Adelaide University

North Adelaide Golf Course Redevelopment

Law and Policy Brief

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Executive Summary

The purpose of this Brief is to outline the key issues arising out of the South Australian Government's approach to redeveloping the North Adelaide Public Golf Course, located in the iconic Adelaide Park Lands.

Development activities in South Australia are covered by a range of legislative instruments that will often interact depending on the nature of the development. For the North Adelaide Golf Course redevelopment, the South Australian Government introduced a specific Act – the *North Adelaide Public Golf Course Act 2025* (SA) - to exclude or modify the operation of nearly all planning, environmental and other legislation. This approach removed the operation of various legislative protections that would otherwise apply to the redevelopment, including community rights of participation and consultation.

Community concern has focused on the planned removal of 600 mature trees from the area known as Possum Park to facilitate fairway construction. As of 31 July 2026, 400 of those trees have been removed, with a further 185 subject to injunctive relief in the Federal Court. Additional trees in the Park Lands are planned to be removed for a golf driving range and a Moto GP racetrack. Other concerns include the potential impacts of the redevelopment on the National Heritage values of the Park Lands, and therefore whether the redevelopment should have been referred to the Commonwealth Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); and the impacts of the redevelopment on the culture and heritage of First Nations peoples.

The question of public engagement has become a key focus of public complaint. There have been ongoing protests by the public, particularly in relation to tree removal, and there is growing public concern that assertions made by the government in relation to the impacts of the redevelopment, and assurances that appropriate matters have been considered and protections applied, are not supported by publicly available information, including expert evidence. The key aspects of these issues and relations to legislative instruments are addressed in this Brief.

A range of legal and non-legal public concerns have arisen in relation to the North Adelaide Golf Course redevelopment in the Adelaide Park Lands, including ecological, biodiversity, climate health and resilience, and human wellbeing needs. A development of this significance, with high public interest, in a type of protected area which is a sensitive location, calls for meaningful and transparent engagement with the diverse interested stakeholders. This includes the release of expert evidence regarding the potential impacts of the redevelopment on the environment, culture and heritage, and the opportunity for the public to make submissions based on best-available information.

1 Introduction

The City of Adelaide, in the State of South Australia, has hosted the LIV golf tournament at The Grange Golf Club in the seaside suburb of Grange, since 2023. In February 2025, the Premier of South Australia, Mr Peter Malinauskas, announced an extension of the LIV Golf agreement to 2031. He also announced that, from 2027, the LIV Golf Tournament would be held at the North Adelaide Public Golf Course, located in the Adelaide Park Lands, and that the golf course would be redeveloped to host the tournament.[1]

Usually, development in the Park Lands is subject to the rules and procedures for planning assessment and consent, set out in the *Planning, Development and Infrastructure Act* 2016 (SA) ('PDI Act') and other legislative instruments made pursuant to the Act. To expedite the development, the government enacted the *North Adelaide Public Golf Course Act 2025* (SA) ('NAPGC Act'), which bypassed the assessment provisions of the planning law regime that would otherwise apply to a redevelopment of this nature.

As will be demonstrated in this paper, the effect of the NAPGC Act is that the relevant planning authority, the State Planning Commission, must grant planning consent for this project. That planning consent must be given was enshrined in statute before the release of a planning proposal, with no formal public consultation, and no prior assessment of the redevelopment project under the planning regime. Among other things, this generated significant uncertainty and concern regarding the avoidance, minimisation and management of the impacts of the redevelopment in the iconic Park Lands, in particular the impacts on trees, biodiversity, and Aboriginal cultural heritage.[2]

For example, while it was clear from the time of the announcement in February 2025 that the proposed golf course redevelopment ('the redevelopment') would require the clearance of trees, it was not until design plans were released six months later that it was confirmed a total of 585 mature trees would be removed out of an estimated 9000 trees in this part of the Adelaide Park Lands,[3] with no publicly available scientific assessment on the impacts on biodiversity. This is arguably counter to the aims of the new *Biodiversity Act 2025* (SA), which has sought to improve the protection and conservation of biodiversity in the state.

Despite the National Heritage listing of the Adelaide Park Lands since 2008, the South Australian Government, having conducted a self-assessment of potential impacts on the Park Lands, decided not to refer the project to the Commonwealth Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act'). In June 2026, the South Australian Government released a summary of the self-assessment under the EPBC Act, but it has not released the environmental surveys and

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[1] 'LIV Golf and South Australia Government announce extension for LIV Golf Adelaide through 2031', LIV Golf webpage (16 February 2025) < https://www.livgolf.com/news/liv-golf-and-south-australia-government-announce-extension-adelaide-through-2031>.

[2] Helen Karakulak, 'Long-awaited $45 million golf course plans revealed', *InDaily,* 18 December 2025 <h"ps://www.indailysa.com.au/news/just-in/2025/12/18/long-awaited-45-million-north-adelaide-golf-course-plans-revealed>; Leah MacLennan, 'North Adelaide's LIV Golf redevelopment to go ahead after controversial laws pass SA parliament' *ABC News online* (26 June 2025) h"ps://www.abc.net.au/news/2025-06-26/north-adelaide-liv-golf-upgrade-to-go-ahead/105465432.

[3] Ibid, Helen Karakulak, 'Long-awaited $45 million golf course plans revealed'.

other information that support its statements regarding the severity of the potential impacts and their avoidance and/or minimisation. The lack of publicly-available information, and the removal of community rights to participate in the planning process, are particularly concerning given that criteria regarding the National Heritage Values refer to the 'continuing pattern in community support for safeguarding the significance of the Park Lands for the Adelaide community' and state that 'the longevity of the involvement of community groups in campaigning for the protection and safeguarding of the Park Lands is exceptional'.

The NAPGC Act has removed the requirement to obtain any approvals or authorisations that might otherwise be required under most other South Australian environmental laws, except for the requirement to seek approval to disturb, damage or interfere with Aboriginal cultural heritage under the *Aboriginal Heritage Act 1988* (SA) ('AHA'). Although the AHA applies to the redevelopment, consultation under that Act only occurred after the decision to redevelop the course was publicly announced, causing distress about possible damage to cultural heritage and the disturbance of Aboriginal burials.[4]

The purpose of this brief is to explain and critique the legal procedures that have been implemented to govern the redevelopment of the North Adelaide golf course. We identify and explain why these procedures fall short of those that would characterise 'good environmental governance' of the Adelaide Park Lands.

The structure of this paper is as follows.

