development.

Deemed-to-satisfy development with minor variations.

Performance assessed development not assigned to assessment panels.

Land division consent.

PLANNING LEVEL 2

Notified performance assessed development.

PLANNING LEVEL 3

Deemed-to-satisfy development.

Deemed-to-satisfy development with minor variations.

PLANNING LEVEL 4

Deemed-to-satisfy development.

Excludes the assessment of one or more minor variations to the deemed-to-satisfy criteria.

Deemed-to-satisfy land divisions (planning consent only).

BUILDING CLASSES OF ACCREDITATION

There are four classes of accreditation applicable to building professionals. Each class requires a different level of qualification and experience. The below table summarises the activities that can be carried out for each level of accreditation.

BUILDING LEVEL 1

Planning, Development and Infrastructure (General) Regulations 2017

Assess and provide consent for any class of development.

Provide consent for certain deemed-to-satisfy development, as determined by the Minister.

BUILDING LEVEL 2

Assess and provide consent for buildings (all classes) not exceeding 3 storeys and a floor area not exceeding 2000m².

BUILDING LEVEL 3

Assess and provide consent for class 1 or 10 buildings not exceeding 2 storeys and a floor area not exceeding 500m².

BUILDING LEVEL 4

Carry out inspections as provided for under the practice direction on inspection policies.

Appendix 5
Expert Panel letter to the Minister on Character and Heritage, September 2022

Planning System Implementation Review

Level 5, 50 Flinders Street
Adelaide SA 5000

GPO Box 1815
Adelaide SA 5001

08 7133 3222
dti.planningreview@sa.gov.au

Hon. Nick Champion MP
Minister for Planning

By email: officeofministerchampion@sa.gov.au

Dear Minister Champion

EARLY RECOMMENDATIONS ON CHARACTER AND HERITAGE

I refer to your letter of 13 September 2022 in which you requested the Expert Panel for the Implementation Review (the Panel) provide you with early recommendations on the State Planning Commission's (the Commission) proposed 'three pronged' approach to character and heritage in the South Australian planning system.

Importantly, the 'three prongs' that make up the Commission's proposal are:

1. Elevate existing Character Area Overlays in the Planning and Design Code (the Code) to the Historic Area Overlay (where appropriate criteria or justification exists);
2. Support and facilitate councils to review and update their Character Area Statements (and Historic Area Statements) in the Code, to address gaps or deficiencies; and
3. Undertake a State-led Code Amendment to introduce an assessment pathway that only allows for demolition of a building in the Character Area Overlay (and the Historic Area Overlay) once a replacement building has been approved.

The Panel has considered the Commission's proposal and I am pleased to advise that it has resolved to give in principle support to prongs one (1) and two (2), outlined above. In the Panel's view, these are two (2) sensible improvements to the character and heritage framework in South Australia which can occur with limited intervention from the State.

The Panel recognises that both options can currently be facilitated in the absence of any legislative or policy amendment. However, it also notes that the Department of Trade and Investment's preparation of guidance materials will help to empower the local government sector to take responsibility for the transition to enhanced heritage protections at the local level.

The Panel supports the Commission's expeditious progression of these initiatives.

Notwithstanding, noting that prong three (3) is the most significant of the reforms proposed, the Panel has determined that it is not willing to provide early support and/or preliminary

advice on this matter in the absence of community consultation being undertaken on the same.

To that end, the Panel proposes to include prong three (3) in its discussion papers and to facilitate community consultation on this proposal during the Implementation Review. The Panel will consider any submissions it receives and will provide its final views and recommendation on this 'prong' of the Commission's proposal in its Final Report to you.

The Panel looks forward to receiving your views on its proposed approach to prong three (3) and would be pleased to work with both yourself and the Commission in delivering this body of work.

Yours sincerely

John Stimson

Presiding Member, Planning System Implementation Review

20/09/2022

Appendix 6
Country Fire Service Position Statement

South Australian Country Fire Service

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cfs.sa.gov.au

Position Statement

Risk management of mature/large trees on residental properties

The SACFS seeks to maintain a balance between fire risk mitigation while maintaining environmental values. Mature trees located within 20m of a building, if maintained correctly, do not pose a significant fire risk to a building.

Rationale

The SACFS has a legislated mandate to protect life, property and the environment (in that order). While the emphisis remains on the protection of life, the SACFS will always maintain a balance with protecting properties and conserving the environment.

