# CITY OF NORWOOD PAYNEHAM & ST PETERS

# PLANNING SYSTEM IMPLEMENTATION REVIEW SUBMISSION

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# Planning and Design Code Reform Options Discussion Paper

## General Comments in relation to the Code

### Ability for councils to effect policy change

As a State-wide document managed by the State Planning Commission, Councils have very limited ability to effect policy change. Under the *Development Act*, although Development Plan Amendments required approval from the Minister, a Council was able to propose changes to all aspects of its Development Plan (i.e. City wide policy, zones, policy areas etc). With respect to the Code, a Council is only able to propose changes to TNVs and Area Statements within the standard format, and the application of zoning and overlays (but not the content of the policies). In this respect, Council Code Amendments are limited to picking a policy outcome from a standardised suite or format. A Council can also propose to create or apply a sub-zone, but sub-zones have so far been used sparingly in the Code. This is a symptom of a State-wide Code with standardised zones and policies. Short of a return to local policy documents (i.e. Development Plans), there are limited ways of resolving this issue, however greater capacity to include localised policy such as through sub-zones would be some improvement.

Negotiating or influencing policy change to be undertaken by the State Government is also very difficult for Councils. PLUS staff have suggested that for policy mechanisms which cannot be included in a Council led Code Amendment, Councils should come together to advocate to the Commission for policy change on common issues. While this can occur, it is more difficult and cumbersome to coordinate various Councils than a Council amending its own Development Plan, particularly as policy priorities will inevitably vary from Council to Council. The *Development Act* required Councils to prepare Section 30 Strategic Directions Reports which addressed strategic planning issues and necessary amendments to the Development Plan but there is no equivalent in the PDI Act. Although PLUS communicate upcoming State Government-led Code Amendments, it is normally unclear when other policy issues or sections of the Code not included in one of those upcoming Code Amendments will be reviewed. This leaves Councils in a position of being reactive rather than proactive, and waiting for reviews such as this current Planning System Implementation Review.

Four (4) key Discussion Papers were prepared by the Department in 2018/2019, under the topics of *People & Neighbourhoods*, *Productive Economy*, *Integrated Movement Systems* and *Natural Resources & Environment.* These papers outlined policy directions for the new planning system and their level of priority, indicating whether they were consistent with existing policy and would transition directly to the Code or would be part of later 'Gen 1' or 'Gen 2' policy reform. It is recommended these policy directions and associated timeframes are revisited and a process is outlined for how and when Councils are able to progress or influence policy changes in the Code.

### Loss of Local Policy

The replacement of 72 Development Plans with one State-wide Code has resulted in a substantial loss of local policy. Previous submissions from this Council on the Code during consultation have detailed the extent to which local policy was lost in the transition but below is a summary of key policy features which have been lost.

### Loss of Policy Guidance - Desired Character Statements

Desired Character Statements provided specific guidance for many local policy considerations which are absent from the new assessment framework. This affects multiple issues such as land use distribution, streetscape outcomes, traffic and access requirements etc. Examples of lost policy content include:

*Residential Character Zone - St Peters, Joslin, Royston Park Policy Area*
*… in St Peters and College Park, infill development may comprise detached dwellings and semi-detached dwellings but in the case of semi-detached dwellings, only where vehicle access and garaging can be established entirely from adjacent rear laneways.*

*District Centre (Norwood) Zone*
*Outdoor dining, which is complementary to existing businesses, is encouraged along The Parade frontages and, on corner sites, may extend into side streets where it can be accommodated with minimal*

*disruption to pedestrian and vehicular movements and where it does not unreasonably impact on the amenity enjoyed by occupants of nearby residences.*

*Business Zone – Beulah Road Policy Area*
*Vehicular movement is dominated by Beulah and Sydenham Roads which should provide the primary point of access for delivery, service and visitor vehicles, in preference to access via adjoining residential areas.*

**Loss of Policy Guidance - Concept Plans**
Only one (1) out of a previous nine (9) Concept Plans were transitioned from the Council's Development Plan to the Code. TNVs have been used in some circumstances in lieu of concept plans but these are not an adequate substitute, as former Concept Plans also illustrated other features such as desired pedestrian movement networks, portions of sites that should be specific building heights, locations requiring additional interface treatment etc. This, combined with loss of nuanced and locally specific design policy has reduced the effectiveness of the policy framework for new development.

**Loss of Policy Guidance - Land Division Policy**
The Council's former Character Zones contained detailed policies relating to the location and form of acceptable land division. Examples include:

*Evandale/Maylands/Stepney Policy Area Principle of Development Control 4*
*The division of land should not create a hammerhead, battleaxe or similar configuration allotment in Stepney.*

*Trinity Gardens / St Morris Policy Area Principle of Development Control 5*
*Land division creating additional dwelling sites should not occur:*
*(a) in Trinity Gardens, along Canterbury and Hereford Avenues, Lechfield Crescent and the portion of Albermarle Avenue between Canterbury and Hereford Avenues;…*
*except where it involves:*
*(i) the redevelopment of existing multi-unit sites; or*
*(ii) the conversion of an existing dwelling into two (or more) dwellings where the building and the front yard maintain the original external appearance to the street.*

These policies were not transitioned to the Code. Instead, to regulate the areas where land division should not occur, the minimum allotment size TNV was artificially increased to a figure unique to each street which would prevent the subdivision of these allotments. This is a crude and non-transparent replacement of Development Plan policy which provided clear instruction and intent.

**Not Enough Local Policy Enabled through Subzones**
NPSP contains one (1) Code subzone which was a product of a former Ministerial Development Plan Amendment approved just prior to Code implementation which only affects one (1) specific site. Comparatively, under the Development Plan the Council had 53 Policy Areas. It is noted that some of the location specific policy in Policy Areas has been transitioned to the Code through Area Statements and TNVs, however as outlined in this submission these are not considered to be sufficiently detailed, instructive or articulate so as to replace Policy Areas. Although an aim of the Code framework was to 'simplify' and 'standardise' zones and subzones to make it easier for Code users, the reluctance to allow subzones has resulted in the significant loss of valuable policy. It is considered the Code can still operate in a clear and transparent way while accommodating more subzones and it is recommended that additional subzones are permitted where variation from zone policy is justified.

**Loss of Policy Guidance - TNVs**
TNVs are, for the most part, simplified numerical figures which do not provide the same contextual policy guidance as former Development Plan policy. Examples of the differences between Development Plan policy and TNVs are outlined in **Table 1** below:

| TABLE 1 | DEVELOPMENT PLAN POLICY (NUANCED POLICY) | CODE PROPOSED TNV (GENERICALLY APPLIED POLICIES) |
|---|---|---|
| | Residential Zone – Medium Density Policy Area<br>*Building Height: On sites that have a frontage to an arterial road, development of more than two (2) storeys above natural ground level, should only occur where it comprises a mix of residential and non-residential uses [in which case they can be three (3) storeys]* | Building Height:<br>3 storeys |
| | Residential Historic (Conservation) Zone – Norwood 3 Policy Area<br>*The average site area per dwelling unit for residential development in the Norwood 3 Policy Area should not be less than **250 square metres** except where:*<br>*The site of the development does not contribute positively to the historic character of the Policy Area and is not identified in Tables NPSP/5, 6 or 7, the average site area per dwelling may be less than **250 square metres (but not less than 200 square metres**) provided that the development will not be inconsistent with the predominant pattern of development on allotments in the immediate locality of the subject site.* | Site area:<br>200m2 |

The Code has over-simplified policy requirements which now reduces the effectiveness of assessment planners' negotiations for good design outcomes in the assessment process.

Recommendation: Additional opportunities for including local policy should be considered. One option is to include additional TNVs and amend some existing TNVs so they can include more detailed content, e.g. a description of when development can be up to 3 storey vs where it should be 2 storey, rather than just "3 storeys". Additional subzones should also be used to differentiate areas which require more nuanced policy than the standard zone.

**Code Policy Language, Structure and Applicability**

In addition to lost local policy, another symptom of a State-wide policy document is that policies need to be worded generically enough to be applied in various locations and contexts. By comparison, former Development Plan policies were more specific and instructive. Examples of this are provided in the discussion regarding Character and Historic Area policies below.

**Land Use Distribution**

The Code Zones typically anticipate a broader range of land uses than the corresponding Development Plan Zone which demonstrated an intentional step away from basic land use planning. There was an increase of non-residential land uses anticipated in residential zones and vice versa, an increase in permissible floor areas in many commercial zones, and zones which focused on particular land uses transitioned to zones with a much broader mix of non-residential land uses. This is likely to lead to an increase in land use conflicts and may impact land availability for certain land uses. For example, the Council's former Light Industry Zone listed shops greater than 250m$^2$ as non-complying. This zone has transitioned to the Employment Zone which anticipates bulky goods of any size. There is concern that the greater commercial return from retail may 'push out' typically lower return land uses such as small-scale light industry. The land supply reports released in 2021 provided some insight into the lack of available industry land in the eastern region, but further analysis is required to determine if and how Code Zones are affecting land use availability.

## 'Bonus' Building Height Policy

There are two policy mechanisms included in the Code which allow 30% additional building heights above the maximum specified in the TNV: Significant Development Sites (SDS) policy and the Affordable Housing Overlay policies. The Council does not support these mechanisms as it results in developments exceeding Code parameters in a non-strategic and non-transparent way. The Council advocated against this policy change in the transition to the Code but was obviously unsuccessful. Council staff have recently met with the PLUS Code Control Group regarding potential ways the Council can limit, influence or override the 'bonus height' policies. Staff were informed that, although the concerns were understood, there is 'little appetite' for a Commission led change but Councils could explore finding common ground and collectively advocating for policy review.

**Significant Development Sites Policy**
The intent of this policy is to incentivise the amalgamation of individual sites and encourage development outcomes which are "over and above" standard expectations. However, in NPSP's experience development has occurred on sites which have historically been under single ownership and the SDS policy criteria are not considered out of the ordinary or "above and beyond" what should be expected of large-scale developments. Notwithstanding the merits or otherwise of the criteria and intent, the outcome is development which exceeds specified maximum building heights. The maximum building heights have previously been set with intention – i.e. set at the maximum building height which is considered acceptable for that locality or site. While a citizen can read Code policies and relatively easily understand that a site has a maximum building height of, say, six (6) storeys, the significant development site policy allows up to eight (8) storeys. This does not achieve the upfront certainty and consistency which the planning reform program set out to achieve. An example of this occurring is the recent consent issued by the SCAP for 120 The Parade where the SDS policy facilitated eight (8) storeys in the Urban Corridor (Main Street) Zone where the TNV under DPF 3.1 sets out a maximum height of six (6) storeys.

**Affordable Housing Overlay**
The Affordable Housing Overlay provides policy incentives to include affordable housing which were not previously offered in Development Plans (i.e. the Development Plan stated a standard requirement for affordable housing in large developments without any bonus or incentives). Incentives in the Overlay include increased building heights (30% extra), reduced car parking rates and reduced allotment sizes. The Council is particularly concerned about the additional building height as this could have meaningful impacts on surrounding development, particularly as it's likely to occur on ad-hoc, isolated sites.

## Insufficient Sustainability Policies

*State Planning Policy 5: Climate Change* notes the way we manage our built environment will have a direct and long-term impact on our ability to adapt to climate change. Although climate change is an ever present and increasing risk, sustainability metrics do not form part of many Code assessments.

The opportunity of having a State-wide planning assessment framework and the importance of *State Planning Policy 5: Climate Change* combine to produce an imperative for South Australia to adopt a sustainability assessment tool which measures how a proposed development demonstrates sustainable design criteria at the Planning Consent stage.

The Code policies under the General Development Policies – Design in Urban Areas for All Development outline some sound environmental performance objectives, but this is not supported through any measurable sustainability criteria, as occurs in many other Australian states. To require a higher standard of climate-responsive buildings, the planning system needs to incorporate quantifiable metrics or ratings such as that used by planning authorities in other jurisdictions. Legislation introduced in New South Wales through the *Environmental Planning and Assessment Regulation 2000* enabled the creation of the Building Sustainable Index (BASIX) State Environmental Planning Policy, resulting in mandatory minimum standards to:

- reduce consumption of mains-supplied potable water,
- reduce emissions of greenhouse gases, and
- perform in a thermally efficient manner.

In Victoria the Sustainable Design Assessment in the Planning Process (SDAPP) has implemented the Built Environment Sustainability Scorecard (BESS) assessment tool for residential, non-residential and mixed-use developments with minimum standards for energy, water, stormwater and indoor environment quality.

Climate resilience and climate-smart buildings should be further addressed in Code policies and applied to common development types. Other opportunities include policy to avoid the use of dark materials which increase heat loading, suitable building orientation and ventilation, reduction of water use, use of double glazing etc. Although there are some policies, such as *Design in Urban Areas – All Development - Environmental Performance PO 4.1 - 4.3* (below), these policies are often not applied to developments and the generic nature of the policy makes it difficult to enforce or prioritise over other factors such as setbacks, car parking provision etc. It is noted that changes to the Nationwide House Energy Rating Scheme to require 7-star ratings will increase the need for better energy performance, but given that many of the required features are fundamental to the building layout design, it is important for these to be integrated at the earliest opportunity during the planning assessment stage.

**FIGURE 1 - GENERAL DEVELOPMENT POLICIES IN THE PLANNING AND DESIGN CODE**

| Environmental Performance | |
|---|---|
| PO 4.1<br><br>Buildings are sited, oriented and designed to maximise natural sunlight access and ventilation to main activity areas, habitable rooms, common areas and open spaces. | DTS/DPF 4.1<br><br>None are applicable. |
| PO 4.2<br><br>Buildings are sited and designed to maximise passive environmental performance and minimise energy consumption and reliance on mechanical systems, such as heating and cooling. | DTS/DPF 4.2<br><br>None are applicable. |
| PO 4.3<br><br>Buildings incorporate climate responsive techniques and features such as building and window orientation, use of eaves, verandahs and shading structures, water harvesting, at ground landscaping, green walls, green roofs and photovoltaic cells. | DTS/DPF 4.3<br><br>None are applicable. |

As raised in previous submissions on the Code, the Stormwater Management Overlay and Urban Tree Canopy Overlay policies in the Code are positive outcomes in terms of improved sustainability and climate resilience for residential development. However, the UTC and SM Overlays don't apply to non-residential developments in Neighbourhood Zones and also don't apply to any developments in mixed use and other non-residential zones. While there are some General Development Policies relating to landscaping and stormwater, they are not as extensive nor as prescriptive as the Overlay policies, and in any case, are often not prescribed in Table 3 in the Code so can't be applied to many developments. This is a missed opportunity and results in an inconsistent approach to tree planting/ retention and stormwater management across the metropolitan area and will undermine achieving the targets set out in the *30 Year Plan*. For example, a detached dwelling in the Business Neighbourhood Zone does not require a new tree(s) or rainwater tank, whereas an adjacent detached dwelling in the Established Neighbourhood Zone does. We recommend UTC and SM Overlays are applied to most or all zones and include additional policies to cater to non-residential developments. Alternatively, the Code should ensure the General Development Policies have commensurate requirements for the planting of trees and rainwater capture / reuse, relative to the scale / impact of the land use.

A minor suggestion with respect to the SM Overlay policies – the policies require roofed area to constitute 80% of the impervious area on a site which typically requires either an unusually small area of paving, or permeable paving. A recent analysis of a sample of applications in NPSP has indicated

that about one third of typical residential developments meet this requirement; the remaining two-third fall short by typically 10-20%. While we do not want to see the good intent of this policy undermined, it may be worth reviewing the applicability of this policy or the availability or awareness of permeable paving.

Another important sustainability consideration is biodiversity. *State Planning Policy 4: Biodiversity* notes that maintaining and enhancing a healthy, biologically diverse environment ensures greater resilience to climate change, increases productivity and supports a healthy society. The *Natural Resources and Environment Policy Discussion Paper* from 2018 also considered future biodiversity protection policy opportunities for 'Generation 1' and 'Generation 2' policy reform, such as managing the interface between protected areas and adjoining land uses. Some Code mechanisms, such as the Native Vegetation Overlay, provide opportunities for the planning system to prevent or mitigate impacts on biodiversity. However, opportunities for maintaining biodiversity in inner-metropolitan areas are more constrained. One option would be to introduce an Urban Biodiversity or Biodiversity Sensitive Urban Design (BSUD) Overlay which could be applied to known areas where biodiversity could be affected by new development and should be protected. This Overlay could allow relevant policies to be considered as part of development assessments.

## Character and Heritage

### State Planning Commission Proposals

**1. In relation to prong two (2) pertaining to character area statements, in the current system, what is and is not working, and are there gaps and/or deficiencies?**

Complexity in Policy Framework

The deficiencies in the Character and Historic Area Statements are a symptom of the complexity of the Code policy framework. When assessing development in the Character or Historic Area Overlays (CAO and HAO), the assessing planner and applicant are expected to refer to a combination of Zone + Overlay + Area Statements + non-statutory Design Advisory and Common Styles Attributes Guidelines in order to understand what is considered an acceptable development outcome. It is worth noting that the non-statutory guides appear to be rarely used in practice.