In Part 2, we briefly explain the history, role and importance of the Adelaide Park Lands, as an iconic feature of the City of Adelaide and a type of protected area of special importance to the community. In stating this, we acknowledge that the Park Lands have been cared for and managed by the Kaurna people for thousands of years, and that this Brief is framed by our position as non-Indigenous persons living on the unceded lands of the Kaurna people. We recognise that Part 2 of this Brief describes the history, role and importance of the Park Lands from 1836 and is written wholly from a settler perspective. The issues identified and addressed throughout this Brief, and the explanation and critique of law and policy, are undertaken from a settler perspective, and are not analysed through the lens of decolonisation.

In Part 3, we explain the architecture of the planning regime in South Australia and the way planning law would have applied to the redevelopment if the NAPGC Act had not been enacted. We then critically assess the NAPGC Act, analysing how that Act has bypassed the usual protections of planning law, with a particular focus on the assessment of the redevelopment on trees and biodiversity.

Part 4 briefly examines the management of animal welfare during the removal of the trees.

In Part 5 we examine the decision of the South Australian Government not to refer the redevelopment under the EPBC Act, with a focus on the impacts on the National Heritage Values of the Adelaide Park Lands. Part 6 examines issues surrounding the protection of Aboriginal cultural heritage, focussing on a critique of the application process under the AHA. In Part 7, we briefly note the possibility for disempowered communities to

[4] Helen Karakulak, 'Fears for 'sacred site' amid LIV Golf course plans to churn up park lands', *InDaily*, 25 July 2025 (updated 31 July 2025), <https://www.indailysa.com.au/news/in-depth/2025/07/25/fears-for-sacred-site-amid-liv-golf-course-plans-to-churn-up-park-lands>.

make complaints under the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, where governments disregard environmental and/or human rights protections, thereby leading multinational enterprises into breaching their obligations of due diligence under the OECD Guidelines.

Part 8 concludes.

2 The History, Role, Importance and Management of the Adelaide Park Lands

The Kaurna people have been custodians of *Tarndanya*, now known as Adelaide, for thousands of years before British ships first brought Europeans to the area in 1836. In 1837 Colonel William Light, who had been appointed by the Colonization Commissioners for South Australia as Surveyor-General for the new colony of South Australia, was given just under twelve months to draw up plans for the proposed City of Adelaide.[5] The Adelaide Park Lands, an area comprising about 930 hectares, completely encircles the City of Adelaide and North Adelaide, and has been described as unique in Australia, with 'no known counterparts elsewhere in the world'.[6]

The uniqueness and importance of the Adelaide Park Lands, and Colonel Light's layout for the City of Adelaide, were recognised on 7 November 2008, when they were listed on the Australian National Heritage List.[7] Community groups have campaigned for the protection of the Park Lands since 1869,[8] and as we explain in Part 5, the 'continuing pattern in community support for safeguarding the significance of the Park Lands for the Adelaide community' is part of the National Heritage values for the Park Lands. The Adelaide Park Lands are of cultural significance to the Kaurna people and this is described further in Part 6.

2.1 The importance of the Park Lands as an urban 'greenbelt'

The concept of a grid-based city surrounded by a large urban park was the vision of Colonel William Light. There was considerable public interest in town planning in England in the 1830s, and a move towards designing healthier towns and cities that incorporated more open space for public parks and gardens. Colonel Light would have undoubtedly been influenced by these ideas.[9]

Urban greenspaces or 'greenbelts' such as the Adelaide Park Lands, play a significant role in our built environment, particularly when mature trees are present. Tree canopies provide shade from direct solar radiation and cooling benefits although how much cooling capacity they have depends on the species. An earlier study of the Adelaide Park Lands showed that the air temperature around the Park Lands is around 1.5 degrees cooler than the average temperature in the CBD in the night time, and 0.5 degrees cooler in the daytime, excluding the time when the ground was irrigated, which would make the difference even larger.[10] Another study showed that tree canopies further reduce the air temperature under the canopy by 3-4 degrees compared to the surrounding air temperature during the day, while the surface temperature under the tree can be lower by up to 15 degrees compared to the temperature of unshaded grounds.[11]

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[5] Geoffrey Dutton, *Founder of a City* (1984, Rigby Publishers) 214.

[6] Patricia Summerling, *The Adelaide Parklands – a Social History* (Wakefield Press, 2011) ix.

[7] DCCEEW, *Adelaide Park Lands and City Layout*, (webpage, updated 16 April 2026) <https://www.dcceew.gov.au/parks-heritage/heritage/places/national/adelaide-parklands>.

[8] Ibid.

[9] Dutton (n 5) 214.

[10] Guan, H. *et al* (2013). *Characterisation, Interpretation and Implications of the Adelaide Urban Heat Island*. Report to Department of Planning Transport and Infrastructure, Department of Environment, Water and Natural Resources and Department of the Premier and Cabinet, South Australia Government.

[11] Osmond, P., Sharifi, E., *Guide to urban cooling strategies* (CRC Low Carbon Living, 2017) <https://www.unsw.edu.au/content/dam/pdfs/ada/built-environment/low-carbon-living-crc/resources/rp2024_guide_to_urban_cooling_strategies_2017_web.pdf>.

Urban heat mapping of the Greater Adelaide Metropolitan area shows that the Adelaide Park Lands are cooler than the CBD, as well as the nearby suburbs surrounding the Park Lands, particularly the areas where a lot of trees are present, such as on the North Adelaide golf course, Adelaide Botanic Garden and Adelaide Zoo, and the southeastern part of the Park Lands.[12] Greenbelts allow the heat generated in the built-up areas in the city to dissipate particularly at night, helping the buildings to be cooler and lowering the need for air-conditioning.[13]

Trees also act as excellent carbon sinks – they absorb and store carbon thus help minimising carbon emissions.[14] Maintaining the health and presence of trees significantly helps our cities and state to achieve net zero carbon emissions. Trees particularly the tree roots also help control and filter stormwater, reducing the pollutants in our waterways, rivers and oceans.[15]

Greenspaces, particularly trees, have also been shown numerous times to have significant correlations with improved health and wellbeing. They help to reduce cardiovascular disease, lower blood pressure as well as boost immune function.[16] Cooler and shadier outdoor environments attract more people to be more active outdoors thus increasing the possibility of human interactions and reducing social isolation that can be detrimental to mental health.[17] The impact of trees on improving health and wellbeing is also related to trees' capabilities in reducing air pollution thus improving outdoor (and subsequently indoor) air quality,[18] and minimising urban noise.[19]

As important is the role of greenspaces including trees in maintaining biodiversity.[20] The Adelaide Park Lands, for example, are homes to possums, mammals such as black and brown rats, koalas and even short-beaked echidna, many kinds of reptiles and amphibians, flying fox and bats, bees and butterflies. Our living environment relies heavily on biodiversity, for the health of our soil, for ensuring that our ecosystems naturally

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[12] Government of South Australia, Department for Environment and Water, *Urban Heat and Tree Mapping Viewer* (webpage, 2022) <http://spatialwebapps.environment.sa.gov.au/urbanheat/?viewer=urbanheat>.