The biggest fire-related risks to a building are direct flame contact and attack from sparks and embers.

Direct flame contact can be minimised by the active management of vegetation adjacent to buildings. This is generally referred to as ‘elevated fuels’ and is defined as shrubs and bushes that grow between shin height and shoulder/head height. This does not always include mature trees as they take considerable radiant heat and direct flame contact to initiate combustion.

Research has proven that sparks and embers are the most common direct cause of structure fires. The production of such sparks and embers are most commonly generated from the ignition of fine fuels.

Fine fuel hazards

Fine fuels are generally defined as small pieces of vegetation such as small branches and twigs (less than 6mm in diameter) and light fuels such as

Government of South Australia

Office 37 Richmond Road, Keswick SA 5035 **Phone** (08) 8115 3300 **Fax** (08) 8115 3301 **DX** 666
Post GPO Box 2468, Adelaide SA 5001 **Email** CFSHeadquarters@sa.gov.au **ABN** 97 677 077 835

OFFICIAL

ribbon bark. These fine fuels generally accumulate as surface fuels (on the ground) and slightly elevated fuels (fine fuels suspended in shrubs and bushes).

Fine fuels become airbourne and can then lodge against a building or in cracks and vents making the building susceptable to fire ignition.

Management of large trees

The Native Vegetation Legislation allows for landowners to remove all native vegetation within 10m of their dwelling and structures, including large trees (see native vegetation definition). The legislation also allows for landholders to remove all elevated native vegetation for a further 10m from dwellings only with the exception of large or significant trees. If landowners wish to remove those trees for bushfire protection purposes in the 10-20m area then they may apply to the SACFS for approval. It is unlikely that any such approval will be granted as a single tree or even a stand of trees, if they are suitably managed, pose no significant fire risk to a structure or building.

Under the Planning and Development legislation all large trees may be removed within 20m of a “dwelling” (only a dwelling and non native trees) if located in a mapped medium or high bushfire risk area.

A stand of trees may, in some circumstances, act as an ember screen by capturing embers before they can reach a structure. Where a mass of trees exists adjacent a structure, the CFS encourages trimming of the canopy fuels over the removal of large trees to reduce the potential of a canopy fire spreading.

Recommended hazard reduction and maintenance

Regular maintenance and removal of the elevated and fine fuels will mitigate the risk of mature or large trees igniting.

Regular maintenance of mature trees should include the thining and removal of lower limbs to reduce the risk of ground fire climbing the folige into the tree limbs and canopy. The removal of the any loose bark on the trunk and the accumulated bark and branches underneath the tree will prevent a fire climbing the trunk of any mature tree.

Brett Loughlin AFSM
Chief Officer
South Australian Country Fire Service

Appendix 7
Deemed-to-Satisfy Infill Investigation Outcomes

2:1 Development – Extent of Consistency with Infill Code Policy

DEVELOPMENT APPLICATION			CODE POLICY			
Application ID + Council	Zone	DA Description	Landscaping	Site Coverage	Design Features (3/7 Requirement)	Car Parking
	Suburban Neighbourhood	2 x two storey detached dwellings	Council have determined that landscaping provisions have been met and are appropriate Met	Site area meets site coverage requirement (PO 3.1) (50% max – site measures 44%) Met	Council have specified that 3/7 requirements (recessed building line, materiality and portico) feature in the development. Met	Double garage provided – meets Code policy (DPF 5.1 – Transport, Access and Parking) Met
	General Neighbourhood	2 x single storey detached dwellings	Council have determined that landscaping provisions have been met and are appropriate Met	Site area meets site coverage requirement (PO 3.1) (60% max – site measures 60%) Met	Council does not specify if 3/7 design features have been met. Not specified	Double garage provided – meets Code policy (DPF5.1 – Transport, Access and Parking) Met
	General Neighbourhood	2 x two storey detached dwellings	Council have determined that landscaping provisions have been met and are appropriate (20% of site recommended – site measures 44%) Met	Site are meets site coverage requirement (PO 3.1) (60% max – site measures 37%) Met	Council have specified that PO 20.2 has been suitably achieved. Do not specify which requirements have been met. Met	Double garage provided and an additional driveway carpark– meets Code policy (DPF 5.1 – Transport, Access and Parking) Met
	General Neighbourhood	2 x single storey detached dwellings	Council have determined that landscaping provisions have been partially satisfied (20% of site recommended – site 1 measures 21% site 2 measures 18%) Partially met	Site area meets site coverage requirement (PO 3.1) (60% max – site 1 measures 57% site 2 measures 60%) Met	Council have specified that PO 20.2 has been suitably achieved. Do not specify which requirements have been met. Met	Double garage provided and an additional driveway carpark– meets Code policy (DPF 5.1 – Transport, Access and Parking) Met
	Suburban Neighbourhood	2 x two storey detached dwellings	Council have determined landscaping provisions have been satisfied (20% of site recommended – both sites 22%) Met	Site area meets site coverage requirement (PO 3.1) (60% max – both sites 55%) Met	Council have specified that PO 20.2 has been suitably achieved but have not detailed specifically whether DPF 20.2 criteria have been met. Considered met	Double garage provided – meets code policy (DPF 5.1 – Transport, Access and Parking) Met