The complexity of this framework has caused confusion for community members trying to interpret the Code. For example, Table 2 illustrates the policies which show up when enquiring about the applicable building heights for a selected property in College Park in the online Code:

**TABLE 2 BUILDING HEIGHT POLICIES DISPLAYED IN AN ONLINE CODE ENQUIRY**

| |
|---|
| **Established Neighbourhood Zone DTS/DPF 4.1:** |
| Building height (excluding garages, carports and outbuildings) is no greater than… 2 levels |
| **Historic Area Overlay PO 2.2** |
| Development is consistent with the prevailing building and wall heights in the historic area. |
| **Historic Area Statement NPSP 1** |
| Building Height: Single storey, two storey in some locations |

The Code rules of interpretation state that in the event of any inconsistencies, Overlay policies take precedence over Zone policies. Therefore in the example above, if the prevailing height in the locality was single storey then new development would generally need to be single storey, notwithstanding that the zone policy indicates the height can be two storey. Unfortunately, the way the Code policies are presented in the ePlanning format, the hierarchy isn't clear and owners have expressed confusion about the conflicting policies. On multiple occasions for properties with similar policies, prospective applicants have brought in preliminary plans for two-storey designs based on the zone policy, but need to make substantial changes to comply with the Overlay / Area Statement. One way of avoiding some ambiguity would be for the Zone DPF / TNV dealing with building height to allow for more nuanced policy. That is, rather than being limited to selecting '1 level' or '2 levels', if the TNV could specify "mostly single storey but two storey in some locations" this would provide some consistency across the different policy layers.

Policy Clarity Requires Improvement

Despite being more complex, the Code is not considered to deliver the same level of detail or clarity as former Development Plans. Under the former NPSP Development Plan, the Character and Historic Zone and Policy Area policies were more specific, instructive and tailored to the local area and locality. Although Policy Areas took precedence over the Zone, there was normally no direct conflict between corresponding Zone and Policy Area policies. Former Desired Character Statements also provided relevant contextual information on the history of the area and the desired future direction of development in the locality, which helped the interpretation of the Zone / Policy Area policy in the event of any ambiguity.

Due to the Code Zones applying to multiple locations across the State, the Zone policies are generically worded which often makes them difficult to interpret and apply. For example, it is difficult to justify to an applicant why an improved design is required when the policies are not specific about the desired outcome. The Overlay policies are also generically worded and rely on the Area Statements for reference to locally specific characteristics. In the transition to the Code, the Area Statements provided the only opportunity for Councils to transition local, descriptive policy from Development Plans, but the format of the Area Statements only allowed for brief descriptors of existing features which lack context and instruction. In this respect, it is very frustrating that the Overlay policies address *how* to undertake new development but *lack specific and local detail*, while the Statements contain a *greater level of local detail* but don't address *how* to undertake new development. Examples of this disparity is provided in Table 3 below:

**TABLE 3 COMPARISON OF DEVELOPMENT PLAN AND CODE POLICIES**

| Development Plan | Code |
|---|---|
| **Residential Historic (Conservation) Zone**<br>**The Avenues Policy Area PDC 2**<br>Development should comprise the erection, construction, conversion, alteration of, or addition to a detached dwelling<br><br>*(More instructive)* | **HAO PO 1.1**<br>All development is undertaken having consideration to the historic streetscapes and built form as expressed in the Historic Area Statement.<br>**+**<br>**The Avenues HAS NPSP 18**<br>**Eras, Themes & Context:**<br>Detached dwellings.<br>**+**<br>**Established Neighbourhood Zone PO 2.1**<br>Allotments / sites for residential purposes are of suitable size and dimension to accommodate the anticipated dwelling form and are compatible with the prevailing development pattern in the locality.<br>**+**<br>**DPF 2.1 + TNV**<br>Allotments / sites for residential purposes accord with the following…<br>Minimum site area for detached dwelling is 600sqm…<br>In relation to instances where… (the relevant dwelling type is not listed), then none are applicable and the relevant development cannot be classified as deemed-to-satisfy<br>*(Noting that no min. site area is prescribed for other dwelling types, and this is intended to indicate that other dwelling types are not appropriate, but this is not clearly articulated in the policy)*<br><br>*(Less instructive)* |

| | |
|---|---|
| **Residential Historic (Conservation) Zone**<br><br>**Hackney South Policy Area PDC 10**<br><br>Vehicle access to sites and garaging should be from rear access lanes where possible.<br><br>*(More instructive)* | **HAO PO 1.1**<br><br>All development is undertaken having consideration to the historic streetscapes and built form as expressed in the Historic Area Statement.<br><br>**+**<br><br>**Hackney South HAS NPSP 3**<br><br>**Setting, landscaping, streetscape and public realm features**<br><br>Consistent pattern of narrow streets and rear service lanes. Rear lanes used for vehicular access and garages.<br><br>*(Less instructive)* |

In these examples, the Development Plan policy is considered to be clearer and more instructive. This has been demonstrated by a recent request for preliminary advice for an area in the HAO where only detached dwellings are envisaged. A planning consultant formed the view that the absence of guidance about other dwelling types meant these other dwelling types could be justified (i.e. they were not discouraged). While alternative dwelling types can be assessed on merit, it will be harder to justify why these alternative dwelling types should not occur. In the transition to the Code, Council staff advocated for a Code policy which explicitly communicated what dwelling types were envisaged but were informed by PLUS staff that the combination of Code policies shown in Table 3 were considered sufficient.

Exacerbating the issue of policy ambiguity is that many of the Overlay policies do not specifically refer to the Area Statement and instead refer to the 'character/historic area'. There is no consistency in which policies do, and which policies don't refer to the Statements. An example is the building height policy which states:

> *"Development is consistent with the prevailing building and wall heights in the character / historic area"*

Although it is relevant and important to consider the area surrounding a development site, this policy provides no direct reference to the building height expressed in the Area Statement which is more instructive – e.g:

> *"Predominately single-storey, up to two storeys in some locations"*

PO 1.1 does refer to development being undertaken in accordance with the Statements, but the reference to the Statements should be more consistent and direct. A preferred approach with less ambiguity is for the Overlay policy to read:

> *"Development is consistent with the prevailing building and wall heights and as described in the historic area statement"*

Recommendation

The policy framework for historic and character areas should be simplified so users do not have to refer to Zone policies + Overlay policies + Area Statements + Guidelines. One way of achieving this is to allow more specific, instructive and localised policy at the Zone and Overlay level which may negate the need for Area Statements, or if Area Statements are retained, they should be allowed to contain more specific and instructive policy content.

**2. Noting the Panel's recommendations to the Minister on prongs one (1) and two (2) of the Commission's proposal, are there additional approaches available for enhancing character areas?**

In relation to both character and historic areas, as per the response to Question 1, a simplified policy framework with more specific and instructive policies would provide a greater level of clarity and consistency which in turn would improve development assessment processes and development outcomes.

An area of policy that should also be reviewed and improved in both historic and character areas is the design guidance for two-storey development (both new dwellings and dwelling additions). In areas where two-storey development may be appropriate, there should be clearer policies with more detailed design guidance for upper-level development, particularly with respect to impact on neighbours. The Overlay policies focus on streetscape impact which is valuable, but appearance and siting of buildings when viewed from neighbouring properties should also be included in the Overlay policies given this is an important aspect of the character and amenity of these areas. **Figure 2** includes examples of diagrams in the Council's former Development Plan that were useful in guiding appropriate two-storey development in character areas.

**FIGURE 2 – DIAGRAMS INCLUDED IN NPSP DEVELOPMENT PLAN CHARACTER AREAS**

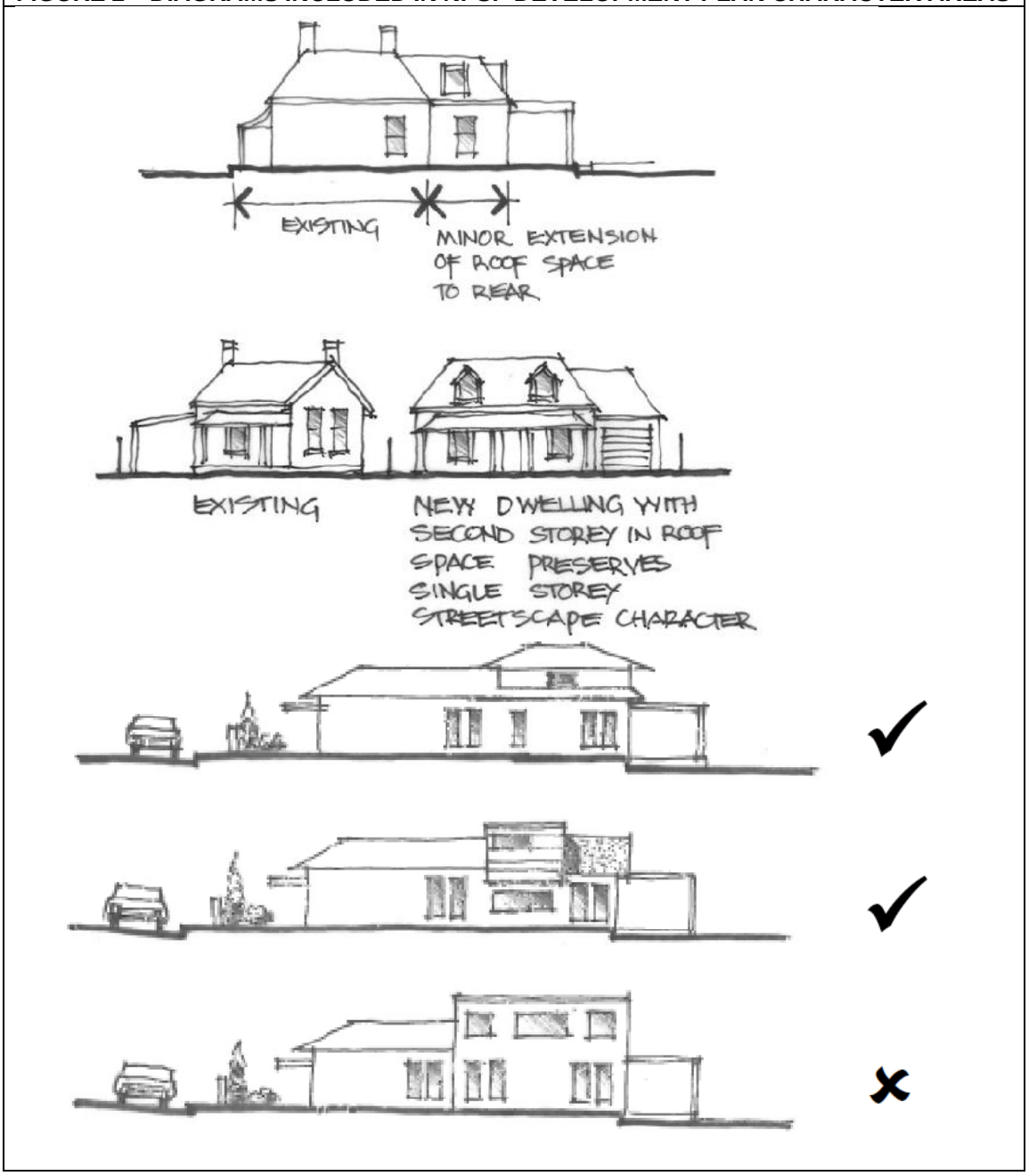



**Table 4** also provides an example of a historic area policy included in the NPSP Development Plan

| TABLE 4 TWO-STOREY DEVELOPMENT GUIDANCE FOR HISTORIC AREAS IN NPSP DEVELOPMENT PLAN |
|---|
| **Residential Historic (Conservation) Zone PDC 17:** (emphasis added) |
| Development of a new building or building addition should result in dwellings that have a single-storey appearance along the primary street frontage, where these are predominant in the locality, but may include:<br>(a) sympathetically designed two-storey additions that utilise or extend roof space to the rear of the dwelling, such as the use of attics with dormer windows; or<br>(b) second storey components located to the rear of a building; and<br>(c) in either of these instances:<br>(i) should be of a building height, scale and form that is compatible with the existing single-storey development in the zone;<br>(ii) should not result in an excessive mass or scale that would adversely affect the visual outlook from adjoining residential properties;<br>(iii) should not overshadow or impact on the privacy of neighbouring properties;<br>(iv) should not compromise the heritage value of the building or the view of the building from the street; and<br>(v) the total width of second storey windows should not exceed 30 percent of the total roof width along each elevation and be designed so as to not overlook the private open space of adjoining dwellings. |

Other suggestions for improving both character and historic areas include:

- diagrams included in Code policy rather than (or in addition to) underutilised non-statutory guides (such as the diagrams illustrated in Figure 1);
- clearer policies regarding corner sites, particularly addressing the secondary street frontage with appropriate setbacks and building design, noting that being on a corner site may limit opportunities for two-storey development due to streetscape impacts; and
- clearer policies regarding appropriate front fencing designs.

**3. What are your views on introducing a development assessment pathway to only allow for demolition of a building in a Character Area (and Historic Area) once a replacement building has been approved?**

Proposed pathway in Character Areas:
While improved outcomes in Character Areas are supported, the proposal to introduce "demolition controls" in Character Areas is likely to cause confusion and misunderstanding amongst the community.

Firstly, introducing any kind of demolition controls in Character Areas confuses the difference between Historic Areas and Character Areas. The primary intent of Historic Areas is the preservation of the existing buildings which have historic value, noting that although in isolation the buildings may not meet Local Heritage Place criteria, collectively they represent an era(s) or style of development which was important in the history of that local area and should be retained. If these buildings are demolished, it would eliminate the historic value of that area. Conversely, the primary intent of character areas is to preserve the general character and amenity of the area through (among other things) the size and siting of built form, allotment patterns, landscape settings etc, so in theory you could replace the existing buildings in a Character Area with appropriately designed new buildings but still maintain the character of the area. If a Character Area contains buildings that are worthy of retention due to their historic value, then either these buildings should be listed as Local Heritage Places or the area should be elevated to a Historic Area.

Secondly, the introduction of "demolition control" could create a misconception amongst the community that Councils can "control" the demolition of a building in a Character Area. That is, it would create a perception that the Council could refuse an application for demolition based on the

character value of the building alone, which does not appear to be the intent of the proposal. The intent of the proposal appears to be on improved outcomes for replacement buildings and/or to prevent sites remaining vacant for extended periods of time. With respect to the quality of new dwellings, a new dwelling needs to be assessed against the same Code policies whether a demolition is included in the proposal or not. Therefore, it is not clear what different outcomes this proposal would deliver. Concerns about the quality of new buildings need to be addressed through improvements to the policy contained in the Character Area Overlay and/or Area Statements. The Council supports improved policies in the Overlay (as outlined in comments above) and considers this should be the focus of future projects and reform, rather than a 'control' mechanism which does not necessarily achieve control. With respect to sites remaining vacant, this is not typically a problem in the City of Norwood Payneham & St Peters but this experience may differ across the State.

Proposed pathway in Historic Areas:
Similarly, the replacement building 'test' is not supported for Historic Areas as it undermines the purpose of demolition control in a historic area and creates no meaningful distinction from Character Areas. If this proposal is introduced in the Historic Area Overlay, the policy would need to be clear that the assessment of the demolition should be based solely on the historic value and condition of the existing building, and was not able to be justified based on a suitable replacement building.

**4. What difficulties do you think this assessment pathway may pose? How could those difficulties be overcome?**

Some of the potential difficulties have been outlined in the response to Question 3. From a procedural point of view, this assessment pathway would require an applicant to provide information relating to both the demolition and construction of the replacement building when they submit their application. If this pathway applies to demolition in Historic Areas (or heritage places), and if the demolition of the building is not supported, the assessment may not progress to an assessment of the replacement building. In these circumstances, the applicant may have wasted considerable resources preparing plans for the replacement building. In the former system, when assessing a demolition and replacement building in a historic area, it was common practice for the assessing planner to first assess the demolition and if the demolition could be supported in principle the planner would then request the information required for the replacement building. However, this would not work with the current verification process which needs to occur upfront because the details of the proposed building would need to be reviewed to determine public notification / referral triggers etc.

Another procedural implication relates to public notification. Where one element of a development requires public notification, other performance assessed elements are also subject to the same notification process even if they don't trigger notification in their own right. In some cases, applicants intentionally separate elements into different applications to minimise what parts of the development are subject to notification. In the proposed assessment pathway, both the demolition and the replacement building would need to be part of the same application, so in the Historic Area if demolition of the replacement building triggered public notification, then the other element(s) would also be subject to notification. In a Character Area, if the replacement building triggered notification (e.g. due to boundary wall height) members of the public may submit representations on the basis they oppose the demolition of the building, even if there was no policy justification for preventing demolition. This is not a significant concern, but in Character Areas may contribute to a misconception that demolition of buildings can be prevented.

Finally, if the assessment pathway specifically refers to 'replacement building' this could be confused with the defined land use of 'replacement building' outlined in Part 7 of the Code, which has a different meaning and is specifically a new building which is substantially the same as the previous building and is used to facilitate a Deemed to Satisfy pathway for 'like for like' replacements.

## Other comments in relation to character and heritage

### Elevating Character Area to Historic Areas

The Council supports the proposal of elevating worthy character areas to historic areas, and has already initiated a Code Amendment which includes a proposed elevation of a character to heritage area and commenced investigations for a similar future Code Amendment affecting additional areas. After years of proposed heritage and historic area policy amendments, the Council has found the 'threshold' of what is considered a historic area has varied under different State Government planning administrations. In light of the new planning system and to inform the Council's Code Amendments, NPSP staff have previously held discussions with Department staff, members of the Commission and heritage sub-committee to determine if there is any current guidelines or expectations for proposing new historic areas. As part of these discussions, NPSP staff provided suggestions for historic area criteria (contained in **Attachment 1**). If the Commission supports and prioritises Code Amendments for this purpose, it is necessary for the Commission to provide clear and effective guidelines on what will or will not be supported for elevation. For example, the Commission could establish assessment criteria for new Historic Areas and templates to be used in the Code Amendment process so Councils understand the level of information and justification which is required to be submitted with a Code Amendment.

### Representative Building

Representative Buildings were a last-minute inclusion in the Phase 3 Code following strong advocacy from Councils (particularly NPSP) for the retention of Contributory Items. Although NPSP supported a mechanism to transition Contributory Items, the Council remains concerned with the lack of clarity regarding the role and status of Representative Buildings.