[13] Akbari, H., 'Shade trees reduce building energy use and CO2 emissions from power plants' (2002) 116 *Environmental Pollution*, S119–S126.

[14] Hand, K.L. et al, 'Ecosystem services delivery by large stature urban trees' (Forest Research, 2019) 1-24.

[15] Kumar, P. et al., 'Urban heat mitigation by green and blue infrastructure: a review of drivers, effectiveness, and future needs' (2024) 5(2) *Innovation*, Article 100588.

[16] Astell-Burt, T., and Feng. X., 'Association of Urban Green Space with Mental Health and General Health Among Adults in Australia' (2019) 2 (7) *JAMA Network Open*, Article e198209.

[17] Li, D. et al, 'Life course nature exposure and mental health outcomes: A systematic review and future directions' (2021) 18 *International Journal of Environmental Research and Public Health* 5146.

[18] Kumar, P. et al, 'Overlooked considerations in prescribing green and blue infrastructure solutions for urban environments' (2026) 7(5) *The Innovation* 101184-1-101184-36.

[19] Rey-Gozalo et al., 'Influence of Green Areas on the Urban Sound Environment' (2023) 9 *Current Pollution Report* 746–759.

[20] Stanford, H.R. et al., 'Biodiversity in the gaps: The role of urban informal green spaces in supporting bird conservation in cities' (2026) 122 *Urban Forestry & Urban Greening* 129517.

keep disease-carrying animals in check, and for the health of our community due to the environmental microbiota that influence human microbiota.[21]

2.2 Development and Use of the Park Lands

From the time the Park Lands were first established, there were conflicting ideas in the colony about what the purpose and role of the Park Lands should be, and this debate and conflict continues through to the present day. Light's plan of the Adelaide city, North Adelaide and the Park Lands layout reserved nine areas in the Park Lands for government purposes including a hospital, school, government house, botanic gardens, soldiers' barracks and cemetery.[22] While a number of the nine items exist in the Park Lands today, only the West Terrace Cemetery is in the site originally designated. Over time there have been a range of institutional, sporting and recreational, railway and private intrusions into the Park Lands.

Reflective of thinking at the time of settlement, the grazing of stock, government horses and the removal of trees for timber was prevalent. The first settlers to land in the colony erected and resided for some time in makeshift reed and timber huts and shelters, as well as tents, in the area to the west of West Terrace. Since then, the Park Lands have seen many uses come and go, including waste disposal sites, sand and stone quarrying, brickworks and kilns and illegal residences which are no longer present.

Over the last 180 years, a range of government institutional buildings, sporting and recreational facilities, railway and road additions, water reservoirs and Council and government work depots have been progressively placed within the Park Lands, particularly abutting the North and West terraces, and these and some other uses have remained *in situ* in one form or another to the present day. [23] Summerling notes that the institutional and public buildings located along North Terrace between East and West Terraces, and the various works noted above, have alone resulted in a loss of over 600 acres (243 hectares).[24]

Community consternation, debate and conflict about many of these physical intrusions into the Park Lands have been a factor from the very early days of the colony. There were members of 'colonial society' who thought the Park Lands should be retained as landscaped park and gardens for the enjoyment of all citizens, whereas others believed it was acceptable to have a range of government and institutional buildings within them as well as tram and rail lines. Indeed, Light's original plan as noted above contemplated that certain uses would be part of the Park Lands, particularly along the Terrace edges to the city proper. These different viewpoints exist through to the present day.

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[21] Stanhope, J., Breed, M., & Weinstein, P. 'Biodiversity, Microbiomes, and Human Health' in G. A. W. Rook, & C. A. Lowry (eds.), *Evolution, Biodiversity and a Reassessment of the Hygiene Hypothesis* (Springer Nature, Progress in Inflammation Research, vol 89, 2022) 67-104.

[22] Jim Daly, Decisions and Disasters-Alienation of the Adelaide Parklands (Bland House, 1987), Fig 1.2, 17.

[23] Ibid, 25-46.

[24] Summerling (n 6) 85.

Many of the institutional intrusions into the Park Lands have been authorised by Parliament through the passage of legislation, a practice which continues today. One of the first pieces of legislation was *The Railway Clauses Consolidation Act 1847* (SA), which was to provide for a railway station and railway line that would traverse the Park Lands on its way to Port Adelaide. Daly argues that one of the few mistakes made by Light in his planning of Adelaide 'was to make no provision for the inevitable development of railways on the Park Lands.'[25] The *Municipal Corporations Act 1861* (SA) provided for one and half acres of land to be set aside near to the present-day Festival Theatre for public baths.

Daly maintains that there was 'little resistance'[26] (on the part of the settler society) to many of the earlier uses of the Park Lands but suggests no reason for this. It may be that development was seen as a positive addition towards making Adelaide a desirable place to live and work, and a more progressive city. In the last sixty years or so, there has been much greater resistance to developments that have been constructed in the Park Lands. The *Adelaide Festival Centre Trust Act 1971* (SA) enabled the development of the multipurpose Adelaide Festival Centre complex behind Parliament House, on the site of the old public baths and government printing office. While the construction of a Festival Theatre complex on the Park Lands itself did not seem to be resisted, the controversy was more about where it should be located.

Other statutes that have enabled or facilitated Park Lands development include the *South Australian Motor Sport Act 1984* (SA) which has facilitated various car races on a city circuit and the eastern Park Lands; the *Adelaide Railway Station Development Act 1984* (SA) and the subsequent *ASER (Restructure) Act 1997* (SA) and the *National Wine Centre (Restructuring and Leasing Arrangements) Act 2002* (SA). The legislation relating to the heritage-listed Adelaide railway station precinct is particularly notable for its alienation of Park Lands area. It facilitated an upgrade of the Railway station and the lines into it as well as enabling the construction of a multistorey Hyatt Hotel (now the Intercontinental), Casino, Convention Centre and Office tower. The hotel, convention centre, Casino and office building were all private commercial developments granted long term commercial leases over Park Lands area, a fact that was opposed by many people at the time.