DEVELOPMENT APPLICATION			CODE POLICY			
Application ID + Council	**Zone**	**DA Description**	**Landscaping**	**Site Coverage**	**Design Features (3/7 Requirement)**	**Car Parking**
	General Neighbourhood	2 x single storey detached dwellings	Council have determined landscaping provisions have been satisfied, percentage not specified. **Met**	Council have stated the sites satisfy site coverage requirements (no specification of %) **Met**	Council have indicated the design is not acceptable yet have then detailed that the dwelling is of a 'conventional design' and satisfies setback and other criteria. Council have provided insufficient information to determine whether DPF 20.2 have been met. **Not specified**	Council have stated the sites satisfy site coverage requirements (no specification of %) **Met**
3 of 4 criteria not met/ partially satisfied	General Neighbourhood	2 x single storey detached dwellings	Council have determined that landscaping provisions have not been satisfied (20% of site recommended – both sites 15.8%) **Not met**	Site area meets site coverage requirement (PO 3.1) (60% max – both sites 53.2%) **Met**	Council have specified that only two of seven design features of PO 20.2 have been met (30% wall setback, min. 2 different materials) **Not met**	2 x spaces provided (1 x garage, 1 x off-street) – Council have specified internal garage dimension not achieved. Parking **Rate met** **Internal dimensions not met**
	General Neighbourhood	2 x double storey dwellings	Council have determined landscaping provisions have been satisfied, percentage not specified. **Met**	Council have stated the sites satisfy site coverage requirements (no specification of %) **Met**	Council have specified that PO 20.2 has been suitably achieved. Do not specify which requirements have been met. **Met**	Council have specified car parking requirements have been met. **Met**
3 of 4 criteria not met/ partially satisfied	General Neighbourhood	2 x double storey semi-detached dwellings	Council have determined that landscaping provisions have not been satisfied (20% of site recommended – both sites 19%) Council have stated minor shortfall acceptable in this instance. **Not met**	Site area does not meet site coverage requirement (Max 60% – both sites 61%) council have deemed acceptable as it is a minor variation. **Not met**	Council have specified that only two of seven design features of PO 20.2 have been met (upper-level projection, min. 2 different materials). Council have stated acceptable in this instance – will blend suitably with the street. **Not met**	Council have specified car parking requirements have been met. **Met**
	General Neighbourhood	2 x single storey detached dwellings	Council have determined that landscaping provisions have not been satisfied (20% of site recommended – both sites 21%) **Met**	Site area meets site coverage requirement (PO 3.1) (60% max – site 1 measures 52.21% site 2 measures 53.4%) **Met**	Council have specified that three of seven design features of PO 20.2 have been met (min. 2 different materials, portico, 30% building line recessed) **Met**	Single garage space for each allotment. Additional off-street parking space provided. **Met**