Representative Buildings are provided with an administrative definition in the Code which states (in part) they are:

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

Other than this definition, and a brief reference in relevant Historic Area Statements, the Code policies themselves do not make reference to Representative Buildings. For example, the demolition policy 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.*

Council staff have previously clarified 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 therefore be considered a building which should not be demolished unless parts (a) or (b) were satisfied. The Code authors advised that the historic value of each building must be assessed individually and therefore no assumptions can be made that a Representative Building is automatically worthy of retention. Based on this advice, it is unclear what purpose Representative Buildings have in the Code framework. In Council's view, if the Representative Buildings are defined as "buildings which display characteristics of importance" and the policy seeks retention of buildings which "demonstrate the historic characteristics", then Representative Buildings should generally be retained, subject to the demolition tests outlined above. Council staff have previously suggested alternative policy wording which would more clearly communicate the intent and purpose for Representative Buildings and provide more upfront certainty for both property owners and relevant authorities (contained in **Attachment 2**). These suggestions have not yet been adopted.

A further challenge is that a property owner is unable to find out if their building is a Representative Building via the Code, as they are only identified in a layer in SAPPA. The visibility of Representative Buildings in SAPPA is due to be improved through the Miscellaneous Technical Enhancement Code Amendment, but there appears to be no intent to embed Representative Buildings in the Code policy.

### Assessment Triggers for State and Local Heritage Places

Table 1 and Table 2 of many zones prescribes certain developments as Accepted or Deemed-to-Satisfy other than where State or Local Heritage Overlays apply. This exclusion is supported in most

circumstances, however, there are some large sites where the Overlay applies due to one (or more) buildings being heritage listed but there may be other buildings or portions of the site which are not part of the heritage listing – e.g. at large school campuses such as St Peters College or Prince Alfred College. At these sites, an internal fit out of a school building which is not heritage listed and is well removed from a heritage place cannot be processed as Accepted. Under the former *Development Regulations*, State and Local Heritage Places were also exempt from 'building consent only' development however the wording of Schedule 1A(1)(4)(a) allowed some discretion for what constituted the "site" of the heritage place. That is, we could determine that the "site" of a Local Heritage Place on one end of the campus does not extend to the interior of a school building on the other end of the campus. Although the Miscellaneous Technical Enhancement Code Amendment is likely to introduce some flexibility with respect to the application of Overlays, it is unlikely to assist in this circumstance given the Overlay applies to the whole site. It is recommended that Tables 1 and 2 are reviewed and clauses or mechanisms are introduced to provide some flexibility for Accepted or DTS development which will clearly not affect a heritage place on the same property.

## Trees

### Tree Protections

Notwithstanding the responses and recommendations given below, the Council is of the view that the PDI Act and Regulations should be amended to allow Councils to introduce local tree regulations and controls, rather than the 'one size fits all' approach for Greater Adelaide. This would allow for more nuanced and locally responsive controls which are better suited to the context and needs of the local area.

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

The obvious implication is an increase in the number of trees with legislative protection and an associated likely increase in tree retention. This would be a positive outcome with respect to increased tree canopy and associated environmental benefits and would assist in meeting the tree canopy target set out in the *30 Year Plan*, noting that the *30 Year Plan Report Card 2020-2021* indicates that progress against this target requires review.

An increase in the number of protected trees would logically lead to an increase in applications involving 'tree damaging activity' (tree removal, pruning or tree protection measures). This would create a level of inconvenience to developers as it would remove some applications from Accepted or Deemed to Satisfy pathways potentially lengthening assessment timeframes, and would also prevent some sites being totally cleared of vegetation at the time of demolition. However, on balance, the likely benefit of increased tree canopy is considered to outweigh these impacts on developers.

There is a perception that tree protections can lead to pre-emptive tree removal – i.e. tree owners removing a tree when it gets to 1.9m circumference to avoid not being able to remove the tree at a later date when it grows to 2m circumference. While this may occur in some cases, we are not aware of any evidence that demonstrates increased tree regulations leads to an increase in tree removal. Moving forward, improved access to LiDAR data will improve tree canopy monitoring which will help to identify any such trend, but in the interim, this is not considered to be a sufficient reason to not maintain or strengthen tree protections.

It is recommended the trunk circumference of regulated and significant trees is reduced with the new circumference measurement being set based on data, evidence and expert advice, such as the University of Adelaide Report. In particular, it is important the new circumference measurement is relevant to the South Australian context, and the rationale for selecting the new measurement is clearly communicated.

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

The Council supports height being one of the triggers for legislative protection as this would capture some trees such as Corymbias which are typically tall with slender trunks and have high

environmental and aesthetic value. That said, tree height in isolation may not be a good trigger as it could capture trees with limited environmental value (e.g. tall palms). An analysis should be undertaken to determine if there are a lot of trees which offer value due to their height but don't meet current circumference minimums – that is, whether there is a meaningful gap in the current tree protections with respect to tall but skinny trees.

Consideration needs to be given as to how tree height is measured if this was introduced as a new criteria. LiDAR mapping can provide height ranges (e.g. 5-7m, 7-9m etc) but this doesn't provide a high level of accuracy and the data may not always be available. A clinometer or hypsometer could be used, but this may require training for development assessment staff (and obviously access to these devices). Neither of these methods are as accurate, accessible or efficient as measuring the trunk or proximity to dwellings / swimming pools on the ground which can be done by anyone with a tape measure. Currently determining whether a tree is protected can come down to a matter of millimetres, so consideration should be given to the practical application of including height as a regulatory trigger to ensure accuracy and consistency of measurement. Assuming the Regulations or Practice Direction can provide appropriate guidance for how to accurately measure tree height, it is recommended that both circumference and tree height are used as the metrics for determining when a tree is regulated. That is, a tree would need to meet the minimum trunk circumference (reduced from 2m as recommended above) as well as a minimum height requirement.

If tree height is not ultimately included as a criteria for determining when a tree is regulated, it could be recognised in Code policy as a factor to consider in support of tree retention. Guidelines could also be developed for a 'point based' system of assessing tree value, of which tree height can be a numerical factor.

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

Similar to comments above, canopy spread in isolation may not be an appropriate trigger for legislative protection due to difficulty in accurately measuring this, particularly where multiple trees share canopy space. It is also unclear if there is a meaningful gap in the current tree protections for trees with wide canopies but skinny trunks that don't meet the current 2m circumference. As per above comments, canopy spread may be better considered as part of the policy test when assessing regulated tree removals.

In either case, it is worth considering that the use of canopy spread as either a legislative trigger or assessment factor could incentivise excessive canopy pruning which, notwithstanding pruning controls in the legislation, could lead to poor outcomes for trees.

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

The rationale behind current species exemptions and inclusions (e.g. eucalypts and willow myrtles) has never been well documented or justified since its introduction in 2011. It's understood some of the species' selections were based on interstate examples which may not be relevant to South Australia, and the decision to provide special protection for Eucalypts may not have intended to exclude Corymbias and Angophoras based on species categorisation at the time.

Moving forward, it is important that any species-based inclusions / exclusions are reviewed, relevant for the South Australian context and appropriately justified. In principle, it is considered that only species which are an identified weed should be excluded, and potentially only where that weed is recognised as a problem. It is recommended that if the 10m (or similar) exclusion is retained, that Corymbias and Angophoras are protected along with Eucalypts given these trees offer similar environmental benefit and it would also avoid the confusion around the identification of Eucalypts vs Corymbias. Including species-based tree protection whereby a species is protected regardless of trunk circumference should only occur for rare species where there is appropriate justification to do so.

**Distance from Development**

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

As with the species exemptions and inclusions, the rationale for the 10m exclusion is not well understood. It is presumably based on high-risk areas typically being located within 10m of a dwelling and / or the likelihood of root damage to dwellings and pools within a certain radius of the tree. However, given typical residential allotment sizes, increasing densities in some areas, dwelling setbacks and high number of swimming pools in metropolitan Adelaide, the 10m exclusion is presumably excluding a huge number of trees from protection as these can be removed as of right. In many cases it also prevents the planting of replacement trees pursuant to PDI Act Sec 127(5) and Regulation 59, further diminishing the ability to achieve the *30 Year Plan* canopy target of increasing trees by 20% by 2045.

It is recommended the 10m exclusion is removed in the interest of increased tree retention. Increased risk due to limb / tree failure and damage to structures in close proximity to dwellings and pools can be assessed as part of a development application (also noting that construction techniques are continually improving so there is likely to be less damage to modern structures).

If, however, a distance exclusion is retained in legislation there should be greater clarification on why the specified distance has been selected and how to measure this distance, particularly with respect 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 later 'tack on' verandah? Also, what part of the tree should be included in the measurements – noting that for some trees it is less clear where the trunk stops and the root base starts. The distance between a tree and a pool was considered in *HARGRAVES & ANOR v CITY OF HOLDFAST BAY [2018] SAERDC 41 (19 September 2018)* however this didn't address the distance to a dwelling which is the more common scenario.
- At what stage during construction can a dwelling or pool be used to allow the removal of a tree – i.e. can a tree be removed if it is within 10m of a dwelling slab during construction or does the dwelling construction need to be completed?
- What assessment considerations should be given to a proposed dwelling or pool which, once constructed, would exclude an adjacent tree from being regulated? In our view, tree protection measures should be implemented during construction while the tree is still considered regulated, but this view is not shared by everyone.
- How to accurately measure distances when there are obstructions between the tree and the structure in question – e.g. how to measure the distance between a tree and the neighbour's house when there's a fence in the way.

**14. What are the implications of revising the circumstances when it would be permissible to permit a protected tree to be removed (i.e. not only when it is within the proximity of a major structure, and/or poses a threat to safety and/or infrastructure)?**

The obvious implication is a change in the number of regulated trees which will be removed; either an increase or decrease depending on the revised criteria. The current tests for removal (environmental and aesthetic contribution of the tree, risk to people and property, health and structure of the tree etc) are generally considered a reasonable range of considerations when assessing a tree removal.

**Other comments on regulated trees**

**Pruning**

- Exclusion from tree damaging activity set out in Regulation 3F(6) [e.g. <30% crown pruning etc] is not the same as "maintenance pruning" referred to in in the definition of "Tree damaging activity" in Sec 3(1) in the PDI Act. Most people assume the exclusions in Sch4(18) are what constitutes "maintenance pruning" so this needs to be clearer.

- Regulation 3F(6) should be amended to ensure that excluded pruning works are not done in such a way as to detrimentally affect trees: e.g the following could be added "*and... (c) that does not jeopardise or detrimentally affect the health and structure of the tree*" Alternatively the regulation could reference the applicable Australian Standard (AS 4373-2007 Pruning of Amenity Trees). Determining 'material risk' when undertaking pruning should be determined by a person with minimum qualifications – e.g. Diploma in Arboriculture as per Regulation 37.
- Retrospectively determining whether pruning works complied with the legislative exemptions is very difficult. One way of mitigating this would be to require the person undertaking the pruning to document the tree before and after the pruning work (e.g. through photographs) and provide this documentation on request by the Council. Should the extent of pruning later need to be investigated, this may assist the Council in its investigations. It may also serve as a disincentive for excessive pruning in the first place.

**Excluded species**

- Excluded species and other exclusions in in Sch 4(18) should be incorporated into Regulation 3F rather than sitting in a separate location.
- Note that Regulation 59 states that replacement trees can't be an excluded species as per Regulation 3F. If Sch4(18) and Regulation 3F are not combined, then Regulation 59 should be amended so it also prevents replacement trees being those specified in Sch4(18)

**Replacement trees**

- When an applicant has applied to remove a tree on a neighbour's property and they wish to plant replacement trees, it's not clear if the replacement trees need to be on the subject land (i.e. the land where the tree was removed) or if they could be on the applicant's land. Assuming the trees need to on the subject land, the applicant can't reasonably maintain these trees on an ongoing basis which would place the onus of maintenance on the tree owner, which is consistent with Sec 127(4), but what happens if the owner does not consent to trees being planted? Would this limit the applicant to paying into the fund? Sec 127 should be clearer about these circumstances.

  Replacement trees are also problematic when the application involves the removal of a Council tree. Although a Council may have a replacement planting schedule, it won't necessarily be consistent with the number of trees required to be planted, especially at that specific location and particularly if it's the removal of a street tree with limited verge space. NPSP has its own Urban Tree Fund, so it's not logical for the Council to pay into its own fund in lieu of planting. Recommend including an exemption for circumstances where the applicant is a Council or where the tree is on public land.
- Comments relating to payments in lieu of replacement trees are provided in the response to Question 17

**Urban Tree Canopy Off Set Scheme**

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

Increasing the fee for payment into the off-set scheme would incentivise planting trees on private land and/or incentivise tree retention in lieu of planting new trees. In circumstances where the off-set fee is paid, it would increase funds available to Councils to plant trees on public land. That said, the preference is for trees to be planted on private land due to the limited amount of public land available for increased tree canopy, particularly in inner-metropolitan Adelaide.

Currently the off-set scheme applies in one zone in NPSP (Housing Diversity Neighbourhood) as well as sites with specified soil types, but to date no approvals have involved payment into the Off-set scheme. The rationale for including the Housing Diversity Neighbourhood Zone in the off-set scheme is understood but is considered a flawed approach; areas with a high proportion of medium density development (typically multi-dwelling sites with small setbacks, high levels of hard surfaces and in some cases more 'affordable' housing options compared to lower density areas) are more likely to benefit from trees provided on site. In NPSP the HDN Zone is an urban infill area with very limited land availability so it is unlikely Council can purchase additional land

to provide increased tree canopy to these areas to make up for the lack of trees on private land. While verge space provides some opportunity, there is pressure on verge space for additional / wider crossovers due to subdivisions. On this basis, it is recommended that the HDN Zone is excluded from the Off-set Scheme, such that trees need to be planted as part of new developments in this zone.

**16. If the fee was increased, what are your thoughts about aligning the fee with the actual cost to a council of delivering (and maintaining) a tree, noting that this would result in differing costs in different locations?**

This is supported in principle, however it could be difficult to determine and justify different costs in different localities. It may be more practical to increase the offset scheme payments to better reflect the average / typical cost of tree planting rather than the cost specific to a particular council or area.

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

Increasing the amount required to be paid into the Urban Tree Fund when a regulated tree is removed is supported in some circumstances. Increasing the required payment into the Urban Tree Fund could result in an unreasonable financial burden for tree owners who genuinely need to remove their tree (due to poor tree health, unreasonable risk or damage to structures) and who are not proposing an associated development. These applicants often already face considerable financial burden in having the tree removed and are not benefiting financially from a new development. It is noted that Sec 200(8) allows a 66.6% discount for tree owners who hold a Pensioner Concession Card, however there could be other tree owners who would also financially struggle with an increase in Urban Tree Fund contributions and aren't entitled to a discount.

However, where a Regulated Tree is removed to accommodate new development, the Urban Tree Fund payment should be increased to better reflect the actual cost of Councils planting and maintaining trees and this cost can be factored in to the development. Alternatively, payment associated with regulated tree removal could be based on the value of the tree being removed. It is understood an Australian Standard is currently being developed for the valuation of trees, but there are other current methods such as the Maurer-Hoffman Formula.

**Public Realm Tree Planting**

**18. Should the criteria within the Planning and Development Fund application assessment process give greater weighting to the provision of increased tree canopy?**

Generally speaking, yes, however there is still a need for funding of recreational open space.

**Other Comments Relating to Tree Planting Policies**

As outlined under the comments relating to sustainability policies – the Urban Tree Canopy Overlay should be amended and applied more broadly than it currently is to provide greater consistency across different development types and areas. That is, there should be consistent tree planting requirements for the same dwelling types across different zones (noting there is a need for tailored approaches for apartments as opposed to detached dwellings). Stronger tree planting requirements should also apply to non-residential development. It is recommended that:

- the UTC Overlay a planting requirement is applied to all new dwellings in all zones;
- tree planting requirements are also applied to dwelling additions above a minimum floor area – e.g. for dwelling additions of 50m$^2$ or greater;
- the tree planting requirement applicable to car parks is increased beyond the one (1) tree per 10 parking spaces outlined in Design in Urban Areas DPF 7.4; and
- there be a quantitative tree planting policy applied to other commercial developments where fewer than 10 parking spaces are proposed.

It is also worth noting that the Urban Tree Canopy Overlay allows existing trees to be retained rather than new trees being planted. While this is supported on the basis that established trees provide

greater benefits than new trees, to date no applications in the City of Norwood Payneham & St Peters have adopted this option, indicating this policy mechanism may be under-utilised.

**Infill**

**Design Guidelines**

**19. Do you think the existing design guidelines for infill development are sufficient? Why or why not?**

*State Planning Policy 2: Design Quality* notes that good design improves the way our buildings, streets and places function, making them more sustainable, more accessible, safer and healthier. However, for most development in non-Character or Historic Areas, there is relatively limited design guidance included in the Code. The Local Design Review program was introduced with a view to improved design outcomes however there has been little appetite from Councils to opt in to this system. Various factors were cited as to why take-up rates of the program have been low, however some Councils are of the view that there is limited purpose in establishing a Panel to contribute to the assessment process if there are limited design policies which can be used during that assessment.