More recent concerns regarding the State Government's approach to the Park Lands include the decision to demolish the heritage-listed Thebarton Police Barracks to build a much-needed new Women's and Children's hospital, and in doing so, to also remove a number of olive trees planted in the early years of the colony, together with other vegetation; the decision to redevelop the North Adelaide Golf course; and the most recent decision to use the Park Lands for a motorbike racing circuit for the MotoGP.[27]

The redevelopment of the Golf Course needs to be understood in the historical context: community concerns over continuing approved incremental developments and pressures on the Park Lands, or 'death by a thousand

[25] Daly (n 22) 78.

[26] Ibid, 87.

[27] See e.g. 'Adelaide Parklands works to continue despite parliamentary inquiry' (*891 ABC Adelaide*, 15 July 2026) <https://www.abc.net.au/news/2026-07-15/adelaide-parklands-golf-course-tree-chop-parliamentary-inquiry/106917820>.

cuts', reflecting a perceived lack of commitment to the protection of the environmental and heritage values of the Park Lands by successive state governments. In 1987, some 40 years ago, Daly wrote that:

> *The vision of the Parklands as conceived by Colonel Light has been blurred by expediency, ad hoc planning and haphazard development … pressure groups have conducted successful campaigns to alienate parklands and the strategies by which individuals, public institutions and sporting organisations have done so is worthy of study.* [28]

2.3 Management and control of the Park Lands

The Adelaide Park Lands have had a diverse history in terms of management and control. Peter Bell[29] has noted that the Park Lands remained Crown land until 16 April 1839, when Governor Gawler purchased them to prevent their acquisition by land developers and speculators.[30] Bell argues that the Corporation of the City of Adelaide ('the Adelaide Council') has generally been accepted as the body responsible for administering the Park Lands since 1841, although its tenure has always been questioned. [31] Nevertheless, the care and management of all Park Land areas not designated as Government Reserves has been under the care, control and management of the Adelaide Council, and the general consensus is that the Council has proven to be a responsible body in that role as Park Lands Trustee.[32] Currently, around 80% of the Park Lands are under the care, control and management of the City of Adelaide, with 20% managed by the South Australian Government.

In 2005, in response to concerns about the ongoing alienation of the Park Lands, the State government passed the *Adelaide Park Lands Act 2005* (SA). This legislation is meant to provide a legal framework to protect the Park Lands and limit the commercial use of them. It establishes the Adelaide Park Lands Authority as the principal advisor to the City of Adelaide and the State Government on the protection, management, enhancement and promotion of the Park Lands, with members representing both the state and local government.

The Adelaide Park Lands Act requires a Management Strategy for the Park Lands: the current version is the *Adelaide Park Lands Management Strategy: Towards 2036*. Part B of the Management Strategy sets out priorities, directions and goals for the Adelaide Park Lands. There are three goals, which reflect the different overall purposes for which the Park Lands are used and managed.[33]

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[28] Jim Daly, *Decisions and Disasters-Alienation of the Adelaide Parklands* (Bland House, 1987).

[29] Peter Bell, 'Adelaide Parklands' in Wilfred Prest, Kerrie Round, Sandra Kearney and Bernard O'Neil (eds), *The Wakefield Companion to South Australia History* (Wakefield Press, 2024) 498.

[30] There have been questions about whether payment was ever made for the Park Lands: Daly (n 9) 23.

[31] Bell (n 11) 498.

[32] Daly (n 22) 179.

[33] *Adelaide Park Lands Management Strategy: Towards 2036*, 37 <h"ps://d31atr86jnqrq2.cloudfront.net/docs/strategy-adelaide-parklands-management.pdf>.

- **Goal 1 – Places and Spaces:** 'Places of activity, creativity and tranquillity for everyone that support our changing lifestyles, health and wellbeing; offer diverse landscapes and natural beauty and provide a range of sport, recreational, sensory and stimulating experiences'. This goal reflects the use of Park Lands for purposes such as community buildings, public amenities, sport and recreation, formal parks and playgrounds.
- **Goal 2 – Connections and Networks:** 'A system of connected and legible places and spaces enabling safe movement via paths and trails linking the city to the suburbs, hills and coast'.
- **Goal 3 – Natural Systems, Cultural Landscapes and Climate Resilience:** 'Places that thrive in the face of a changing climate and celebrate Adelaide's unique natural and cultural heritage'. This goal reflects the recognition of the need to preserve and promote the Park Lands as a place of natural beauty, cultural significance to the Kaurna People, and national heritage, and to protect biodiversity and strengthen climate resilience.

The Management Strategy sets out Strategies to achieve each of these goals. The Management Strategy, which was developed in consultation with the community, can be seen to address a fundamental question: what are the appropriate purposes or uses of the Park Lands? However, it does not address a second fundamental issue that follows from the first: how should the different uses or purposes be prioritised or balanced? Conflicts continue to arise because there is no agreed approach or answer to this question. The goals and strategies may be inconsistent, for example, when development that furthers Goal 1 undermines Goal 3 in relation to protecting the environment and heritage. Table 1 demonstrates certain key goals and strategies that may be perceived to conflict in relation to the golf course redevelopment.

Table 1: The *Adelaide Park Lands Management Strategy:* Selected Goals and Strategies	
Goal 1 - Places and Spaces	
Strategy: The Adelaide Park Lands will host diverse events, from small to large, in more places more often	**Strategy 1.7:** to 'provide both permanent and temporary infrastructure to attract and service world-class events in the Adelaide Park Lands'
Strategy: The Adelaide Park Lands are Adelaide's hub for sport and recreation	**Strategy 1.8:** to "strengthen the role of the Adelaide Park Lands as a regional destination for competitive sport …'.
Goal 3 – Natural Systems, Cultural Landscapes and Climate Resilience	
Strategy: The Adelaide Park Lands are a place of natural beauty and Kaurna cultural significance	**Strategy 3.1:** Recognise, promote and protect sites of Kaurna cultural heritage and significance …
Strategy: The Adelaide Park Lands celebrate biodiversity	**Strategy 3.6:** Through Biodiversity Sensitive Urban Design enhance biodiversity in the Adelaide Park Lands and provide food, resources and habitat. **Strategy 3.7:** Continue to protect and enhance habitats and ecosystem health to achieve a net increase in biodiversity. **Strategy 3.10:** Continue to survey, monitor and improve our knowledge of Adelaide Park Lands biodiversity. Share data and report findings.
Strategy: The Adelaide Park Lands are climate resilient	**Strategy 3.14:** Strengthen the Adelaide Park Lands' role in developing a climate resilient city and in reducing the urban heat island effect. **Strategy 3.16:** Retain and strengthen distinctive mature tree species through succession planting. **Strategy 3.17:** Seek opportunities to increase greening and tree canopy, including through community participation. **Strategy 3.19:** Ensure climate change risks and opportunities are assessed and integrated in decision making and management of the Adelaide Park Lands.
Strategy: The Adelaide Park Lands are valued as a National Heritage site worthy of World Heritage Listing	**Strategy 3.20:** Ensure the values of the National Heritage Listing are protected and promoted.