Appendix 8
Minor and Operational Recommendations

No.	Topic	Recommendation	Comment
Planning, Development and Infrastructure Act 2016			
1.	Definitions	Definitions within the PDI Act and Code should be reviewed and additional definitions included.	The Panel heard there are several terms that are currently undefined and which there would be benefit in defining. The terms identified by the Panel include, but are not limited to: › Multiple dwelling › Trade Training Facility › Emergency Services Facility The Panel considers there would be benefit in reviewing the definitions currently included in the PDI Act and Code, and consideration be given to including additional definitions.
2.	Definitions	Development to State Heritage Places should not attract a referral in certain circumstances.	Pursuant to Schedule 9 of the PDI Regulations, development proposed to occur to a State Heritage Place attracts a referral to the Minister responsible for the administration of the *Heritage Places Act 1993.* For most developments, this referral is necessary and appropriate. However, the Panel heard this can be a tedious and expensive process for applicants (as identified in a subsequent recommendation below), particularly in circumstances where the proposed development is minor and would otherwise be processed as a DTS or Accepted development. The Panel considers there is merit in refining the definition of development as it pertains to referrals for State Heritage Places to remove the necessity of a referral in certain circumstances.
3.	Alignment of definitions	Consideration should be given to aligning the definition of 'contiguous land' in both the PDI Regulations and the *Real Property Act 1886*.	The term 'contiguous land' is not defined in the PDI Regulations, but where relevant, is stated to be allotments separated only by a road or a road reserve. This clarification was transported into the PDI Regulations in the same form as existed in the *Development Regulations 2008*. However, in the *Real Property Act 1886* (RPA), land will be taken to be contiguous: *if they abut one another at any point or if they are separated only by —* *a. a street, road, railway, thoroughfare or travelling stock route; or* *b. a reserve or other similar open space dedicated for public purposes.* The Panel heard this discrepancy causes difficulties for surveyors. Specifically, the Panel was advised there have been circumstances where planning applications have not been supported because the RPA definition has been adopted, albeit in a manner which does not comply with the criteria of the PDI Regulations. The Panel therefore recommends consideration be given to aligning the use of the term 'contiguous land' across both pieces of legislation.

No.	Topic	Recommendation	Comment
Planning, Development and Infrastructure Act 2016			
4.	Schedule 4	Schedule 4 should be reviewed.	Schedule 4 of the PDI Regulations identifies development that is exempt from planning assessment. A proposed development must meet the criteria set out in Schedule 4 to be exempt. However, in circumstances where the criterion is not met, the development will then fall into the 'all Code assessed' category and a Performance Assessed assessment pathway. This is onerous in circumstances where the criteria not met may be minor. The Panel considers there is merit in reviewing Schedule 4.
5.	Fees	A sliding scale for development application fees pertaining to heritage places should be introduced, together with an ability to waive application fees for State Heritage Places in certain circumstances.	The Panel heard there is often a disconnect between the fees applicable to a development application for a heritage place, and the cost of the proposed development itself. An example provided to the Panel by the SA Heritage Council was: *a shade sail that can be purchased from the local hardware store for around $1,000 would require a development application attracting a fee of approximately a further $1,000 - the same cost for buying the sail. This high fee in relation to small development is a real disincentive to owners. On the other hand, a DA fee of $1,000 for a large commercial company to build a 15-storey building worth millions of dollars is very insignificant. The current small homeowner appears to be subsidising agency costs for large corporates.* *...It is not reasonable or equitable that small inexpensive developments attract the same development application fee as large-scale developments.*[79] The Panel agrees with the sentiment provided in the above example and recommends a sliding scale for development application fees be implemented, together with an ability to waive application fees for development at State Heritage Places, when appropriate.
6.	Civil Design Assessment Timeframes	Investigate, consult, and determine whether reform is required to encompass civil design within the regulatory framework for land divisions.	Under section 102(c) and 102(d) of the PDI Act, any approved land division must satisfy the requirements set out in the PDI Regulations regarding the width, formation and construction of roads, as well as the construction of bridges, drains and services. There are anecdotal concerns that the time taken for councils to confirm they are satisfied that the requirements of the PDI Regulations have been met has significantly increased, thereby delaying the progression of the development. The Panel understands that it is taking upwards of eight (8) to twelve (12) weeks for civil designs to be confirmed. In addition, there are also concerns pertaining to the time taken to issue a section 138 certificate. As such, investigations should be undertaken to consider whether regulatory reform is required to recognise this process in the legislation. The Panel considers these investigations should encompass significant consultation with local government and industry.