The lack of design policy may be intentional for some developments, so as to not create unreasonable burden for developers, but there is some scope for improvement. For example:

- Design in Urban Areas DPF 20.2 which prescribes minimum design features can be difficult to interpret and would benefit from greater clarification (e.g. are windows and roof included in the area used to calculate percentages of material on the front building elevation as per part (g)? Do the eaves referred to in part (e) need to extend across the whole facade or can the design include parapet in lieu of a portion of the eaves?);
- While prescribing a minimum number of materials has some benefit, the quality of design is more likely to be determined by quality and colour of materials, although it's noted this will be difficult to quantify for DTS development;
- Design in Urban Areas DPF 20.1 allows double garages to occur on narrow sites where the dwelling is two-storey, even if the garage width is more than 50% of the site frontage. Although there are other policies regulating driveway width and driveway angle, it is considered that the 50% maximum garage width relative to frontage should apply to all sites to avoid garage dominance; and
- More nuanced design guidance should be provided for two-storey development (both new dwellings and dwelling additions). The Council receives feedback regarding big and bulky dwellings and rear additions, particularly when the addition is clad in dark materials

**20. Do you think there would be benefit in exploring alternative forms of infill development? If not, why not? If yes, what types of infill development do you think would be suitable in South Australia?**

In principle, yes, however it can be difficult to accommodate alternative infill development without compromises. For example laneway facing dwellings, which has occurred to an extent in NPSP, requires additional considerations such as access to services, safety and crime prevention (due to lack of passive surveillance and street lighting), and impacts on neighbours resulting from buildings at the rear of existing sites which are much bigger than typical domestic outbuildings. The former NPSP Development Plan included a much broader range of policies relating to laneway development than is currently included in the Code, which could lead to poorer outcomes when laneway development is proposed.

Community expectations with respect to dwelling size in comparison to allotment size is also a consideration. In the past NPSP has approved the creation of smaller allotments with a view to providing a broader range of housing choices; e.g. allowing a new small allotment to be divided off from existing dwelling site which is intended to accommodate a modest two bedroom home. However, when this allotment is on-sold, the new owners expect to build a large three or four bedroom / two living area dwelling with compromises to setbacks, open space etc. This creates a difficult assessment process, often with insufficient time and insufficient relevant policy. Based on

the nature of applications submitted, there does not appear to be much appetite in NPSP for alternative dwelling types such as 'shop top' dwellings, other than large apartment complexes.

**Strategic Planning**

**21. What are the best mechanisms for ensuring good strategic alignment between regional plans and how the policies of the Code are applied spatially?**

Under the new planning system, the private sector is dominating the Code Amendment program. This results in a Code Amendment program which is opportunistic, reactive and not driven by strategic outcomes or policy improvements by the State or Local Governments. Government agencies aren't sufficiently resourced to progress important Code Amendments and Councils are unable to influence the Code without first getting all other affected Councils to agree on and advocate for the change to the Commission or Minister.

Policy Improvement Work Program

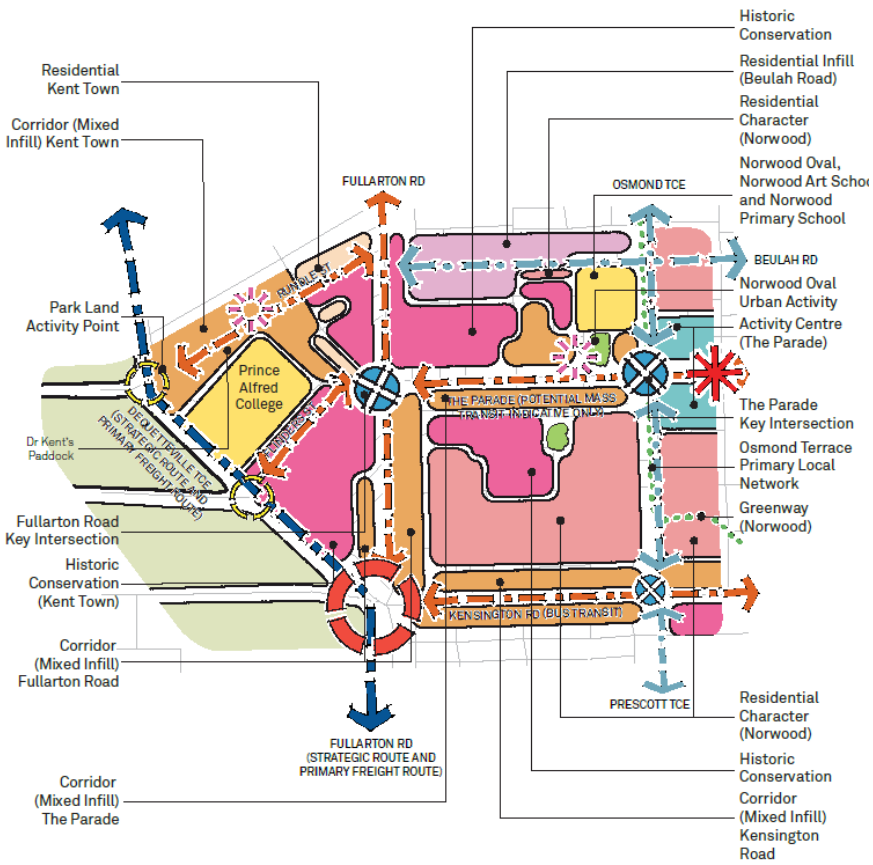
There is a need for an agreed program or framework between State and Local Governments, with the allocation of responsibilities and resourcing, prioritising how and when Code Amendments occur, after the development of Regional Plans – i.e. which agency undertakes which changes and at whose cost.

Specific, clear and instructive strategic planning is more important than ever in light of the generic wording of Code policies and private Code Amendments which can lead to ad-hoc, opportunistic and non-strategic rezoning of land. In some cases, private rezoning can occur without sufficient supporting infrastructure or logical connections to complementary zoned land. Managing the impacts of, and providing coordinated services for, substantial developments on isolated properties presents a bigger challenge and less efficiency than managing these services on a precinct or nodal basis.

Rezoning isolated sites also provides less certainty and clarity for the community, particularly where the proposed intensity is substantially at odds with the surrounding locality. It is unfortunate that the new regional plans were not updated prior to the development of the Code and subsequent private Code Amendments, as this would have been the logical order in establishing the new planning system.

The current 30 Year Plan envisages 85% of new infill established in urban Adelaide by 2045 but there is a lack of detailed spatial guidance for which areas across inner metropolitan Adelaide will be supported and prioritised for rezoning to facilitate this. While a Regional Plan cannot determine which properties will become commercially available, a Regional Plan (or subregional plan) can provide much clearer direction for the density and scale of development that can be planned for the future, taking into account proximity to established centres, open space, available infrastructure, and broader land use planning principles. A good way of communicating this is through Concept Plans, as was included in the *Inner Metro Rim Structure Plan (2012)* developed by the former DPTI with input from Councils. This level of spatial resolution needs to be replicated in subregional plans so future Code Amendments can be assessed against these intended outcomes. An example Concept Plan is illustrated in **Figure 3** below:

**FIGURE 3 – Concept Plan in *Inner Metro Rim Structure Plan (2012)***




Concept Plans would also be prudent in light of Sec 75 complying Code Amendments, which do not require consultation if the Code change is consistent with a recommendation in the Regional Plan. There is considerable risk that community members will miss out on an appropriate consultation opportunity through the Sec 75 Amendment process. Firstly, it is unclear whether the Regional Plan consultation will involve notification to individually affected properties. If not, the Regional Plan consultation would not be an adequate substitute for the Code amendment consultation which is typically more refined and targeted. Secondly, community members are much less likely to be engaged with a broader strategic document than they are with a zone/policy change which directly affects their property. Thirdly, it is expected that the initial Regional Plan consultation and any subsequent Code amendments reflecting the Regional Plan could be some years apart. It is likely that properties may change ownership or occupation during this time and as a result, the owners/occupants that were notified of the Regional Plan could be different to the owners/occupiers of the property at the time of the Code amendment. In this instance, the latter owners/occupiers would miss out completely. It is recommended some parameters are introduced around this process to ensure there is an appropriate level of detail included the Regional Plan, the consultation associated with the Regional Plan is sufficiently targeted, and there is a limited time between the Regional Plan consultation and the subsequent Code Amendment.

It is understood the new Regional Plan will be delivered in a primarily online format (rather than a published PDF document). This will be necessary to provide a full strategic picture of planning policy for any given area.

**22. What should the different roles and responsibilities of State and local government and the private sector be in undertaking strategic planning?**

Strategic planning should be undertaken by both State and Local Government (either collaboratively or in consultation) depending on the scale and spatial application of the document. For example, Councils should have the ability to lead or substantially contribute to subregional plans and/or more local strategic plans which guide land use distribution and the provision of local infrastructure and services. While all stakeholders (including the private sector) should be included in consultation on strategic planning documents, it is the State and Local governments which have a responsibility to represent the interests of the general public and to provide the services and infrastructure required to facilitate increased populations and changing land use distribution.

**Carparking**
**Code Policy**

1. **What are the specific car parking challenges that you are experiencing in your locality? Is this street specific and if so, can you please advise what street and suburb.**

   *State Planning Policy 1 – Integrated Planning* anticipates a planning system which integrates land use, transport and infrastructure and *State Planning Policy 11 – Strategic Transport Infrastructure* anticipates an integrated, dependable and sustainable transport system that provides connectivity. The current *30 Year Plan* also anticipates changed travel behaviour and targets for new housing in close proximity to fixed line and high frequency public transport. The comments below relate to car parking issues experienced in the City of Norwood Payneham & St Peters and the action the Council is taking to manage this. However, many of the issues stem from broader issues outside the Council boundaries, such as commuters (presumably some of whom live outside the Council) using local streets as an ad-hoc 'park and ride'. This indicates that improvements are required to State infrastructure, such as dedicated 'park and ride' facilities and improved public transport.

   In residential areas such as the General Neighbourhood and Housing Diversity Neighbourhood Zones, increasing infill development is resulting in more driveway crossovers and therefore less kerb space for on-street parking. The Council is also nervous about the proposed Driveway Crossover Design Standard being prepared by the Commission and the potential for this to result in the loss of verge space due to wider / increased number of crossovers (Design Standards are discussed further under the PDI Act section of this Discussion Paper). There also appears to be an increasing proportion of larger cars, which are difficult to manoeuvre into the minimum size garages and car parking spaces, resulting in an increasing number of residents parking on the street, or in some cases parking in the garage but overhanging the footpath.

   Suburbs in close proximity to the CBD or adjacent high frequency public transport such as Hackney, Norwood, College Park and Kent Town experience commuter parking issues where people park on the street all day and catch the bus, ride or walk into the CBD. Similar problems occur with employee parking near activity centres or arterial roads with high commercial activity such as The Parade or Magill Road in Norwood, or larger employment sites such as schools, childcare centres and Lifecare in Joslin, or large construction sites such as the Norwood Green or new townhouses on Beulah Road in Norwood. All day commuter or employee parking makes it difficult for residents in these locations, particularly with respect to visitors, carers or tradespeople. This also poses a risk of disincentivising customers who want to drive to businesses in these areas.

   The Council has recently endorsed a new Car Parking Policy and is currently implementing time limited parking to alleviate these issues. However, when timed parking is introduced in one street employees and commuters are just finding other streets to park in (or move their car every two hours) rather than finding alternative modes of transport. Any further reduction of off-street car parking will only work if there is a travel-mode shift to public transport, cycling and walking. The Council encourages sustainable transport where possible, but travel behaviour change incentives, education and encouragement programs is a metro-wide State Government responsibility.

2. **Should car parking rates be spatially applied based on proximity to the CBD, employment centres and/or public transport corridors? If not, why not? If yes, how do you think this could be effectively applied?**
3. **Should the Code offer greater car parking rate dispensation based on proximity to public transport or employment centres? If not, why not? If yes, what level of dispensation do you think is appropriate?**

As outlined above, the State Planning Policies and *30 Year Plan* anticipate better integration of transport and land use planning, so it is important for designated areas to be located in areas where this desired integration can be achieved.

The current designated area car parking rates generally work well in facilitating changes in land use. However, there are some locations slightly further out from the CBD where designated areas apply, but in reality, customers are much less likely to catch a bus, ride a bike or undertake a multi-purpose trip to certain land uses, especially if they are undertaking cross-suburb travel, e.g. if a person from Payneham is visiting their GP in St Morris. As such, a spatial review of the applicable designated areas is recommended. A metro-wide travel behaviour / incentive program is also required to ensure alternative modes of transport remain more appealing than driving.

**4. What are the implications of reviewing carparking rates against contemporary data (2021 Census and ABS data), with a focus on only meeting average expected demand rather than peak demand?**

Using contemporary data is generally supported, however data is required for not just car ownership but how / where people park their cars – e.g. the household may have two cars but park one on the street if the garage is used for storage. It would also be important to look at spatially specific data and using suburb level data rather than the average car ownership rate across metropolitan Adelaide. There does also still need to be consideration of peak demand in areas where residents or businesses are negatively affected on a regular basis.

**5. Is it still necessary for the Code to seek the provision of at least one (1) covered carpark when two (2) on-site car parks are required?**

Before covered car parking requirements are removed or reduced, research should first be conducted into consumer demand. New dwellings are typically proposed with double garaging and covered parking is a selling point for properties on the market. It is also not unusual for an increase in enquiries to planning departments about additional carports after a severe storm events or in extended hot weather. If a development is designed with no covered carparking 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.

**Design Guidelines**

**6. What are the implications of developing a design guideline or fact sheet related to off-street car parking?**

In principle, a fact sheet summarising Code policies and how to provide safe and convenient manoeuvring would assist some small-scale applicants. Designers of larger developments are generally aware of the requirements but it is unfortunately common for developments with common driveways or parking areas to provide insufficient or impractical manoeuvring area. This issue is unlikely to be resolved with a fact sheet. It is also important that fact sheets are made more obvious and easily accessible on the PlanSA website as it appears current fact sheets are underutilised by applicants that are not aware they exist or have trouble finding them. An option is to provide hyperlinks via the Online Code to fact sheets which may be relevant to particular policy issues or development types.

**Electric Vehicles**

**7. EV charging stations are not specifically identified as a form of development in the PDI Act. Should this change, or should the installation of EV charging stations remain unregulated, thereby allowing installation in any location?**

**8. If EV charging stations became a form a development, there are currently no dedicated policies within the Code that seek to guide the design of residential or commercial car parking arrangements in relation to EV charging infrastructure. Should dedicated policies be developed to guide the design of EV charging infrastructure?**

It is not correct to state that activities not specifically identified in the Act is not development; the definition of development is very broad and constitutes various forms of unspecified building work and infrastructure. Whether or not EV charging stations constitute development depends on

specific details. For example, some involve building work, illuminated advertising or require variations to approved car parking areas particularly if parking spaces are removed to accommodate the infrastructure. The legislation should be clearer about when EV charging stations constitute development. The Code should provide policies to assist in their assessment including:

- traffic management (e.g. safe and convenient access for cars using the chargers, impacts on car parking provision etc);
- design and appearance of the infrastructure; and
- buildings being appropriate designed to accommodate EV charging stations etc. Recently the Council was made aware that some residents of the East Park apartments in Kent Town have been limited in purchasing EVs as there is no provision for charging infrastructure in the communal parking area.

**Car Parking Off-Set Schemes**

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

NPSP does not have a car parking fund however in principle car parking funds could be used for projects which reduce car dependence, such as cycling infrastructure. That said, it is considered there should be better strategic investment in public transport and integration with land use planning at a State Government level.

**Commission Prepared Design Standards**

11. **Do you think there would be benefit from the Commission preparing local road Design Standards?**

In general, Design Standards for the creation of new local roads in greenfield areas and large subdivisions could be beneficial. However, NPSP is generally concerned about Design Standards which affect the existing public realm (footpaths, roads etc) as they could override and be in conflict with existing Council policy and standards.

**Other comments relating to car parking**

- The current internal car parking dimensions for garages, while consistent with the Australian Standard, are not practical for many common car types. Even when cars can fit in the garages, there is little room for manoeuvring around the cars or ancillary storage. In an early draft of the Code the internal garage dimensions were larger and it is understood this dimension was reduced due to feedback from the development industry. However, it is important garaging meets modern needs, otherwise garages will be underutilised and residents will park on the street instead, causing issues discussed above.
- The Code should include policies relating to vertical car stackers which are an increasingly common solution for small sites, as well as on-ground car park stacking in commercial developments (e.g. where one car ‘parks in’ another car) which may be acceptable for a small proportion of staff parking but only to a limited extent.
- The typical 5.5m setback of garaging or carports should be reviewed due to an increasing number of larger vehicles and to provide some ‘buffer’ space for imperfect parking and moving around cars

City of Norwood Payneham & St Peters

# PDI ACT 2016 Reform Options Discussion Paper

## General comments in relation to the legislation

### State Planning Commission

The Council notes and appreciates the diverse skill sets and expertise of the Commission members. However, given the importance of planning to local communities and the significant impact the planning system has on Local Government operations, a member(s) of the Commission with contemporary local government and/or community advocacy experience is necessary in assisting the Commission to understand and manage these impacts. As such, the Council recommends that Section 18 of the PDI Act is amended to include a requirement for the Commission to include a member(s) with contemporary local government and / or community advocacy experience. The amendment could also allow the LGA the opportunity to nominate a person onto the Commission.

### Relevant Authorities

The PDI Act has created a complicated system of relevant authorities. This has created administrative burdens with respect to delegations and financial management / responsibility. With respect to Planning Consent, the PDI Act has removed substantial decision-making responsibility from delegates of the Council (as was the case under the Development Act) to an individual Assessment Manager. Notwithstanding that the Assessment Manager is appointed by the Council and is subject to accreditation and auditing, it seems contrary to good governance that the responsibility of these decisions rest with an individual rather than an elected body. It also 'personalises' the decision-making role as appeals of decisions are against the "Assessment Manager of X Council" rather than an appeal against "X Council". Building Consent Relevant Authorities are also complicated, given that CAPs are technically the Relevant Authority for Building Consent but they *refer* the decision-making ability to Councils who then *delegate* to Council staff. A review of relevant authorities in the Act would require substantial legislative change, but this is recommended in the interests of efficiencies, good governance and simplified roles and responsibilities.