There has been disagreement between members of the community over the appropriate purpose and uses of the Park Lands since they were established. Development on the Park Lands today – including the golf course redevelopment - is taking place in an era of constantly declining biodiversity, the removal of Aboriginal cultural heritage, and the need for climate resilience to adapt to climate change. Individual development decisions have had, and are having, increasing cumulative impacts on the Park Lands. In this context, upholding 'procedural rights' in planning law, including the right of the community to 'have a say' in regard to proposed development, is particularly - and increasingly - important to the good governance of the Park Lands.

In the next section, we explain the planning process that would usually apply to a redevelopment of the golf course on the Adelaide Park Lands. We then explain and critically analyse the way in which these procedures have been bypassed by the NAPGC Act, which among other things, has removed the rights of the public to make submissions on the redevelopment, and limited access to environmental assessment documents. Removing rights of public participation contributes to feelings of distress and anger experienced by members of the community, and lead to increased opposition to development and risks of litigation.

3 Planning Law

3.1 Architecture of the Planning System

South Australia's planning system is established under the *Planning, Development and Infrastructure Act* 2016 (SA) ('the PDI Act') and other legislative instruments, including the Planning, Development and Infrastructure (General) Regulations 2017 ('the PDI Regulations') and the Planning and Design Code ('the Code').

The Code divides South Australia into zones, and sub-zones, which set out the types of development that can take place in an area, addressing matters such as land use suitability for certain activities in the zone, and land use intensity. Overlays address matters against which development proposals must be assessed, either generally or if a property is located in or near certain environments or natural resources (e.g. waterways or threatened native vegetation) that are protected under other environmental legislation. The Code also sets out General Development Policies for certain types of developments.

The PDI Act, PDI Regulations and Code establish the 'rules' for development assessment and approval. The PDI Act divides development into categories and establishes different assessment pathways. These are:[34]

(a) accepted development – a project does not require planning consent if all 'accepted development classification criteria' for the type of development in the relevant zone are met.

(b) Code assessed development, which includes two categories:

- Code assessed, deemed-to-satisfy development ('DTS development') – a project must be granted planning consent if all the 'deemed-to-satisfy classification criteria' for the type of development in the relevant zone are met
- Code assessed, performance assessed development ('performance assessed development') – projects are assessed on their merits against the Code; and

(c) impact assessed development, which includes a sub-category, 'restricted development'.

A simple outline of these categories and some key features of the assessment rules and procedures are set out in Figure 1 below. Although restricted development is a category of impact assessed development, it is shown as a separate category in the diagram for ease of reference.

[34] Ibid Part 7, Division 2.

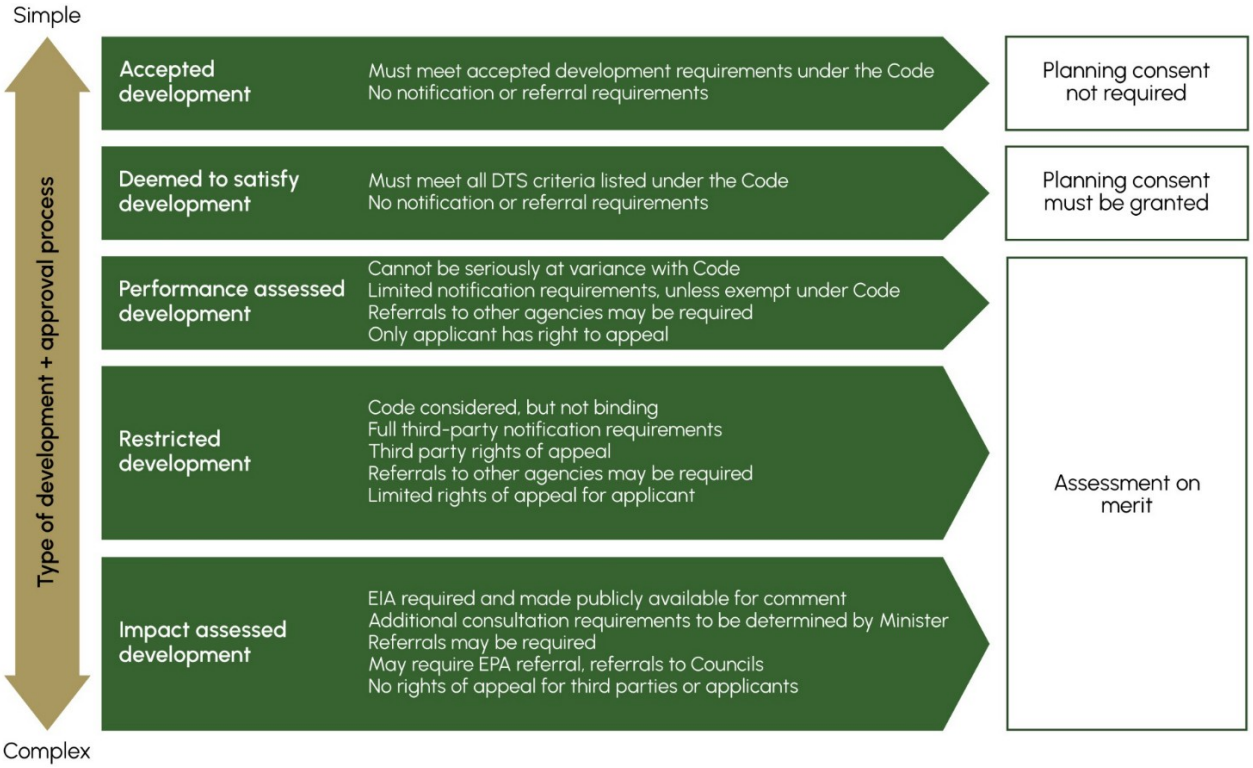

Figure 1. Diagram setting out the different planning assessment pathways under the PDI Act and their associated notification, referral and assessment requirements. Based on figure by PlanSA, published in A. Wawryk et al, *Navigating South Australia's Laws and Policies for Blue Carbon: A Stakeholder Guide* (Green Adelaide 2024).