79. SA Heritage Council, Submission December 2022, 5.

No.	Topic	Recommendation	Comment
Planning, Development and Infrastructure Act 2016			
7.	Disability access and inclusion	Ensure all future design guidelines reference matters related to disability inclusion and access.	The Panel considers all future design guidelines established under the planning regime (whether recommended by the Panel or otherwise) should reference matters related to disability inclusion and access. This will go some way toward ensuring consideration is given to these matters during the design phase of a development.
8.	Site Contamination	Preliminary Site Investigations for land contamination should be able to be a Reserve Matter.	Preliminary Site Investigations (PSI) must currently be undertaken on land where it is known, or suspected, there is site contamination. However, noting these can be particularly expensive reports to obtain, the Panel considers there would be value to applicants in enabling a PSI to be listed as a reserve matter on a planning consent. This will allow an applicant certainty that their proposed land use is, but for the results of the PSI, appropriate and otherwise supportable, prior to making the investment into a PSI.
9.	Duplication of consultation requirements under the *Fences Act 1975*	The interface between the PDI Act and the *Fences Act 1975* should be reviewed to resolve the duplication of consultation requirements.	The Panel heard there is concern regarding the interface between the PDI Act and the *Fences Act 1975* (the Fences Act). This arises as a consequence of there being a duplication of process in circumstances where a boundary fence is considered a publicly notifiable development (which will currently include the adjoining neighbour and, if the Panel's recommendation 4 is supported, will soon only be directly notified to the affected neighbour) but there are additional consultation requirements neighbours are required to engage in prior to removing or erecting a new boundary fence. The Panel was advised: *Councils are finding that many residents are failing to meet their Fences Act 1975 obligations, which is resulting in increased complaints and civil disputes. Practice Direction 6 – Scheme to Avoid Conflicting Regimes does not directly deal with the interface between these two Acts and there is consensus amongst many planning practitioners that fencing should not be subject to consultation under the PDI Act 2016 where it is subject to consultation under the Fences Act 1975.*[80] The Panel understands these concerns and recommends the interface between the PDI Act and the Fences Act is reviewed to resolve the duplication of consultation requirements. Whilst the Panel's Terms of Reference do not include the Fences Act, it also observes that legislation should be wholly reviewed and updated.

80. City of Burnside, Submission January 2023, 24.

No.	Topic	Recommendation	Comment
Planning, Development and Infrastructure Act 2016			
10.	Trees	The State Government undertake and fund LiDAR tree mapping at appropriate intervals.	The Panel has recommended tree canopy be introduced as a measure of tree protection. If implemented, it will be possible to measure tree canopy using the forthcoming LiDAR data capture. However, to ensure this continues to be accurate and utilised for both enforcement and measurement of the effectiveness of tree protection measures, the Panel considers it is imperative the State Government undertakes and funds LiDAR tree mapping at appropriate intervals.
11.	Funded Assets	Payments made to local and State government in accordance with the PDI Act and/or PDI Regulations should be recognised and annually reported through Treasury management processes.	Payments made by applicants for street trees, footpaths, public open space, and other infrastructure should require transparency and good governance. Options to improve this and achieve greater consistency, should be investigated.
12.	Copyright	The State Government investigate what mechanisms are available to it to provide copyright protection to local government, and in what circumstances those protections would be available.	Under regulation 101 of the former *Development Regulations 2008,* there was an enshrined right for the community to view plans. However, as there is no analogous provision in the new planning regime, councils are concerned there is no protection for them to physically and/or digitally reproduce plans for developments that are not publicly notifiable or are otherwise outside of the notification period. Section 238 of the PDI Act provides an exemption for the Minister, the Commission, and the Chief Executive of the Department with administration of the PDI Act to: *publish any document, instrument or material in which copyright may exist.* This enables the publication and upload of plans and information to the SA Planning Portal without limitation, as a copyright exemption is extended to the above mentioned designated entities. It is understood this provision was limited to State Government entities at the time of drafting the PDI Act, as the *Copyright Act 1968* (Cth) specifically provides that a State does not infringe copyright when carrying out services for that State. The Panel therefore recommends consideration be given to what mechanisms are available to it to provide copyright protection to local government to enable the reproduction of plans, and in what circumstances those protections would be available.