On several occasions in the past, NPSP has opposed the appointment of the Commission as the relevant authority for development exceeding 4 storeys in specified areas. In the case of NPSP this applies to our 'uplift' areas where the Design Overlay / Urban Corridor Zones apply. Various decisions have been made by the Commission through the SCAP which involve development which exceed applicable height policy, which the Council has not supported. It is recommended these decision-making powers are returned to the Council.

### Design Standards

Section 69 allows the Commission to prepare Design Standards that relate to the public realm or infrastructure. Design Standards will supplement the Code as they will form part of the 'planning rules' against which development should be assessed. The first Design Standard relating to vehicle crossovers is currently being prepared so it is not yet clear what, if any, local context or current Council policy content will be included in Design Standards. This could result in a single Design Standard which determines the specifications of driveways across public land for the whole of the State. If this is the case, this would undermine local Council policies, standards and guidelines which are currently used to assess applications for driveways. For example, NPSP has specific design guidelines for alterations to the public realm in Kent Town to provide consistent and fit for purposes public realm in conjunction with the large developments occurring in the Urban Corridor Zone, but this could be undermined by a State or metro-wide Design Standard which does not prescribe the same requirements.

In short, the fact that Design Standards set by the Commission can determine the nature of works which occurs on land under the care and control of the Council, even when the Council does not support the content of the design standard, is a significant concern.

### Interaction with Local Government Act

It is important to note that pursuant to Section 221(3)(b) of the *Local Government Act 1999*, a Section 221 permit is not required for vehicle access approved as part of a development application, and

impending amendments through the *Statutes Amendment (Local Government Review) Act 2021* will clarify that any physical alteration of the public realm related to the vehicle access will also be exempt. This includes development applications assessed by relevant authorities other than the council (i.e. private planning certifiers or State Government). The *Statutes Amendment Act* will further amend the LG Act such that where an application for a driveway is assessed by a non-Council relevant authority, they must *consult* with the Council (note, this is not a concurrence role) however when the driveway is consistent with a Design Standard there is no requirement to consult with the Council. The effect of this is that driveways which are inconsistent with the Council's public realm polices can be approved by a private relevant authority with no input from the Council. This will undermine the Council's coordination and oversight over the public realm.

It is also important to note that Schedule 6 Part 7 of the PDI Act, while not currently 'switched on', seeks to amend the Local Government Act even further. Specifically, any alteration to a road or use of a road for business purposes approved as part of a development application would not require a Section 221 or 222 permit from the Council under the LG Act. If enacted, this would have much broader and serious implications for Councils given the significant range of activities, alterations and structures which could be undertaken on public land without Council oversight nor the conditions, restrictions and requirements which are attached to Section 221 and 222 permits. It is understood there is no intention to 'switch on' this section of the PDI Act due to the potential ramifications of this amendment, and the *Statutes Amendment Act* has been written to 'pare back' these changes outlined in the PDI Act however it is recommended this section of Schedule 6 is removed entirely (noting this may have some associated implications for the *Statutes Amendment Act*).

**ePlanning Levy**

Pursuant to Section 56, Councils are required to make significant contributions to the ePlanning system. For NPSP and many other Councils, the ePlanning levy is in the order of $59,000 per year. It is noted that the lodgement fee for development applications is also retained by the State Government for maintenance of the system. This is a significant investment from Councils and is in addition to the maintenance of Council's own systems which are still required to manage development applications (e.g. Development Act applications as well as PDI Act Crown developments) and GIS systems which are still required given SAPPA cannot do everything our GIS systems do (e.g. provide names and addresses for public notification or producing maps which illustrate specific features). Although improvements are regularly being made to the ePlanning system, it is not without its faults, frustrations and work arounds and in many respects does not perform as well as Council's own systems. In short, Councils are making significant financial contributions to a system which does not currently meet our needs, while we are also still needing to invest in our own systems. It is recommended the extent of contributions from Councils is reviewed and Local Government be given a larger say in the prioritisation of improvements to the ePlanning system.

**Access to and provision of information**

Section 55 exempts documents held in the Poral from the *Freedom of Information Act 1991*. This has created confusion and inconsistencies in the industry with respect to accessibility of documents. Under the *Development Regulations 2008*, Reg 101(4) and (5) allowed a person to inspect development documents at council offices, provided there were no copyright or security risks. In the interests of consistency and transparency, it is recommended a similar regulation regarding access to documents is reintroduced.

**Navigating legislation + the Code**

The *PDI General Regulations* have been structured to refer to the Code for various procedural triggers on the basis the Code can be more easily updated than the regulations. This is supported in principle, however it leads to a confusing and cumbersome line of enquiry. For example, to determine if a fence requires approval a person must:

1. refer to Schedule 4 of the PDI General Regs which states a fence is not exempt from approval if it is in a "*designated flood zone, subzone or overlay identified under the Planning and Design Code*"; then

2. refer to Regulation 3 which defines a 'designated flood zone, subzone or overlay' as "*a flood zone, subzone or overlay identified under the Code as a designated flood zone, subzone or overlay*"; and then
3. refer to Part 5 – Table 1 of the Code and find the relevant clause of the regulations to determine what constitutes a 'designated flood zone, subzone or overlay':

| | |
|---|---|
| Areas identified as 'designated flood zone, subzone or overlay' for the purposes of clause 3(1) of the Regulations - Interpretation | Coastal Areas Overlay<br>Hazards (Flooding) Overlay<br>River Murray Flood Plain Protection Area Overlay |

While the intent of referring to the Code is understood, this is a difficult process to navigate. If possible, a note in the regulations could provide guidance on how to find the relevant information in the Code.

**Practice Directions**

*Practice Direction 12 – Conditions*

- Urban Tree Canopy Overlay condition requires review to address the following:
  The condition refers to trees being planted *or* payment into the Scheme. Whether or not the applicant is planting or paying should be resolved at the time of Planning Consent. If the condition remains with both options, this could be misleading for applicants who are not eligible for the offset scheme (due to their zone or soil type).

  More detail should be provided in this condition rather than just referring to the DPF 1.1 as this policy could be superseded by Code Amendments over time and it will be difficult to determine what the requirements were at the time of the consent, particularly for a future owner who may not realise trees on the site should be retained. It could be very complicated to specify all of the detail contained in DPF 1.1, however an abbreviated version could be included to provide a basic level of information with a reference to the policy for more detailed information. Alternatively, the condition could allow the relevant authority to provide more specific info based on the site area(s) of the dwelling(s).

- Stormwater Management Overlay Condition requires review to address the following:
  Similar to the above, it is not practical to simply reference the DPF as it does not provide the level of information necessary in a condition. Although there is less risk in rainwater tanks being removed or altered after installation as compared to trees, the condition should still be clearer and more instructive.

  It is noted that alternative stormwater management solutions may be considered as appropriate ways of managing stormwater as part of a development. However, given this is a mandatory condition, it precludes the relevant authority from determining a suitable alternative. Recommend the legality of applying mandatory conditions with respect to assessment criteria is reviewed.

- Regulated Tree Removal condition requires review to address the following:
  Similar to the above, the condition should not be applied as written in the Practice Direction. It should specify that either trees are planted (and the number of trees to be planted is specified) or payment is made into the fund, depending on what the applicant and relevant authority have determined.

Note that additional comments on individual sections of the Act and Regulations are contained in **Attachment 3**.

**<u>Public Notifications and Appeals</u>**

**1. What type of applications are currently not notified that you think should be notified?**

The notification triggers in the Urban Corridor Zone should be reviewed so that proposals which exceed the building height TNV are subject to notification even where the development is not on a zone boundary. Although this is consistent with the notification triggers in former Development Plans, development which exceeds policy parameters should be notified regardless of location (other than minor departures). The original intent of the new planning system was that stronger

consultation would be undertaken upfront on Code policies and therefore less notification would be required at the development assessment stage. However, this is undermined when development is assessed and approved well in excess of the policy parameters without notification and associated community oversight. It is also recommended that third party appeals are available for development which exceeds maximum building height policy, in the interests of a transparent and accountable planning assessment process.

**2. What type of applications are currently notified that you think should not be notified?**

The MTE Code Amendment is expected to sufficiently address this issue.

**3. What, if any, difficulties have you experienced as a consequence of the notification requirements in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.**

The new system condenses notification categories from a three (3) tiered system down to a two (2) tiered system. Under the former three (3) tiered system, the extent of notification was generally commensurate with the level of likely impact. For example, residential structures were typically Category 2 so only adjacent neighbours were notified, whereas non-residential development which often has broader impacts was typically Category 3 so broader notification and appeal rights applied. Under the PDI Act, however, the extent of notification required (all properties within 60m, sign on the land and plans being publicly available) is often excessive for residential development.

Some examples of this from NPSP include a proposed carport on a side boundary which required the distribution of 68 letters, and proposed tennis court lighting and fencing required 89 letters, most of which were far removed from the development site. By contrast, an application for 69 three storey dwellings on the former 'Otto's Timber' site at Stepney, did not trigger public notification as it did not exceed the new zone height and interface parameters. This is neither effective use of administrative resources nor an equitable and reasonable opportunity for public input to inform the decision-making process. It is noted some domestic ancillary structures will not require notification after the MTE Code Amendment is implemented, however various residential developments will still require notification. A solution would be to re-introduce a middle 'tier' of notification for smaller or residential development where impacts are unlikely to extend beyond immediate neighbours.

**4. What, if any, difficulties have you experienced as a consequence of the pathways for appeal in the Code? Please advise the Panel of your experience and provide evidence to demonstrate how you were adversely affected.**

Based on discussions with members of the community affected by development, it appears most community members do not understand their appeal rights or processes and are often surprised they have limited appeal rights (as compared to former Category 3 development). Although third party appeal rights can disrupt planning processes and are not appropriate in every circumstance, in other circumstances they provide a healthy level of review and oversight over development decisions. It is recommended the current lack of third-party appeal rights for performance assessed development is reviewed.

**5. Is an alternative planning review mechanism required? If so, what might that mechanism be (i.e. merit or process driven) and what principles should be considered in establishing that process (i.e. cost)?**

Aside from third party appeals as discussed above, generally the existing planning review processes are considered sufficient. It is recommended, however, that the following amendments be made to the review of the Assessment Manager's decision process:

- If a review of an AM decision is lodged with the CAP during an assessment (i.e. a procedural decision relating to categorisation etc) clarification be provided as to whether the assessment of this application should be put 'on hold' pending consideration of the review by the CAP or if the assessment of this application should continue; and

- ability for the required fee to be processed via the DAP and then distributed to councils with other fees. Currently the only option is for the fee to be paid via the council and evidence uploaded to the DAP, which is cumbersome and not integrated with the system.

**Accredited Professionals**

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

Planning decisions should only be issued by planning professionals as they more likely to be aware of updated information and case law relating to planning policy, and are therefore better placed to apply and interpret planning DTS criteria. We acknowledge this will reduce the amount of available work for private building professionals, however planning decisions is unlikely to be the primary source of work for private building certifiers.

**Other comments regarding private planning certification**

It is recommended that private planning professionals are not permitted to approve DTS development with any minor variations due to the subjective nature of assessing minor variations. While most private planning professionals will act professionally and with integrity, the fact that private planners have a financial incentive to determine that a development is DTS is not conducive with a transparent process.

There have been a number of examples under the former Development Act system where the Council has questioned minor variations to Rescode criteria issued by private planning certifiers. One example from 2021 involved a private planning certifier who processed two (2) dwellings and associated land division as a Rescode development despite a shortfall in site frontages. Although the shortfall was not significant, it was not considered minor by the Council and would have allowed an otherwise un-subdividable allotment to be subdivided. Importantly, the minimum frontage width was intentionally set in the Development Plan so as to only allow larger than average allotments to be subdivided (i.e. the policy did not envisage subdivision of the most common 15.24m wide allotment size in that area). The applicant appealed the Council's decision but this appeal was subsequently withdrawn and the development has not proceeded. This is an example of a minor variation decision made by a private planner which could have had meaningful planning implications with respect to allotment patterns in that locality. Another example from 2020 was a development for two (2) detached dwellings which involved a driveway encroaching on the tree protection zone of a regulated street tree, walls which exceeded the maximum wall height, and shortfalls in side and front setbacks. After the Council raised concerns, the applicant amended the plans however some of these issues remained unresolved and new issues also arose with the amended plans.

**Impact Assessed Development**

9. **What are the implications of the determination of an Impact Assessed (Declared) Development being subject to a whole-of-Government process?**
   This is supported.

**Infrastructure Schemes**

10. **What do you see as barriers in establishing an infrastructure scheme under the PDI Act?**
11. **What improvements would you like to see to the infrastructure scheme provisions in the PDI Act?**
12. **Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?**

The complexities and onerous requirements in the infrastructure scheme process is a deterrent to entering into the process, other than for very large developments. A refined infrastructure scheme process may assist infill Councils where smaller scale public realm works are needed to be part-funded by developers. Currently Councils are still having to set up costly and time-consuming legal agreements to leverage good public realm upgrades. For example, NPSP has not entered into any

infrastructure schemes but has used mechanisms outside of the PDI Act to enter into agreements with developers to share public realm upgrade costs which benefit the Council, development and broader community. (Note this process is supplemented by the Council's *Kent Town Urban Design Framework* and *Kent Town Urban Design Manual*).

**Local Heritage in the PDI Act**

**13. What would be the implications of having the heritage process managed by heritage experts through the Heritage Places Act (rather than planners under the PDI Act)?**

There are a number of aspects of reform sought by the original 2014 Expert Panel on Planning Reform that have not yet been addressed. Specifically, under its *Reform 8: Place Heritage on renewed foundations* the Panel recommended:

- a single heritage statute (reform 8.1)
- terminology review (reform 8.2)
- integrated heritage authority for state and local listings (reforms 8.3 and 8.4)
- code of practice for listed properties for descriptions, maintenance and adaptive re-use (reform 8.5)
- role of accredited professionals in assessing works consistent with Code of Practice (reform 8.6)
- audit of heritage listings to accurately describe their attributes (reform 8.7)
- financing of heritage to support custodians of heritage (reform 8.8)

Many reviews, investigations and documents have been prepared since that time, without addressing these broader strategic reforms:

- Planning SA Local Heritage Discussion Paper 'Heritage Reform - An exploration of the opportunities' (2016)
- ERD Committee Inquiry into Heritage Reform (2019)
- Government response to ERD Committee recommendations (2019)
- Formation of Heritage Reform Advisory Panel (2021)

These remaining reform recommendations should now form part of the current Expert Panel's recommendations to improve heritage processes in the planning system.

A single statute and integrated Heritage Authority will enable more efficient and independent consideration of Local Heritage Place listing nominations. The Local Heritage Place identification and listing process through Heritage Surveys undertaken by Councils is costly, slow and subject to uncertainties during the policy amendment stage. The progress of the original Expert Panel (2014) recommendations and the Heritage Reform Advisory Panel (2021) will significantly improve local heritage processes and outcomes for local government. It is noted, however that sufficient resources will need to be made available to any future centralised heritage authority to ensure they are equipped to deal with the additional requests for heritage listing of Local Heritage Places.

Although the process for listing Local Heritage Places would benefit from sitting in a centralised statute, the assessment of development affecting Local Heritage Places should remain with Local Government. Referrals to State Heritage for development affecting State Heritage Places, while supported, adds time and cost to development applications. NPSP has 661 Local Heritage Places as compared to 73 State Heritage Places, so if the assessment of development affecting Local Heritage Places also required referral to a State-level heritage body, this would add time and cost to considerably more applications. Most Councils engage a heritage expert when required as part of the assessment of development a Local Heritage Place so there is generally appropriate expert oversight over these assessments.

**14. What would be the implications of sections 67(4) and 67(5) of the PDI Act being commenced?**

The discussion paper indicates these clauses relate to the designation of places of local heritage value. For clarity, these clauses were intended to relate to the designation of historic areas (currently Historic Area Overlay and formerly Historic Conservation Zones in some Development Plans) rather than individual Local Heritage Places, given that 67(4) refers to "heritage character or preservation zone". It is also noted that Section 202(1)(a) allows an owner of land which has

been designated as a Local Heritage Place to appeal the designation to the Court. In this respect, the Act includes a separate 'check and balance' process for aggrieved Local Heritage Place owners. The following comments are made on the understanding these clauses relate to the designation of historic areas (e.g. Historic Area Overlay).

Properties within a historic area do have additional development restrictions, notably demolition controls and stronger design criteria for new development. It is understandable then that some property owners feel strongly about a Code Amendment which proposes to introduce historic area designation. However, there are other planning policy mechanisms which have a similar effect on development potential, such as minimum allotment sizes which prevent opportunities for subdivision or maximum building heights. No other planning policy mechanism is subject to 'popular vote' and it is incongruent with current planning processes to do so. It would also be an administrative nightmare for Councils in managing who is eligible to vote. When a similar mechanism has been used by the Council in introducing localised car parking controls, there have been multiple challenges to the process with respect to who was entitled to vote or people who missed their opportunity to vote because they were away etc. Therefore, the Council supports the deletion of these clauses from the Act.