If a particular form of development in a Zone is not identified by the Code as accepted development, DTS development or impact assessed development, then the development proposal will default to performance assessed development. Generally speaking, development will be accepted development or DTS development where the impacts of a development proposal are comparatively minor and can be predicted with a high degree of confidence. For various types of development, the Code identifies 'accepted development classification criteria' and 'DTS classification criteria' which often set measurable, quantifiable limits on development.

Figure 2. Diagram showing the category of development likely to apply to development and the level of public input required, depending on the scale and extent of knowledge of expected impacts, and the level of public interest. Government of South Australia, Department of Planning, Infrastructure and Transport, Assessment Pathways: How Will They Work? (Technical Discussion Paper, 2018) Figure 5, Scalable Assessment Categories.

An example of accepted development in a residential zone might be a small garden shed where the 'accepted development classification criteria' set out particular dimensions (e.g. height and area) for the shed.

A type of development will be DTS development if 'deemed-to-satisfy classification criteria' are met. For example, in the Hills Face Zone, 'farming' will be DTS development if all the 'deemed-to-satisfy classification criteria' for farming in the Hills Face Zone set out in the Code are met. These criteria include, for example, that a proposal to engage in farming will not involve the construction of new buildings or tracks, or the clearance of native vegetation. If the proposal does *not* meet the DTS classification criteria (for example, because a new building or track will be constructed) then 'farming' will not be characterised as DTS development but will be performance assessed development.

Performance assessed developments are assessed against assessment provisions – called 'policies' - contained in the zones, overlays and General Development Policies that apply to the land or waters where a development

is proposed to be located. The Code sets out desired outcomes and performance outcomes for assessing individual developments in each zone/subzone, as well as listed 'deemed-to-satisfy criteria/designated performance features ('DTS/DPFs').

Performance outcomes are of central importance to a relevant authority's determination of performance assessed development. Desired outcomes and the DTS/DPFs are designed to assist a relevant authority to interpret performance outcomes. The Code includes Rules of Interpretation,[35] which (among other things) give guidance on the relationships between performance outcomes, desired outcomes and DTS/DPFs. According to the Rules of Interpretation:

desired outcomes '… are policies designed to aid the interpretation of performance outcomes by setting a general policy agenda for a zone, subzone, overlay or general development policies module'; and

a designated performance feature '… provides a guide to a relevant authority as to what is generally considered to satisfy the corresponding performance outcome but does not need to necessarily be satisfied to meet the performance outcome, and does not derogate from the discretion to determine that the outcome is met in another way, or from the need to assess development on its merits against all relevant policies'.

The DTS/DPF criteria are the same, but they operate differently. If a development is characterised as DTS development, the criteria are 'DTS' criteria': if all the DTS criteria are met, the project *must* be granted planning consent. If development is performance assessed development, then the criteria are 'designated performance features' (DPFs). Planning consent must not be granted if development is 'seriously at variance' with the provisions of the Code, disregarding minor variations.[36]

Meeting the DPFs may help a relevant authority to determine that proposed development will meet the performance outcomes. However, the Supreme Court in *Geber* v *Barossa Assessment Panel* established that meeting all the DPFs does not necessarily mean a proposal will satisfy the performance outcomes; and conversely, a proposal may satisfy the performance outcomes even if all the DPFs are not met.[37] The relevant authority must firstly, assess whether or not a development will be 'seriously at variance' with the provisions of the Code such that planning consent must be refused; and then, secondly, assess the development on its merits against provisions of the Code to determine if the performance outcomes will be met and whether planning consent should therefore be granted, and if so, under what conditions.[38]

[35] Planning and Design Code, Part 1 - Rules of Interpretation, accessed at <h"ps://code.plan.sa.gov.au>.

[36] Ibid s 107(2)(c).

[37] *Geber Super Pty Ltd v The Barossa Assessment Panel* [2023] SASC 154.

[38] Ibid.

3.2 North Adelaide Public Golf Course and the Planning and Design Code

The North Adelaide Public Golf Course is located within the Adelaide Park Lands Zone. An analysis of the provisions of the Code reveals that the redevelopment should (but for the NAPGC Act) be performance assessed development.

3.2.1 Characterisation of the redevelopment under the Code

The redevelopment is not accepted development in the Adelaide Park Lands Zone

Certain activities will be accepted development in the Adelaide Park Lands Zone if the 'accepted development classification criteria' are met, and if there are no exceptions by virtue of various Overlays applying. These actions include, for example, alterations to buildings (that do not, for example, exceed existing wall heights or overall building heights, or increase the floor space of the building), partial demolition of a building or structure, essential infrastructure, fence and retaining wall structures, shade sails, roof mounted solar photovoltaic panels, and underground water tanks. These proposed actions, taken together, mean that the North Adelaide Public Golf Course redevelopment would not be accepted development in the Adelaide Park Lands Zone.

The redevelopment is not deemed-to-satisfy development in the Adelaide Park Lands Zone

Likewise, the redevelopment would not usually be DTS development. The only type of land use/development in which a proposed development in the Adelaide Park Lands Zone could be classified as DTS development in this Zone are temporary advertisements. [39] Even then, this excludes advertisements where certain listed Overlays apply, including, for example, the Character Preservation District Overlay; Heritage Adjacency Overlay Historic Area Overlay; Local Heritage Place Overlay; State Heritage Area Overlay and State Heritage Place Overlay. Further DTS classification criteria for advertisements are set out in General Development Policies for Advertisements that apply in all Zones;[40] and in various Overlays, including the Native Vegetation Overlay [Environmental Protection] DTS/DPF 1.1, and State Significant Native Vegetation Areas Overlay [Environmental Protection] DTS/DPF 1.1. Where these Overlays apply, the additional classification criteria must be met for advertisements to be DTS development.