No.	Topic	Recommendation	Comment
Planning, Development and Infrastructure Act 2016			
13.	Outline Consents	Outline consents should be commenced as soon as reasonably practicable.	The PDI Act makes provision for outline consents in section 120. Outline consents are not yet able to be used as no Practice Direction has been prepared, as required by section 120. The Panel considers the preparation of a Practice Direction to enable the use of outline consents may lead to more streamlined assessments for complex proposals, and certainty for applicants. On that basis, the Panel recommends outline consents are commenced as soon as reasonably practicable and are supported by appropriate guidance material.
14.	Referral Timeframes	The referral timeframes prescribed in the PDI Regulations should be reviewed to ensure they appropriately align.	The Panel heard there are difficulties which arise because of the referral timeframes to the Native Vegetation Council (NVC) and Country Fire Service (CFS) being misaligned. In this example, the NVC has 20 business days to respond to a referral, whilst the CFS has 30 business days. The Panel heard when development applications are referred to the NVC, it needs to know the finalised CFS Asset Protection Zone prior to completing its referral response. Aligning the referral timeframes would also enable the NVC and CFS to coordinate and provide a joint response for the purposes of section 122 of the PDI Act. On that basis, the Panel considers the referral timeframes prescribed in the PDI Regulations should be reviewed to ensure they align when practical to do so (as demonstrated by the above example).
Planning and Design Code			
15.	Local Heritage	Refine Performance Outcome 6.1 in the Local Heritage Place Overlay to exclude deterioration due to neglect as a supporting factor for demolition, as in State Heritage Place Overlay.	The Panel heard that there is a penchant for local heritage places to be neglected and left to deteriorate to enable ease of their demolition in accordance with Performance Outcome 6.1 of the Code. The Panel considers this needs review to ensure local heritage places are not being neglected and left dilapidated. Performance Outcome 6.1 in the State Heritage Place Overlay provides: *State Heritage Places are not demolished, destroyed or removed in total or in part unless either of the following apply:* *the portion of the State Heritage Place to be demolished, destroyed or removed is excluded from the extent of listing that is of heritage value or* *the structural condition of the State Heritage Place represents an unacceptable risk to public or private safety and r**esults from actions and unforeseen events beyond the control of the owner** and is irredeemably beyond repair.* (our emphasis) The Panel considers it would be appropriate for wording analogous to that identified above in the State Heritage Place Overlay to be inserted into the corresponding provisions of the Local Heritage Place Overlay.

No.	Topic	Recommendation	Comment
Planning and Design Code			
16.	Consistency of language	PLUS undertake a language and consistency check of the Code to ensure the same terms and expressions are used throughout.	The Code is, in its current form, somewhat inconsistent in how it applies language and terminology. This has been the subject of comment from the ERD Court where it observed in *Vikhlyaev v City of West Torrens Assessment Manager* [2023] SAERDC 1: *Unhelpfully, the authors of the Code have used the terms "consistent", "complementary" and "compatible" interchangeably throughout the most relevant Zone POs and its DO. Also unhelpfully, there was no analysis undertaken by the planning experts of what the Code provisions in these respects were directed to achieving.* *I note that one of the many definitions under the Collins Concise Dictionary for "compatible" is "consistent". "Complementary" is defined to mean, among other things, "forming a satisfactory or balanced whole". The Oxford Dictionary defines "complementary" as meaning "combining in such a way as to enhance or emphasize the qualities of each other or another", whilst the term is defined in the Cambridge Dictionary as simply meaning "good together".* *Notwithstanding the lack of rigour in the drafting of the Zone provisions, I expect it was intended that the words carry essentially the same meaning. Each of the various urban design elements identified under the POs are not to be varied to an extent that would disrupt the existing development pattern, where one existed.*[81] The Panel considers there would be value in PLUS undertaking a language and consistency check of the Code to ensure there are no unintended consequences arising from any inconsistencies. This review should also ensure the Code's rules of interpretation provide sufficient guidance to Accredited Professionals.
17.	Hills Face Zone	The Hills Face Zone be reviewed to consider minor boundary anomalies.	The Commission has previously advised it would be conducting a review of the Hills Face Zone and its application. This has not yet occurred. The Panel considers this review would recognise that there are boundary anomalies within the Zone, and as such recommends the Commission undertake a review.