**Deemed Consents**

**15. Do you feel the deemed consent provisions under the PDI Act are effective?**

**16. Are you supportive of any of the proposed alternative options to deemed consent provided in this Discussion Paper? If not, why not? If yes, which alternative (s) do you consider would be most effective?**

*Concerns with Deemed Consents*

In principle, Deemed Consents are considered to be a punitive tool which penalises Local Government and ultimately does not produce good planning system outcomes. Although the Deemed Consent provisions are probably effective in ensuring more applications are determined within the required timeframe, the negative effects are considered to outweigh its effectiveness. Although very few applicants are likely to issue a Deemed Consent notice due to the administrative complexities and delays which would follow (e.g. the Council appealing the notice to the Court) the threat of a Deemed Consent 'hangs over' every application and places considerable additional stress on the assessing planner. Other Councils have indicated Deemed Consents are a factor in an increased loss of assessment planners from the Local Government sector, which is already in a constrained employment market. The primary risk of a Deemed Consent is development occurring which is significantly at odds with the Code, which could have significant impacts on surrounding properties and in some circumstances could result in unsafe development. It is particularly concerning that demolition or modification of heritage buildings could occur, or regulated trees could be removed, prior to an appeal being lodged with the Court. Notwithstanding the fact an applicant who does enact a Deemed Consent for demolition or tree removal consent runs the risk of the Deemed Consent being overturned by the Court, the outcome could be irreparable if the work has already occurred. Based on the above, Deemed Consents are considered to be a low-likelihood but high-risk scenario.

*Ways of dealing with Deemed Consents*

There are various ways of managing the risks associated with Deemed Consents. Approaches which either we are aware have been adopted in other councils, or are otherwise presumed likely to occur include:

- issuing refusals rather than negotiating improved outcomes with the applicant;
- exceeding verification timeframes in order to 'buy more time' for the assessment process;
- undertaking a rushed assessment which increases the risk of human error or oversight;
- granting consent to a finely balanced proposal which probably should not be approved but is accepted in light of the pressures and time constraints imposed by Deemed Consents;
- prioritising applications which pose more risk if a Deemed Consent were issued, to the detriment of other applications which were lodged earlier but pose less of a risk if a Deemed Consent is issued (resulting in longer assessment timeframes for these other, simpler developments).

None of the above are the preferred approach at NPSP. Rather, if an application doesn't warrant consent the planners will advise they aren't able to support the development and invite the

applicant to put the application on hold in order to resolve the issues, or alternatively if they prefer, a refusal decision can be issued. Unfortunately given the limited assessment timeframes, this conversation usually occurs at the end of the assessment process. As a result, when amended plans are submitted there is very little time to re-assess the amended proposal (unless the changes are substantial in which case the assessment clock can be reset as per Reg 35) which places considerable stress on the planner to resolve the application before the assessment time runs out. This process also does not accurately reflect the time spent on any discussions or negotiations which may occur while the application is on hold. That is, the assessment timeframe statistics may 'look good' but misrepresent the reality of how long the process was for both the relevant authority and the applicant to achieve an acceptable outcome. In short, Deemed Consents are resulting in imperfect 'work-arounds' and are an additional complication and stress for the relevant authority.

*Alternative options to Deemed Consents*

In light of the above, it is recommended the Deemed Consent provision is removed from the Act. If an alternative mechanism is required in place of Deemed Consents, options include:

1. reintroduction of the former Development Act process where the applicant could apply to the Court for a direction for the relevant authority to issue a decision;
2. ability for applicants to apply to the Commission to take over the assessment and issue a decision, given this may be a more expeditious process than option 1 but still sufficient incentive for Councils to undertake assessments within time; or
3. ability for the applicant to issue a deemed refusal notice to allow an opportunity to take the matter to Court.

Two of the alternatives outlined in the discussion paper relate to final Development Approval, which is not a direct alternative to deemed Planning Consents. In any case, these are not supported for two reasons:

- in NPSP, delays with Development Approvals are typically a result of the applicant not yet complying with reserved matters or conditions of Planning Consent, or inconsistencies between planning or building documents so the Council is not in a position to issue Development Approval. Very occasionally there may be an administrative oversight, such as when a staff member is on leave, which causes a short delay (i.e. a day or so) until the application is reallocated and finalised; and
- it is important that Development Approval is issued by the Council (or the Commission where relevant) to ensure an appropriate level of oversight over private planning and building decisions, and appropriate time and respect needs to be given to this legitimate process.

*Recommendations if Deemed Consents are retained*

If Deemed Consents are retained, it is recommended the following is implemented:

- as recommended in the discussion paper and discussed further below, assessment timeframes should be increased to give a relevant authority a reasonable amount of time before there is a risk of Deemed Consent;
- Deemed Consents cannot be issued for development relating to a heritage place or historic area (or at the very least not apply to development which involves demolition);
- Deemed Consents cannot be issued for applications involving tree damaging activity (tree removal or pruning);
- for notified developments, a Deemed Consent can't be issued between the assessment time running out and the next Assessment Panel meeting; and
- for developments requiring statutory referrals, a Deemed Consent can't be issued until a response has been provided by the referral body to allow any conditions to be imposed as per Practice Direction 11.

Additionally, greater clarity should be provided regarding Deemed Consent documentation. We understand no planning decision notification forms are issued for Deemed Consents, and instead the Deemed Consent notice is used in lieu of the DNF. This is a flawed process as the notice does not contain any conditions. Instead, anyone needing to understand the planning conditions will

need to refer to Practice Direction 11 in conjunction with the details of the proposal/ assessment to determine which conditions are relevant. This is not practical and would affect multiple stakeholders including building consent and Development Approval relevant authorities who need to issue a subsequent decision, for the council when dealing with subsequent compliance matters, and for property owners to understand the requirements of their consent (including subsequent property owners). It's also not clear if the Deemed Consent notice would be used in lieu of DNFs on a Section 7 search or on the online public register. It is recommended this administrative process is refined, perhaps requiring the Development Approval relevant authority to enter the required conditions for the full approval DNF, although noting this would not resolve the problem between Planning Consent being issued and Development Approval being granted.

**Verification of development applications**

**17. What are the primary reasons for the delay in verification of an application?**

At NPSP, the large majority of verifications are completed within the required timeframes and any delays which do occur are typically only a day or so. The most common reason for any delay is when additional investigation is required to determine the assessment pathway / relevant elements. For example:

- a site inspection is required to determine if a Regulated Tree will be affected (and therefore add tree damaging activity as an element);
- a site inspection is required to determine if a proposed driveway will affect street trees or infrastructure and therefore whether a development meets DTS criteria;
- investigations are required to determine if a development will materially affect a State Heritage Place, and therefore require a referral; or
- it is not always clear whether a proposal involves a change of use, particularly for undefined land uses, which requires additional consideration and in some rarer cases may require legal advice; and
- even when no special investigations are required, verification can still take a long time if there are multiple elements which all need to be checked against accepted and DTS provisions.

As referred to in Question 16 above, some Councils (not NPSP) will give precedence to assessments of applications over verifications in light of the risk posed by Deemed Consents.

For many applications, much of the assessment needs to be completed within the verification period. This is particularly difficult for the assessing planner if the application is allocated to the planner on day 2 or 3 of verification. Another reason for a longer verification process is that many applications are submitted with insufficient information. In these circumstances, applicants may perceive the verification taking longer than the required timeframe.

**18. Should there be consequences on a relevant authority if it fails to verify an application within the prescribed timeframe?**

No, a consequence is not supported. However, if the Panel are of a mind to recommend a consequence of some description, an option may be that if a relevant authority fails to verify an application, the applicant could apply to the Commission (or a delegate) to take over verification.

A 'deemed verification' process is impractical and not supported as the submission information provided by an applicant often needs to be amended or refined, requiring human oversight.

**19. Is there a particular type or class of application that seems to always take longer than the prescribed timeframe to verify?**

It is difficult to refine this to particular types of applications, but reasons for delays are outlined in the response to question 17.

**20. What would or could assist in ensuring that verification occurs within the prescribed timeframe?**

**21. Would there be advantages in amending the scope of Schedule 8 of the PDI Regulations?**

To improve the standard of information provided by applicants, it is recommended that information prompts are provided in the DAP during submission which summarise the required mandatory information based on the element(s) selected and the requirements of Schedule 8. An online checklist would also be useful for relevant authorities when verifying an application. In some cases, an application should not be able to be submitted without particular information; noting that relevant authorities have the ability to waive the need to provide information, but some information such as site plans are fundamental to an application.

It is recommended that Schedule 8 is amended to outline mandatory information for tree damaging activity both for tree removal (so a relevant authority can confirm if the tree is exempt due to species or proximity to dwellings and determine if the applicant intends to plant replacements or pay into the Urban Tree Fund), and for pruning (to determine if the pruning work is exempt).

Schedule 8 should also outline mandatory information for change of use applications given some change of use applications can be Accepted or DTS. Schedule 8 should also clarify that relevant authorities are able to request any other information which is required to determine the assessment pathway or to verify the elements, to account for applications where the nature of development is not prescribed in Schedule 8. It is also pertinent to review Schedule 8 to make sure any criteria required to be assessed for Accepted / DTS pathways are reflected in mandatory documentation. For example, one of the criteria for determining if a swimming pool is accepted is the extent of soft landscaping remaining on the site, but this is not included in the mandatory information in Schedule 8.

It is worth noting that in the interests of expediting assessment processes for applicants, the NPSP planners will sometimes indicate in the request for documentation that additional information will be required during the assessment– i.e. the RFD will make it clear what information is required for verification purposes but foreshadow further information which will be requested during the assessment. This is one example of how the current DAP processes do not recognise the iterative and non-linear process of assessing development applications.

**Comments on assessment timeframes**

The majority of applications processed by NPSP do not require public notification and are not subject to statutory referrals. However, many of these assessments are complex and require a detailed assessment such as a multi-dwelling proposal, development in the Character Area Overlay, multiple elements or various impacts on neighbouring properties. Many applications also require as many as 4 – 6 internal referrals for matters such as heritage, traffic, stormwater management, regulated or street trees, etc. In most cases, 20 business days is completely insufficient for these types of applications.

A recent example of a complex application with a 20 business day assessment timeframe is a proposal for ten (10) two-storey dwellings of varying design and allotment size for which assessment considerations have included:

- vehicle access issues for the common driveway and insufficient on-site and on-street parking;
- impacts on street trees including a request to remove a street tree;
- overshadowing and visual bulk impacts on neighbours;
- insufficient setbacks;
- tree damaging activity affecting an adjacent tree;
- insufficient soft landscaping and tree planting;
- complex stormwater assessment;
- varying site and floor levels; and
- waste management issues requiring a shared waste arrangement and special approval from Council's waste collection agency.

In the interests of facilitating good development, the Council has negotiated multiple, iterative amendments with the applicant, which have required subsequent review and re-referrals to internal experts, however these amendments have not been so substantial so as to reset the clock as per Regulation 35. Currently the DAP indicates the assessment timeframe so far is 19 business days, whereas in reality it has so far been a total of189 business days since the lodgement date (noting many of those days have been waiting on the applicant to provide various pieces of outstanding information).

It is difficult to quantify in legislation what types of development should be provided with additional assessment time. For some applications an Overlay could be a trigger for additional assessment time, such as flood or historic area overlays, but other issues such as street tree removal, traffic and waste management are not indicated by an Overlay and require complex internal referrals and negotiation. The number of dwellings could not be used as a consistent trigger as the complexity of assessment could vary immensely depending on the nature of the proposal and context of the site. The complexity of non-residential development also varies too significantly to be used as a determining factor. On balance, it is recommended that most performance assessed applications are provided with a minimum of 30 business days assessment timeframe, and some typically minor forms of development such as ancillary residential structures could remain at 20 business days.

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

## General comments relating to the ePlanning system

### Online Code

Opportunities to improve navigation and use of the Code are outlined below. It is noted that some of the issues identified below were recently also highlighted by Commissioner Rumsby in *Evanston South Pty Ltd vs Town of Gawler Assessment Panel [2022] SAERDC 14 (10 October 2022)*, particularly that "the digital planning system is not simple and easily understood".

**Code hierarchy**

Many users of the Code are not familiar with the Code hierarchy. Typically, the user looks up what is relevant to their property or development and doesn't read the 'Rules of Interpretation' so they don't know that Overlays take precedence over the zone. When making a property specific enquiry, the Code displays the Zone policies first, then the Overlays, and the user needs to scroll through a large volume of policies, many of which are irrelevant to their site or development. It is understandable then, that a person sees a parameter such as "maximum height: 2 storeys" in the zone and fails to scroll far enough down to an overriding Overlay policy (e.g. Historic Area Overlay + Statement) which stipulates that development should be "single storey". On numerous occasions applicants (even those who are familiar with the Code) have prepared preliminary plans for a two-storey development and NPSP planners have had to talk them through the limitations of the Overlays. Ways to resolve this would be to either provide an information prompt when inquiring on the Code to clarify the hierarchy, include a note on a zone policy that there may be an overriding Overlay policy, or display the Overlays above the zone.

**Refine and reduce policy results**

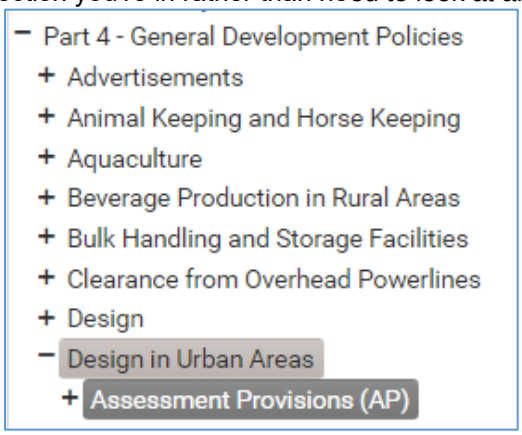
Even when the Code prescribes particular policies to a development in Table 3, the user still needs to sort through numerous irrelevant policies. For example, for an enquiry regarding a detached dwelling at a particular address, the Code 'doesn't know' the circumstances of the property or the configuration of the development so it needs to display policies relating to corner sites, rear access laneways and battle-axe style dwellings in case these are relevant. One solution is if the user could 'hide' policies from the results by indicating whether the subject land is a corner site, has a rear access lane or whether the dwelling is on a battle-axe allotment, and any policies relating to these issues would not be displayed. Note, this would require policies to be 'tagged' with topics or key words.

**Clearer, static and collapsible headings**

When scrolling through a large volume of policies it is very hard to keep track of what heading you're under and therefore whether the policy applies to the development you're assessing. For example when scrolling through Design in Urban Areas it is hard to keep track of whether the policy you're reading applies to 'Residential Development – Low Rise' or 'Residential Development – Medium and High Rise'. Section headers should be static (or have an option to be static) at the top of the page so the user can always keep track of what section of the Code they are looking at.

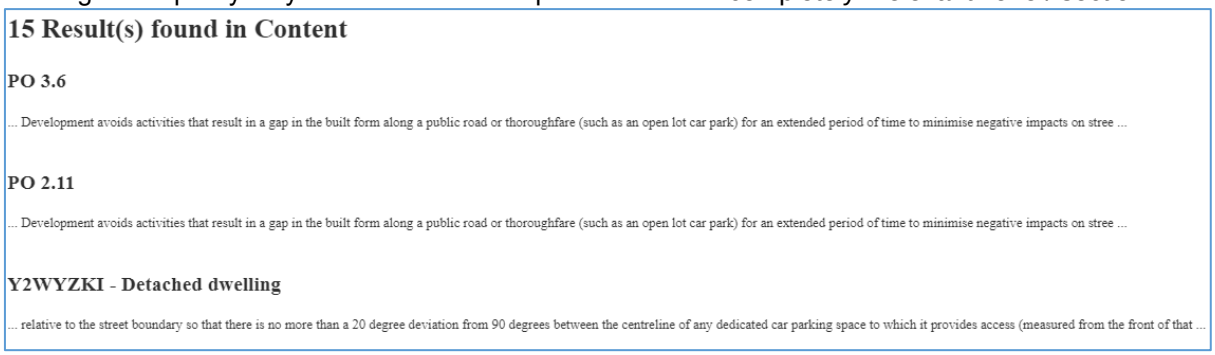
**Subheadings in the navigation panel**

Further to the above, it would help if in the navigation panel you could select just the relevant subheading i.e. be able to select 'Residential Development – Low Rise' so you can keep track of what section you're in rather than need to look at all policies at once (see snip below):



### Search function

The search function in the online Code is difficult to use. The search results do not display the section / heading of the policy so you don't know if the policies are in a completely irrelevant zone / section:




It is easier to navigate to a particular Zone / Overlay / Section and use the ctrl+F function in your web browser to find key words

### Using the Code / Code extracts

Code snapshots produced through the online Code or through the DAP are in PDF format, which is reasonable in terms of content control, but it can be inconvenient to use when assessing an application:

- when trying to copy and paste a particular policy from the PDF into a report the text comes across in a strange format which requires considerable reformatting. This is a minor issue, but when this occurs multiple times every day, cumulatively it is causing inefficiencies. If there is a possibility for the PDF to allow easier copying and pasting or inserting of policies into reports that would be desirable;
- our planners download the Code extract and annotate the PDF (e.g. with 'tick' stamps and text annotations) but this is messy, time consuming, and creates a very large file size. It would be ideal if the DAP or online Code could produce 'checklists' which can be edited online where the assessing planner can tick / cross / make notes against each applicable policy; and
- the Code snapshots include the date the snapshot was produced, but don't include the date version of the Code. The assessment sheet templates requires the planner to enter the date version of the Code which requires the planner to look up the Table of Amendments. It would be easier if the Code snapshot also included the date of the version of the Code.