The redevelopment is not categorised as impact assessed development

Redevelopment of the golf course and the types of activities it would involve are not identified by either the Code or the PDI Regulations as impact assessed development. The Minister for Planning is empowered to declare development to be impact assessed development, but the Minister did not (and could not) make such a declaration in relation to the redevelopment. We discuss this issue in more detail later in this briefing.

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[39] The DTS development classification criteria identified by the Assessment Provisions for the Adelaide Park Lands Zone are set out in DTS/DPF 4.2.

[40] These include Advertisements [Appearance]; DTS/DPF 1.1, DTS/DPF 1.2, DTS/DPF 1.3, DTS/DPF 1.4; Advertisements [Proliferation of Advertisements] DTS/DPF 2.3; Advertisements [Advertising Content] DTS/DPF 3.1; and Advertisements [Amenity Impacts] DTS/DPF 4.1.

The redevelopment would be performance assessed development

Given its location, the nature of the activities proposed, and the likely potential impacts, the redevelopment of the North Adelaide Public Golf Course would be performance assessed development but for the NAPGC Act.[41] As noted above, the relevant planning authority is the State Planning Commission. The State Planning Commission (through the State Commission Assessment Panel) would assess the proposal against the 'Assessment Provisions for Performance Assessed Development' set out the *Planning and Design Code, Part 2 - Zones and Sub Zones, Adelaide Park Lands Zone*, as well as the assessment provisions of any relevant General Development Policies and Overlays. If the redevelopment is seriously at variance with the Code, planning consent must be denied. If the State Planning Commission determined the proposed redevelopment would not be seriously at variance with the Code, the Commission would then assess the redevelopment on its merits, to see whether the performance outcomes will be achieved, and whether or not planning consent should be granted, and on what conditions.

Public participation

Public notification of a performance assessed development must be given, in accordance with the PDI Act,[42] the PDI Regulations and the Code. Notification must be given, firstly, to an owner or occupier of each piece of adjacent land and, secondly, to members of the general public by placing a notice on the land (although the Code may exclude specified classes of development from either or both of these requirements). Following public notification, any person may, in accordance with the regulations and within a period prescribed by the regulations, make representations to the relevant authority in relation to the notified development proposal.

3.2.2 Selected assessment provisions of the Code relevant to the removal of trees, the protection of biodiversity and heritage protection

A number of performance outcomes are relevant to the removal of trees, the protection of biodiversity and the protection of cultural heritage in the Adelaide Park Lands Zone. If the golf course redevelopment was assessed as performance assessed development, the relevant planning authority would assess the redevelopment against the performance outcomes set out below, among others.

Planning and Design Code, Part 2 - Zones and Sub Zones, Adelaide Park Lands Zone, Assessment Provisions for Performance Assessed Development

PO 1.8: The redevelopment of existing buildings and structures within the following sites in a way that is ancillary and complementary to existing uses including … Golf Course - club facilities and restaurants (Item 8)

[41] PDI Act, s107: the redevelopment would be performance assessed development as it is not accepted development, deemed-to-satisfy development or impact assessed development.

[42] PDI Act, s 107.

PO 3.1 Development protects, enhances and improves public access to: areas of special landscape character (such as formal gardens, significant stands of trees, and the like) and areas and items of Indigenous and post-colonial cultural significance.

PO 3.2 Development recognises the Park Land's National Heritage Values.

PO 3.5 Development sensitive to native biodiversity which incorporates ways to protect and improve biodiversity through its design and siting.

Planning and Design Code Part 2 - Zones and Sub Zones, Adelaide Park Lands Zone, Table 3 - Applicable Policies for Performance Assessed Development

The killing, destruction or removal of trees for the golf course redevelopment falls within the definition of a 'tree-damaging activity' within the meaning of PDI Act s 3.[43] A tree-damaging activity is a type or class of development in the Park Lands Zone, to which the Regulated and Significant Tree Overlay will apply in areas affected by the Overlay, to regulated and significant trees. The PDI Act s 3 essentially provides that individual trees, or strands of trees, are those that are defined as regulated and/or significant trees in the PDI Regulations or in the Planning and Design Code. The definitions are complex, but reg 3F(1) provides that:

> *Subject to this regulation, the following are declared to constitute classes of regulated trees for the purposes of paragraph (a) of the definition of regulated tree in section 3(1) of the Act, namely* ***trees within a designated regulated tree overlay that have a trunk with a circumference of 1 m or more*** *or, in the case of trees that have multiple trunks, that have trunks with a total circumference of 1 m or more and an average circumference of 310 mm or more, measured at a point 1 m above natural ground level. (Emphasis added).*

Significant trees are essentially trees with a circumference of two metres or more.[44] The policies of the Regulated and Significant Tree Overlay that are relevant to tree-damaging activities in the Adelaide Park Lands are set out below.

Regulated and Significant Tree Overlay [Tree Retention and Health] PO 1.4: A tree-damaging activity in connection with other development satisfies all the following:

(a) it accommodates the reasonable development of land in accordance with the relevant zone or subzone where such development might not otherwise be possible
(b) in the case of a significant tree, all reasonable development options and design solutions have been considered to prevent substantial tree-damaging activity occurring.

Regulated and Significant Tree Overlay [Ground work affecting trees] PO 2.1: Regulated and significant trees, including their root systems, are not unduly compromised by excavation and/or filling of land, or the sealing of surfaces within the vicinity of the tree to support their retention and health.

The Overlay does not prohibit tree-damaging activities, but rather, seeks a balance between the 'reasonable development of land' and for significant trees, that 'all reasonable development options and design solutions have been considered to prevent substantial tree-damaging activity occurring'. While this does not guarantee

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[43] It is not excluded from the definition by the Planning, Development and Infrastructure (General) Regulations 2017, whereby Reg 3F(6) excludes some pruning of trees from the ambit of the definition in s 3 of the PDI Act.

[44] Planning, Development and Infrastructure (General) Regulations 2017, reg 3F(2).

substantive protection for significant trees, it would usually require proponents to provide evidence to the relevant authority that 'all reasonable development options and design solutions have been considered to prevent substantial tree-damaging activity occurring' and if they have not, the proposal would be at variance with the Code (noting it is not possible to say in theory whether this means the proposal would be 'significantly' at variance with the Code). Moreover, the assessment documents would be made available to the public.