81. Paragraph 84-86.

No.	Topic	Recommendation	Comment
Planning and Design Code			
18.	Car Parking	Investigate the application of specified car parking rates for major open spaces.	The Code does not currently specify car parking rates to apply to open space. This is logical in most scenarios; however, the Panel heard there may be circumstances where it would be helpful for car parking rates to be specified. For example, for major open space projects which include recreation facilities (playground, basketball court, walking tracks etc) and which may reasonably be expected to attract large numbers of people, there would be benefit in a car parking rate being associated with the same. The Panel understands a scenario of this nature arose in the Riverlea development, and the developers determined their own car parking rate to apply to the open space. This is a best practice approach. However, the Panel recognises this will not always be the approach taken and recommends investigations be undertaken to applying car parking rates to major open spaces.
19.	Impractical Policy Provisions	The Code should be reviewed to ensure requirements are reasonable and practical.	The Panel understands there are some provisions in the Code which are impractical in physical situations. For example, the General Development Policies, Infrastructure and Renewable Energy Facilities DTS/ DPF 11.2 requires 50,000 litres of water supply if reticulated water is unavailable, and a further 5,000 litres dedicated water supply for bushfire fighting purposes. The Panel understands standard tank sizes are 22,500 litres, making the Code requirements impractical for implementation. The Panel therefore recommends the Code is reviewed to ensure any requirements imposed by policy are reasonable and practical.
20.	Code Amendment	There should be a bi-annual Code Amendment which deals with minor matters.	The Panel understands there is an intent to undertake a regular review of the Code, like the MTECA, moving forward. However, for the avoidance of doubt, and to ensure the Panel's view on this matter is recorded, it recommends a bi-annual Code Amendment is undertaken to deal with minor matters such as grammar, definitions, the insertion of enhanced diagrams etc. In addition, or otherwise in the alternative, the Panel also notes there is an opportunity for section 76 of the PDI Act, which permits minor or operational amendments to the Code, to be used more regularly. For example, a section 76 update to the Code could occur every six (6) months to update minor matters such as grammar and definitions etc, rather than necessitating a full Code Amendment process. Section 76 should be used as a vehicle for enacting these types of minor updates, rather than a Code Amendment. In the Panel's view, Code Amendments should only be necessary if changing the policy.

No.	Topic	Recommendation	Comment
e-Planning/PlanSA			
21.	List of restricted development types	A list of restricted development types applicable to a site must appear when you search a property address on the PlanSA website.	The Panel notes that often when searching for the Code policies which apply to a particular address on the PlanSA website, the list of Restricted Development types does not appear. Accordingly, to ascertain what development is considered Restricted, a search of the Code and what is included in Table 4 is required to be undertaken. This should not be necessary, and the Restricted Development types applicable to a site should be identified when searching a property address on the PlanSA website.
22.	Request for Information	Relevant Authorities should be required to upload evidence of applicant agreement prior to making an additional Request for Information.	Section 119 of the PDI Act stipulates that a Relevant Authority may only make a Request for Information (RFI) for a development application on one (1) occasion. However, regulation 33 of the PDI Regulations clarifies that an applicant can agree to an additional RFI. In these circumstances, whilst the Relevant Authority is meant to upload evidence of the applicant's agreement to make the additional RFI, this is currently not a mandatory system requirement and is often not complied with. That is, the Relevant Authority can make a subsequent RFI without uploading a supporting document from an applicant. In the Panel's view, this should not occur and recommends the e-Planning system is amended to mandate the upload of evidence prior to allowing a subsequent RFI to be issued.
23.	Wastewater	A Development Approval should not be issued in the absence of the provision and assessment of wastewater systems and should be recorded on the e-Planning portal.	The Panel heard there is concern the wastewater information required under Schedule 8 of the PDI Regulations is being waived by private Relevant Authorities. The Panel is of the view the provision of wastewater information should not be able to be waived and is mandatory. The e-Planning portal should not allow an application to progress through the portal in its absence. On that basis, the Panel recommends the e-Planning portal be updated to require confirmation from an applicant the requisite wastewater information has been uploaded with an application.
24.	Duplication of information	The e-Planning portal should enable duplication of information.	The e-Planning portal does not currently allow an applicant to duplicate the information they have entered for a planning application, into a building application made for the same development. This is a frustrating administrative issue that can and should be resolved through the inclusion of an option to duplicate information already entered by an applicant.
25.	South Australian Property and Planning Atlas	Go-Zones should be mapped on the South Australian Property and Planning Atlas.	The Panel heard it is currently very difficult to identify the locations of public transport 'Go-Zones' on the South Australian Property and Planning Atlas (SAPPA), given they are associated with the Code policy provisions for affordable housing. The Panel considers SAPPA should be updated to include maps of public transport Go-Zone locations for ease of identification.

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