## DAP

Opportunities to improve navigation and use of the DAP are outlined below:

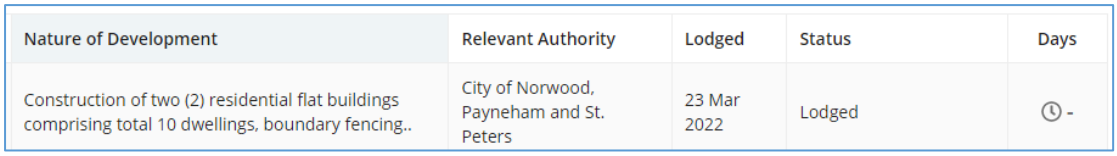
### Dashboard

It is understood PlanSA have been undertaking a review of the DAP dashboard, so this issue may be addressed as part of that enhancement. However, it is recommended the action / status and key dates associated with an application are more obviously displayed on the DAP dashboard. For example, an owner phoned up to check on the progress of the following application (identifying features omitted):

| | | | |
|---|---|---|---|
| Demolition of a detached dwelling and decommissioning of a swimming pool | City of Norwood, Payneham and St. Peters | 13 Jul 2022 | Lodged |

The application displays NPSP as the relevant authority and an action of "lodged" so it's easy to assume it is pending a planning assessment by a colleague. However, Planning Consent has actually been granted and the building consent has been 'initialised' but not allocated to a relevant authority. We understand you can get the correct information by navigating into the application, or clicking the application in the list which will display a status summary at the bottom of the page, but it would be better if the status was clearer to see at a glance.

Another similar example is when an application is 'On Hold' but on the dashboard, the application displays as 'Lodged', rather than the current status which is 'On Hold':



| Nature of Development | Relevant Authority | Lodged | Status | Days |
|---|---|---|---|---|
| Construction of two (2) residential flat buildings comprising total 10 dwellings, boundary fencing.. | City of Norwood, Payneham and St. Peters | 23 Mar 2022 | Lodged | - |

The 'Assigned to me only' filter on the dashboard is useful in many circumstances however it shows up all applications which have that officer's name attached to it. A planner may have finished the planning assessment and the application is now with the building officer, but it will still show up under "Assigned to me" for the planner. It would be preferrable for applications to only show up under this filter when that officer is actively dealing with the application. While most users would want to see applications assigned to them as a default, there are also many users (e.g. in administration or managers) who don't have applications assigned to them who constantly need to untick this filter when trying to look up applications. It would be preferrable to have a DAP setting which allows the user to decide if they want this filter on by default or not.

It is also recommended that the applicant's name is displayed on the dashboard rather than the owner, as we are more likely to identify an application by the applicant.

**Search function**
The search function in its current forma only works with very precise inputs. For example if you search *1 First Avenue* or *1 First Ave* it will not return a result, instead you need to search *1 First Av*. It would be preferrable for the search functionality to allow different abbreviations / full words to be used.

**Clocks**
The clocks can be confusing at a glance – for example an application which is under a planning assessment will ordinarily display the number of days left in the planning assessment but if there is another action such as "Upload evidence of sign on land" with, say, 2 days left on the clock the clock on the dashboard will display as '2'. This isn't hard to clarify, but it does confuse applicants who assume there is 2 days left for the total assessment.

**Templates**
Recommend additional correspondence templates are included in the DAP to avoid the Council needing to generate and upload a letter on our own letterhead for certain actions – e.g. notice to representors of an upcoming CAP meeting or notification to the owner of a Regulated Tree pursuant to Regulation 48.

**Document Management**
The maximum file size for documents is 70MB which is insufficient for some documents, particularly Development Approval stamped plans (note that NPSP uses Trapeze which creates larger file sizes than Bluebeam).

Currently we can't upload email file types into the DAP so we need to convert an email to a pdf and then upload it, including stitching any attachments to the email. It would be preferrable if either we could upload email file types, or if we could send emails (with attachments) in the DAP.

Document categories are very important but are not always used correctly. For example, in the past we have uploaded Development Approval stamped plans under the "Stamped Plans" category instead of "Stamped Plans – Development Approval" which means we can't issue Development Approval. We can't change the document category once the document is uploaded so we need to supersede the first document and upload them again under the correct category. Private Building Certifiers often upload stamped documents in separate documents (not just due to file size, but often because they haven't stitched the documents together). Notwithstanding the fact that several documents are cumbersome for the Council to process for Development Approval, it's particularly problematic when only one of those documents is uploaded as 'stamped plans' as only 'stamped plans' show up under the decision documents tab. It would also be useful to have a guide to document categories to save us clicking through different document types and categories to find an appropriate category when trying to upload a document.

Documents need to be uploaded under the correct consent. It is frustrating when you accidentally upload a document while under the main 'development application' window rather than the 'Planning Consent' window because those documents won't show up when you filter for planning documents. It would be good if we could 'move' a document from one section of the application to another so you don't need to supersede and upload the document again.

**Functionality and user interface**
The following is a brief compilation of issues which could be considered as part of improved user experience:

- action buttons are not always obvious or in a consistent spot;
- certain workflows, such as creating an appeal matter, require various steps and can be hard to follow. We often need to refer to the guide to make sure we follow the correct procedure and while it's very helpful to have the guide, it would be better if the process was more intuitive;
- when in a development application, it would be useful if the development description showed up in addition to the address. For example, a planner may have two tabs open – one for an original application and one for a variation. The addresses would be the same and the DA numbers could be very similar which makes it difficult to keep track of which application is which. This increases the chances of error if an action or document is uploaded in the wrong application.

**Fees**
Fee payment in the DAP must be via credit card. Some applications attract fees of greater than $10,000 which prevents many credit cards from being used. On these occasions our accounts department have generated an invoice for the applicant to transfer the money which we then record in the DAP. Alternative payment options to avoid this issue should be explored.

**Crown Developments**
Crown developments are unable to be processed through the DAP. From what we understand there is a system limitation which currently prevents this. This should be resolved as soon as possible to avoid needing to work in separate systems.

**PowerBI and Reporting**

NPSP finds PowerBI to be not user friendly and significantly limits the statistics and reporting we can produce for DAP applications. Issues include:

- despite having some training from PLUS staff, we are frequently unsure what report function and filters we need to use to find the data we need. This may improve over time as we get more familiar with the system but the amount of time we spend searching and troubleshooting is frustrating;
- inconsistent results when collecting data through different functions – i.e. the number of X type of applications is different when you use the development trends report as opposed to a Council report function. We understand this can be due to issues such as one function including transitional applications and one not, but we have no way of knowing which is which;
- limited data which can be extracted – e.g. for some reports you can only get underlying data with limited data fields. In the past we have run a report where the data extract tells us the day of the week the application was lodged but not the more critical information of the date a consent was granted. In another example there was an application ID but not a property address;
- some data is extracted from PowerBI while other data is extracted from the reporting landing page. For example, if you want to run a report on internal referrals, you need to do this through the reports landing page rather than PowerBI; and
- the advanced search function in the DAP can be useful and is more user friendly, but you can't extract data from the DAP.

Below are examples of information we have been unable to get through PowerBI / Reporting:

- the number of new dwellings approved (preferably by suburb and/or zone and within a defined time period). We can search for the number of applications which involve new dwelling(s) but this doesn't tell us how many dwellings total have been approved. This is a fundamental statistic relevant to different council projects and reports. The number of dwellings is recorded in the

DAP for the purposes of ABS stats, and we've been informed it is possible for this data to be captured by PowerBI, but it's not yet available;
- data relating to tree planting as per Urban Tree Canopy Overlay requirements. Again, there is a question in the DAP which collects this information but it's not yet available through PowerBI. We have had to spend a long time manually collecting this information for our tree canopy projects; and
- searching by condition of consent or fee type (these would help us refine and find different types of approvals).

This information is critical in reviewing and improving policy or analyzing progress of the *30 Year Plan* targets

**SAPPA**

It would be useful is SAPPA enabled us to:

- switch on or select layers with more precision, so that you could produce a map which only shows the location of relevant layers. For example being able to select one specific zone or one specific building height TNV at a time if you wanted to show the locations in the Housing Diversity Neighbourhood Zone where the building height TNV was 3 storeys;
- identify the spatial location of individual Area Statements. Currently the CAO and HAO show faint grey lines to delineate the Area Statement areas but these are not labelled and not able to be switched on in isolation. Previously these were individual Policy Areas which we could map individually in our own GIS system;
- search the layers tab – often you know the layer you want to switch on but end up clicking through various layer tabs to find it;
- save which default layers switch on when SAPPA loads (this may require a log in); and
- street numbers should be switched on by default as this would be useful information for most users and can be switched off if they're not necessary; and
- switch layer labels on and off – e.g. switch on the LGA boundaries but switch off the council name.

**User Experience**

**Website Re-Design**

**1. Is the PlanSA website easy to use?**

The site is easy to use if you are familiar with the site navigation but it can be overwhelming for members of the public who aren't familiar with the planning system. There appears to have been improvements to the search bar functionality overtime, but it can sometimes still be hard to find the page or document you want, particularly if you use slightly incorrect terminology. When searching directly in the resources tab, sometimes you need to use the specific document title to get a successful result.

The following is a summary of what we have heard from users about their experience with the website:

- some prospective applicants have difficulty in finding where to lodge an application;
- community members have difficulty finding applications on notification, particularly as some community members struggle to use the QR code on their notification letters;
- confusion regarding the Accredited Professionals register as on a few occasions people have contacted accredited Council staff seeking assistance with applications in a private capacity;
- the 'Approval wizard' is a useful tool for people wanting to find out if they need approval, but Council still gets numerous queries around this which suggests it could be made more obvious or accessible; and
- based on queries we receive it seems the fact sheets are underutilised, but a review of website visits would be required to determine if this is the case.

**2. What improvements to the PlanSA design would you make to enhance its usability?**

- Improved search functionality both on the home page and in the resources tab;
- more obvious and simple submission process;
- contact details and direct phone numbers for Department staff responsible for particular projects so you know who to contact regarding that project;
- improved clarity on the Accredited Professionals register page around the purpose of the register and who can assist in a private capacity (we are aware some additional clarification was added to this page some time ago, but it is considered more could be done); and
- the option of signing up for notification of applications is currently based on the Council area, however a person at one end of the Council is unlikely to be interested in a development at the other end of the Council. A more refined option could be suburb-based notifications so you could select your suburb and surrounding suburbs.

**Mobile Application for Submission of Building Notifications and Inspections**

**3. Would submitting building notifications and inspections via a mobile device make these processes more efficient?**

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

Mobile functionality would be useful, mostly for external users such as builders on site, but also for Council staff conducting site inspections.

**Online Submission Forms**

**5. Is there benefit to simplifying the submission process so that a PlanSA login is not required?**

**6. Does requiring the creation of a PlanSA login negatively impact user experience?**

**7. What challenges, if any, may result from an applicant not having a logon with PlanSA?**

Generally speaking, not requiring a log on would simplify the submission process for one-time users, especially those not familiar with online processes. However, not having a log on would prevent the applicant from actioning various steps in the DAP (e.g. uploading additional information, applying for next consent etc). There is the option for applicants to submit their application in hard copy and the hard copy lodgement fee assists in offsetting the administrative costs for Councils. As such, for the foreseeable future it may be best to retain a log on for whoever is managing an application.

**Increase Relevant Authority Data Management**

**8. What would be the advantages of increasing relevant authorities' data management capabilities?**

**9. What concerns, if any, do you have about enabling relevant authorities to 'self-service' changes to development applications in the DAP?**

Improved autonomy for relevant authorities over certain DAP functionality is supported, if it avoids the need for us to submit requests to the PlanSA helpdesk. The helpdesk is usually very helpful and we understand the need for a certain level of quality control but it is frustrating to not be able to troubleshoot or correct errors in the same way we did in our previous systems. We acknowledge that system improvements are continuing to be made, for example public notification processes can now be stopped and restarted by Councils to correct an error rather than waiting out a full notification period or getting PlanSA to reset the process on our behalf. However, it would be worth reviewing the requests submitted to PlanSA and determining if there are common requests for assistance which could be undertaken by the relevant authority without risk of undermining system integrity or legislative requirements. An example of a useful change would be to allow relevant authorities to change the property address after verification. Given verification often happens in a rush to complete it in 5 business days, it is not uncommon for a relevant parcel to be missed by both the applicant and the relevant authority and this go unnoticed until the assessment is underway. It would also be an improvement if Councils had more autonomy over reporting statistics rather than being confined to the limitations of PowerBI.

**Inspection Clocks**

**10. What are the advantages of introducing inspection clock functionality?**

Ability to observe the time taken for an inspection to be undertaken by Council.

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

None

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

No impacts that we can foresee.

**Collection of lodgement fee at submission**

**13. Would you be supportive of the lodgement fee being paid on application, with planning consent fees to follow verification?**

**14. What challenges, if any, would arise as a consequence of 'locking in' the Code provisions at lodgement? How could those challenges be overcome?**

This is generally supported as it would avoid needing to re-check a development against Code criteria to confirm there have been no Code Amendments affecting relevant policy between verification and assessment. The biggest inconvenience would be for applicants who need to pay a lodgement fee at submission, then planning fees after verification, then building fees after building verification, then potentially building compliance fees if these weren't paid at the time of building verification.

It's possible that applicants will submit an application with the lodgement fee and minimal information in order to get an application lodged under the current version of the Code, in advance of an unfavourable upcoming Code Amendment. This happened to a huge extent the day before we switched to the new system as people attempted to lodge their application under the Development Act, which caused a significant administrative burden. On balance, however, this is unlikely to be a common or persistent problem.

**Combined Verification and Assessment Processes**

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

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

This would be beneficial for DTS development and for a small number of performance assessed applications (many performance assessed DAs would still require further assessment beyond the initial verification). However, there should be an option to cancel the decision before it's issued in case of any unforeseen circumstances. For example, it is not uncommon for the applicant to amend their proposal after lodgement because they've decided to change or add an aspect of their development.

Even for applications which don't use this streamlined assessment process, it would be useful if the assessment report document could be generated at verification so the planner can start recording assessment notes against the relevant criteria. Currently if they want to keep notes during verification to be used during a later assessment, they need to either put this into a file note, upload a separate document, or keep the notes outside of the DAP.

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

No comment

**Automatic Issue of Decision Notification Form**

18. **What are the advantages of the e-Planning system being able to automatically issue a Decision Notification Form?**
19. **What do you consider would be the key challenges of implementing an automatic system of this nature?**
20. **If this was to be implemented, should there be any limitations attached to the functionality (i.e., a timeframe for payment of fees or the determination will lapse)?**

    As above, this would be useful for DTS and a small number of performance assessed DAs, provided the DNF could be appropriately previewed to ensure any conditions or notes were correct and in a desirable order, and also for the process to be interrupted to deal with unforeseen circumstances.

**Building Notification through PlanSA**

21. **Would you be supportive of mandating building notifications be submitted through PlanSA?**
    Yes

22. **What challenges, if any, would arise as a consequence of removing the ability for building notifications to be received by telephone or in writing to a relevant council? How could those challenges be overcome?**

    There may be challenges in providing the necessary notifications by some owners/builders who do not know how to use the PlanSA portal, particularly in one-off situations. This may result in notifications not being submitted. If building notifications are to be submitted to PlanSA portal only, there may be an influx of phone calls and emails to Councils in regard to how to submit building notifications by owners/builders who have not used the portal previously or who do not have access to a particular development application. Owners/builders providing a building notification on the PlanSA portal who aren't familiar with the system and require support should be able to phone the Plan SA desk and be guided on how to submit a building notification, rather than being directed to call Council.

23. **Would this amendment provide efficiencies to relevant authorities?**
    Yes

**Remove Building Consent Verification**

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

    No. verification of a Building Rules Consent is important step for assessment authority to request necessary documentation and also issue an invoice for the assessment. This step is important because it gives the applicant an overview of what documentation is required and what the assessment fees are for the application.

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

    Relevant authorities will have to commence the assessment of an application immediately to request necessary documentation before actually undertaking an assessment of the required documentation. Although it may streamline the assessment process it will put pressure on the assessing authority. The current assessment timeframes for building rules assessment does not need to be reduced any further.

**Concurrent Planning and Building Assessment**

**26. What would be the implications of enabling multiple consents to be assessed at the same time?**

It would be beneficial for some applications, but for most applications there is a risk that changes required as part of the planning assessment may result in inconsistencies between planning and building consents which would cause further delays. Perhaps it could be limited to certain minor applications and should be accompanied by sufficient information for applicants regarding the risks of going through a concurrent process.

**Innovation**

**Automatic Assessment Checks for DTS Applications**

1. **What do you consider would be the key benefits of implementing an automatic system of this nature?**
2. **What do you consider would be the key challenges of implementing an automatic system of this nature?**

It is assumed this is referring to the system 'reading' plans submitted with an application. If possible, this would create system efficiencies which is a positive outcome. However, as we have experienced with the implementation of the current system, there is always a risk of system errors so it is likely many councils would still oversee this process. Although the quality of plans has improved overtime, some plans are still hand drawn, have multiple 'layers' of information on the one plan which makes them hard to read, or the detail may be included in written schedules (e.g. material schedules) or section details. Human oversight over plans can also identify inconsistencies or errors in the plans which an automated system may not be able to do.

3. **Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?**

There are higher priorities within the existing system which require time and resourcing which should be the Government's focus.

**3D Modelling for Development Application Tracker and Public Notification**

4. **What do you consider would be the key benefits of the e-Planning system being able to display 3D models of proposed developments?**
5. **Do you support requiring certain development applications to provide 3D modelling in the future? If not, why not? If yes, what types of applications would you support being required to provide 3D modelling?**
   This is supported in principle, however 3D models can sometimes misrepresent the details of a proposal e.g. depending on the perspective or if a feature is emphasised or understated, so there should be some caution around this approach. Also, the current development tracker can be slow to load, so an expansion of the tracker should take this into consideration.

6. **Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?**
   This is more achievable and useful than automatic assessment checks, but should not be prioritised over other system improvements. Note that processing and storage of files may be difficult due to file size limitations.

**Augmented Reality Mobile Application**

7. **Would you be supportive of the Government investing in developing this technology so that it may integrate with the e-Planning system?**
   This would be a useful feature in the future, but as above, consideration should be given to the accuracy of the information the augmented reality is based on (e.g. if renders are used) and this should not be prioritised over other more urgent or practical system improvements.

**Accessibility through Mobile Applications**

8. **Do you think there is benefit in the e-Planning system being mobile friendly, or do you think using it only on a computer is appropriate?**

**9. Would you be supportive of the Government investing in developing this technology so that the PlanSA website and the e-Planning system is functional on mobile?**

Some features of the system, such as SAPPA, are not conducive to use on mobile devices so the user interface on mobiles should be improved. Noting, as above, that other more urgent system improvements should be prioritised.

# Guidelines for new areas to be included in the Historic Area Overlay

*(Included in presentation to members of the Commission and PLUS staff – 2 May 2022)*

The below criteria were provided as a suggested basis for guidelines for assessing new Historic Areas. It was not envisaged that an area must meet every criteria, but rather they be used as part of an the assessment of an area to determine if elevation to Historic Area is justified.

## ERA

High concentration of buildings from the same era which contribute to the historic characteristics of the area

## HISTORIC CHARACTERISTICS

Cohesive physical attributes which contribute to historic character (consistent building form/ siting, building materials, era of construction, style of building, landscaped setting)

## CONTEXT

Area which tells a culturally important 'story' about the history of the community e.g. an area which saw heavy development post WW1 with State Bank Bungalows

## CONFIGURATION

HAO should generally apply on both sides of a street (to provide a consistent streetscape) other than in exceptional circumstances eg:

- it relates to one side of an arterial road (e.g. Portrush Road) given both sides of the street are not typically viewed concurrently
- other side of the street is in a different Council area
- distinct zone difference or land use mix where the zoning intent of one side of the street would be incompatible with the HAO
- HAO extends slightly further on one side of the street

## ZONING

HAO should be accompanied by appropriate zoning e.g. Established Neighbourhood or Business Neighbourhood, not Urban Corridor or Housing Diversity Neighbourhood

## COMMUNITY SUPPORT

Guidelines to include reference to the mandatory Sec 67(3)(b) consultation requirements and any suggestions relating to the engagement plan

## DOCUMENTATION STANDARD

Guidelines to include minimum information provided with Code Amendment applying new HAO (e.g. heritage surveys, maps showing existing/ new Representative Buildings)

# Code Policy Options for the Historic Area Overlay and Representative Buildings

*(Included in presentation to members of the Commission and PLUS staff – 2 May 2022)*

| **Historic Area Overlay – Current** |
|---|
| **HAO Demolition: PO 7.1**<br>*Buildings and structures, or features thereof, that demonstrate the historic characteristics as expressed in the Historic Area Statement are not demolished, unless:*<br>*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*<br>*or*<br>*b) the structural integrity or safe condition of the original building is beyond reasonable repair.* |

| **Option 1 – Change to current Policy Wording – No Representative Building Overlay** |
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| **HAO Demolition: PO 7.1**<br>*Buildings and structures, or features thereof, that are either identified as Representative Buildings or otherwise demonstrate the historic characteristics as expressed in the Historic Area Statement are not demolished, unless:*<br>*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*<br>*or*<br>b) *the structural integrity or safe condition of the original building is beyond reasonable repair.* |

| **Option 2 – Introduce Separate Representative Building Overlay** |
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| **HAO Demolition: PO 7.1**<br>*Buildings and structures, or features thereof, that are not Representative Buildings, but do demonstrate the historic characteristics as expressed in the Historic Area Statement are not demolished, unless:*<br>*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*<br>*or*<br>b) *the structural integrity or safe condition of the original building is beyond reasonable repair.* |
| **+** |
| **Representative Building Overlay PO X.X**<br>*Buildings and structures that are designated Representative Buildings are not demolished, unless:*<br>*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*<br>*or*<br>b) *the structural integrity or safe condition of the original building is beyond reasonable repair* |

**ATTACHMENT 3**

| Additional Comments on PDI Act | | |
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| **Section** | **Issue** | **Recommended Change** |
| s4 (1)(d) | The Code can prescribe an increase in intensity of land use as a change of use. At present there is no prescription. | Prescribe what constitutes an increase in intensity of land use for the purposes of this clause |
| s4 (3) | The Code can allow for the revival of a use after a period of discontinuance to be regarded as the continuance of an existing use. | Consider the introduction of principles into the Code for the purposes of this section. |
| s4 (6) | The Code can specify land use classes whereby a change in use within a use class will not be regarded as a change in use. | Consider the introduction of appropriate use classes into the Code for the purposes of this section. |
| s4 (7) | The Code can specify a change of use as a minor change which will not be regarded as a change in use. | Consider introduction into the Code of appropriate specifications for the purposes of this section. |
| s18 | Review constitution of the State Planning Commission to introduce a greater emphasis on qualifications and experience in planning and urban design. | Consider amendment to s18 (2). |
| s18 | The ex-officio public sector employee on the State Planning Commission should not have a voting right | Consider amendment to 18(1)(b) - In previous iterations of the Development Policy Advisory Committee there was no Departmental membership, it was comprised of independent representatives. What is the justification for a seat on the Commission rather than an independent advice/ service TO the Commission? |
| s35 and s36 | The onerous nature of the legislation has resulted in no planning agreements being entered into or joint planning boards established. The section does not recognise existing established organisations such as Regional Local Government Association which could perform the functions of a joint planning board | Consider amendments to s35 and s36 |
| s42 | Practice Directions and Practice Guidelines are statutory instruments, they should be subject to public consultation in accordance with the Community Engagement Charter, currently they are excluded from the public participation process. | We need to have clear boundaries for process and policy change which occurs through practice directions |

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| s75 | Complying changes to the Code - Consultation on a Code Amendment is not required if it's consistent with a Regional Plan | Include maximum timeframe between consultation of the regional plan and the complying Code Amendment. We understand the rationale for permitting complying Code Amendments is that the intent of the change has already been the subject of consultation in a Regional Plan. There is a risk that the community will not engage with consultation on a Regional Plan in the same way the community would engage with a Code Amendment, but putting this aside, there should be a maximum timeframe between consultation being undertaken on the Regional Plan and the Complying Code Amendment being implemented. This would reduce the risk that there have been property owner or occupier changes between the Regional Plan consultation and the Code Amendment. |
| s66 (2)(c) | The Planning and Design Code is to include definitions and land use classes. It is yet to include land use classes. | Code amendment to establish and introduce classes for the purposes of s66 (2)(c) of the Act. |
| s73(2)(b) | Councils are being encouraged to work together to pursue a Code Amendment affecting more than 1 council, however s73(2)(b)(iv) suggests only 'a council' can only prepare or amend a designated instrument | Amend s73(2)(b)(iv) to read 'a council or more than one council' |
| s83(1)(b)(i) | Stipulates only one CAP member can be a member of a council. Query whether this limitation extends to appointing a second member who is a member of a different Council to that establishing the CAP. | Clarify whether limitation applies to membership of any council. |
| s83 | The requirements relating to the establishment of a Council assessment Panel also apply to Panels established by the Minister, including membership and requirements relating to accreditation | Amend s84 to be consistent with s83 |
| s93 (1) | Where an application does not involve a proposed "development"; such as a variation of a condition limiting operational hours; it is unclear as to who is the relevant authority as the application does not involve a category of development nor have a defined assessment pathway. | Amendment to designate relevant authority in these circumstances, an appropriate assessment pathway and clarification as to whether notification is required. Note that Dev Act s39(7)(c) previously clarified that a variation to a Cat 3 development required notification if there were any reps relating to any aspect of the development that is the subject of the variation. |
| s100 | Only allows delegation by a "relevant authority". This is to be compared to the broader delegation power in Section 20 of the former *Development Act*. This has meant that Council delegations have been required pursuant to the *Local Government Act* involving increased complexity. Further, PDI Act powers sitting with Council CEO's cannot be delegated. | Amend s100 to enable powers of any body, person or entity under the PDI Act to be delegated pursuant to s100(1) - for example Practice Direction 2 (Preparation and Amendment of Designated Instruments) requires a Private Proponent to consult with the CEO of a Council and this would benefit from an opportunity for delegation. |

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| s110 (10) | While the Commission in assessing restricted development must take into account the relevant provisions of the Code; it is not bound by those provisions. Query why restricted development should not simply be assessed against the Code like other code assessed development. | Consider amendment to achieve this -- we can understand that Impact Assessed (not Restricted) developments may be of such a scale or unique nature that an assessment against the Code may not be practical or appropriate (e.g. assessment against other relevant documents / standards is required) but Restricted developments should be assessed against the Code, noting that additional policies may be required in the Code |
| s120 (2) | Outline consents may be granted in circumstances specified by practice direction. To date, no such practice direction has been issued by the Commission. | It is not clear how effective or beneficial outline consents will be, particularly if it requires a relevant authority to grant a consent 'in principle' for an element of development that may be integrated with other elements that have not yet been proposed (e.g. for a mixed use development with multiple new structures on the site and removal of a regulated tree). Recommend outline consents are actually removed from the Act. Preliminary advice can be used, or the applicant can submit a formal application for assessment |
| s127 (2)(c) | A condition can be varied or revoked by way of further application. There is no assessment pathway nor relevant authority prescribed where such applications do not involve "development". | Amendment to clarify assessment pathway and relevant authority in such circumstances. |
| s128 | Variations of a development authorisation may be sought. Where these do not involve "development" no assessment pathway or relevant authority is prescribed. Further, it is unclear as to how a variation of a historical non-complying category 3 authorisation would be assessed. | Amendment to clarify the assessment pathway and relevant authority in such circumstances . |
| s131 (13) | Crown development is only subject to public notice if the total value of all work exceeds $10,000,000 (see previously s49(7d) of the *Development Act* where the relevant figure was $4,000,000). | Consider amendment to reduce the expenditure quantum to allow for greater public participation. |

| Additional Comments on PDI General Regulations | | |
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| **Regulation** | **Issue** | **Recommendation** |
| Regulation 3(4) | Contains a definition for the natural surface of the ground for the purposes of the Regulations. Query whether it should be better aligned with case authority with respect to the term "natural ground level". | Review definition and consider benefit of introducing a definition in Part 8 of the Code. |
| Regulation 3G | Above ground and inflatable pool provisions, where capable of being filled to a depth exceeding 300mm, have created uncertainty with respect to safety fencing obligations. | Review the provision in association with a general review of legislation as it relates to swimming pool safety features. |
| Regulation 3 (general) | Include a definition of 'storeys' | It is recommended that a definition be provided for ‘storeys’ in the regulations as the term ‘storeys’ is used to determine the appropriate relevant authority. Under the Development Act, NPSP had to seek legal advice about what constitutes a storey to determine who would be the relevant authority. Note that ‘Building Level’ is defined in the Code rather than ‘storey’ but the Code does refer to storeys. |
| Regulation 23(2)(b) | Where the Commission is the relevant authority and development is occurring in a council area, the Council CEO may provide a report within 15 business days on a range of matters limited by Regulation 23(c). Potential issues include that the CEO is unable to delegate this power and the restriction on the scope of his or her response. | Consider amendment to remove restrictions on the scope of any report together the timeframe and with the expansion of the delegation power in Section 100 of the Act. 15 BD is not sufficient to provide a response. |
| Regulation 34(2) | Provides for the assessment clock to restart after 1 year from an applicant's request pursuant to Section 119(11) of the Act for a deferral to address a matter associated with their application. This has the potential to increase the risk of a deemed consent notice being given. | Delete Regulation 34(2) so that there is no automatic restarting of the assessment clock in these circumstances. |

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| Regulation 38(2) | Lapsing of Applications - permits a relevant authority to lapse an application if at least 1 year has passed since the lodgement date. When would this clause would be applied rather than refusing an application based on a non-supply of information or on the merits of the proposal, or the application is withdrawn by the applicant if they're not proceeding. It is noted that this is a carryover from the Development Regulations (and this clause was introduced in 2001 as part of the "System Improvement Program Amendment") but clarity in the new Regs would be appreciated. | Either amend Reg 38 or provide supplementary information as to when an application can be lapsed rather than a decision being issued. Note that the Council previously had a matter relating to this regulation determined by the Court: *Maddern & Anor v The Corporation of the City of Norwood Payneham & St Peters [2017] SAERDC 20*. In this matter, the Court determined an application should not be lapsed if the Council was able to issue a decision (i.e. either grant consent or refuse the application) and indicated an application could be lapsed if the application had been abandoned, but it's not clear in what circumstances an application could be considered to be abandoned, but the relevant authority is not able to determine the application. |
| Regulation 47 | Imposes requirements with respect to notification of an application for performance assessed and restricted development in association with Practice Direction 3. Uncertainty arises as to the effect of a notice on land not being in place for the required period. | Consider addressing this by legislative clarification. Also confirmation as to whether the notice needs to be on the land from 12:01am on the first day of notification and if there are any ramifications if the notice is installed in advance of the notification period (e.g. 2 days before) or not taken down at the end of the notification (e.g. left up for 2 days after the notification period ends). We outsource the notice installation ot a third party so we can't always control the exact day and time it's installed |
| Regulation 57 | Requires notice of a decision pursuant to Section 126 to be given in the prescribed form. The prescribed Decision Notification Form needs amendment to accommodate different consents such as the open space consent and any associated conditions. | Ministerial amendment to the prescribed DNF. |
| Regulation 65 | For the purposes of Section 128(2)(b) of the Act a variation to a development authorisation can be treated by a relevant authority as minor in nature and approved without a further application. An issue arises where the variation does not involve "development" as to who is the relevant authority. | Amend legislation to clarify who is the relevant authority in these circumstances. Also to clarify who is the relevant authority when a private Accredited Professional issues a DTS consent and the variation results in the development no longer being DTS |
| Regulation 120 | This imposes an obligation on the relevant authority to ensure that a range of matters in respect of an application for development authorisation are recorded on the SA Planning Portal. | Given these details are automatically displayed on the PlanSA website based on information entered into the DAP, both of which are under the administration of the Department, should it be relevant authorities which are responsible for this or could this regulation be amended to reflect to say *"the Portal should reflect the following information:..."* etc |

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| Schedule 3 | Schedule 3 identifies where excavating or filling is development. There appears to be no limit/ triggers for the extent of excavating and filling that can be undertaken outside of these specific circumstances. If a site which is not captured in Sch 3 is excessively filled pre-development, this could lead to confusion about what is natural ground level as well as issues such as overlooking etc. | Recommend including a trigger for excavation and filling on any site as being development |
| Schedule 4(4)(1)(d)(ii) and (iia) | A fence cannot be exempt from development if it is on the boundary between an allotment and a road. If a fence is not strictly on the boundary (i.e. it is set in from the boundary) then this exclusion doesn't apply. This is not a problem for front fencing because of the additional requirements in clause (iia), but it does not resolve the problem if the fence is slightly set in from the side boundary adjacent a secondary street. | Revise clause (ii) such that any fencing between a building and a public road requires approval. |
| Schedule 4(1)(h) | A moveable sign under the Local Gov Act doesn't require approval but this is only on a public footpath (i.e. you move the sign from the footpath to the front yard and it suddenly needs approval). NPSP have previously recommended that moveable signs on private property should also be incorporated in Sch4, provided there are some parameters as to size and location. | Review Sch4(1)(h) to allow small, moveable signs on private land without development approval (limit one per site?) |
| Schedule 4(4)(1)(g) | A 10m2 / 4m high water tank can be installed in front of a dwelling which can have poor streetscape outcomes. | Recommend amending this to include a clause that water tanks require approval where they are forward of the dwelling, other than in bushfire areas |
| Sch4(4)(1)(k) | Permeable screens attached to existing structures are not development however clarification is required as to whether the following require approval:<br>• café blinds attached to carports, verandahs etc; ?...<br>• freestanding screens (e.g. are they considered to be fences for the purposes of Sch4(4)(1)(d)?) | Amend Sch 4(4)(1)(k) to clarify whether other forms of screens are development |

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| Sch4(4)(3) | The height of shade sails should be measured above ground level only, rather than floor level given other Sch4 structures are measured from ground level. | Amend Sch4(4)(3) such that shade sails are max 3m high above ground level |
| Sch4(4)(5)(c) | Pergolas can be up to 4m high without needing approval | The maximum height of pergolas should be reduced to 3 metres above ground level, or require posts to be a maximum of 3 metres and the total structure height to 4 metres. |
| Sch4(10) | Demolition of buildings doesn't require approval (other than heritage / HAO etc) | Although we aren't opposed to demolitions not requiring approval (other than specified Overlays) there are two issues which have arisen:<br>1. NPSP undertake dilapidation reports prior to work commencing on site for developments where damage to council infrastructure is likely to occur but we can no longer do this for demos. We have experienced several issues of damage to Council / service infrastructure without knowing who caused the damage and/or having any dilapidation reports undertaken prior to work commencing to use to successfully pursue action.<br>2. This is less of an issue, but we can no longer calculate easily calculate net dwelling increase in a given area because we can't subtract demolitions from number of new dwellings (noting the DAP currently can't give us the number of new dwellings anyway).<br>A possible solution is for the regs to require property owners to notify the Council X days in advance prior to demolition occurring. |
| Sch6(4) | SPC is the relevant authority for development over 4 storeys in specified areas. | Recommend returning these decision making powers to Councils |
| **Additional Comment on PDI Accredited Professionals Regulations** | | |
| Regulation 30 | Sets out the circumstances where an accredited professional may not act. These include where the accredited professional has a direct or indirect interest in any body associated with the development and if the accredited professional is employed by any body associated with the development. While these prohibitions do not apply to an officer or employee of the Crown; they do capture a local government employee where an application is made by the Council that employs them. | Amend Regulation 30(2) to include an officer, employee or agent of a council. Could further guidance also be provided as to whether an AM can be the RA for an application where a relative or colleague is the applicant? e.g. is delegating to another staff member or consultant sufficient? |