3.3 North Adelaide Public Golf Course Act 2025 (SA)

The NAPGC Act requires planning consent and building consent to be granted,[45] and declares the State Planning Commission to be the relevant authority.[46] Crucially, the NAPGC Act characterises the redevelopment as DTS development: s 11(2) provides that:

> *All development proposed to be undertaken, for the purposes of the project, on the project site or the support zones will be taken to be classified by the Planning and Design Code as deemed-to-satisfy development for the purposes of the Planning, Development and Infrastructure Act 2016.*

By declaring the redevelopment to be 'taken to be' DTS development, but without subjecting the redevelopment to any DTS criteria, the NAPGC Act requires the State Planning Commission to grant planning consent without assessing the proposal for compliance with specified DTS criteria in the Code.

Also, the NAPGC Act has removed the requirements to assess the golf course redevelopment *as performance assessed development* on its merits against the policies of the Code. These include PO 3.5 (biodiversity) and the performance outcomes of the Regulated and Significant Tree Overlay, including PO 1.4. Section 13 of the NAPGC Act replaces this assessment with an obligation on the Minister to ensure that 'for every tree that is removed in the course of undertaking the project not less than three new trees (or seedlings for not less than three new trees) are planted within the project site and support zones'.

As we will explain below, there are significant problems with assuming that this type of offsetting will lead to better biodiversity outcomes (and outcomes for climate resilience). No publicly available assessment on biodiversity and climate outcomes have been released prior to, or subsequently to, the decision that the redevelopment would proceed. This means members of the community cannot inform themselves, on the basis of best-available expert scientific evidence, about the short- and long-term costs and benefits in relation to biodiversity and climate resilience.

3.4 Critique of the NAPGC Act

By characterising the redevelopment as DTS development, the NAPGC Act impacts on the applicable assessment process and policies in a number of ways.

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[45] PDI Act, s 11(1).

[46] Ibid, s 11(3).

The Code amendment procedures have been bypassed

The Code amendment procedures under the PDI Act include a requirement that, when a draft amendment is proposed to the Code ('Code amendment'), the 'designated entity'[47] must undertake consultation on the draft Code amendment in accordance with the 'Community Engagement Charter'.[48] The Charter is established under the PDI Act,[49] in accordance with one of the key recommendations of the *Expert Panel on Planning Reform*:[50] specifically, 'Reform 3: Legislate to create a charter of citizen participation'.[51] Following consultation, the designated entity must prepare, and furnish to the Minister, a report on the draft Code amendment and the consultation process.[52] The Minister may adopt the draft Code amendment (with or without further amendment) or may determine that the matter should not proceed.[53] If the Minister chooses to adopt the Code amendment, Parliamentary scrutiny requirements apply after the amendment takes effect.[54]

Using the NAPGC Act to reclassify the development from performance assessed development to DTS development bypasses the usual procedures under the PDI Act for amending the Code including, most importantly, the public consultation procedures that apply under PDI Act and the Charter.

Classifying the golf course redevelopment as DTS development is a mischaracterisation

The DTS classification is a fundamental mischaracterisation of the golf course redevelopment – it is not the type of development we would usually expect to be characterised as DTS development, because of the impacts of the redevelopment. PlanSA advises:[55]

> *Code assessed development includes applications which will be assessed on their merit against the Planning and Design Code and are either deemed-to-satisfy development or performance assessed development.*
>
> *Simple developments such as a detached house in a residential zone* will be fast tracked as a deemed-to-satisfy development application. More complex applications such as a multi storey building will be subject to performance-based assessment.*
>
> *(*Emphasis added.)*

The redevelopment cannot be properly understood as Code assessed DTS development

The NAPGC Act has declared the golf course redevelopment to be DTS development but without specifying any accompanying DTS classification criteria. The approach taken by the NAPGC Act is inconsistent with the Code's Rules of Interpretation, which provide as follows:

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[47] The term, 'designated entity' is defined in the PDI Act, s 73(6).

[48] PDI Act, s 73(6)(b).

[49] The Community Engagement Charter is established under the PDI Act, s 44. The Charter can be accessed at Plan SA, 'Community engagement charter' (webpage) <https://plan.sa.gov.au/our_planning_system/instruments/community_engagement_charter>.

[50] *The Planning System We Want*, Final Report by South Australia's Expert Panel on Planning Reform, December 2014, <https://dit.sa.gov.au/__data/assets/pdf_file/0019/360352/Expert_Panel_-_The_Planning_System_We_Want.pdf>.

[51] Ibid, 36. That reform recommendation was adopted by the South Australian Government: see *Transforming our Planning System: Response of the South Australian Government to the final report and recommendations of the Expert Panel on Planning Reform* (March 2015) <https://dit.sa.gov.au/__data/assets/pdf_file/0018/360360/Expert_Panel_-_Response_to_the_Final_Report.pdf>.

[52] PDI Act, s 73(7).

[53] Ibid, s 73(10).

[54] Ibid, s 74.

[55] PlanSA, 'Assessment Pathways', <https://plan.sa.gov.au>how_applications_are_assessed>.

Part 1 - Rules of Interpretation

Major features of the Code - Classification of development - Deemed-to-satisfy development

Each zone contains a table - Table 2 - which specifies classes of development which will be classified as 'deemed-to-satisfy development' under section 106 of the Act in that zone if all of the corresponding criteria in the table are satisfied, insofar as they are relevant to the nature of the particular development.*

*(*Emphasis added.)*

The NAPCG Act has therefore bypassed the requirement that to be classified as DTS development, development must satisfy all relevant DTS criteria that are specified in the Code.

Moreover, the expression 'deemed-to-satisfy' inherently begs the question – deemed to satisfy *what*? Under the PDI Act and the Code, planning consent must be granted only when all DTS criteria are met, because only then can a project be 'deemed' or taken to satisfy the *corresponding performance outcome*. Because the NAPGC Act has not specified any DTS classification criteria for the golf course redevelopment, the redevelopment cannot be assessed against the Code for compliance with DTS criteria and therefore cannot be demonstrated to have met the corresponding performance outcomes. The redevelopment cannot be properly understood as *Code assessed* DTS development. It has not been, and cannot be, assessed against the policies i.e. the performance outcomes, in the Code.

Declaring the golf course redevelopment to be DTS development is a legal fiction designed to bypass assessment on the merits as part of the Code assessed performance assessed pathway and require the State Planning Commission to issue planning consent.

Assessment on the merits has been removed

The DTS classification has removed assessment on the merits i.e. assessment against the performance outcomes and DPFs, that would otherwise be relevant to the golf course redevelopment, without replacing them with any equivalent or better assessment provisions in the NAPCG Act. It has thereby 'rubberstamped' planning consent. Moreover, design plans were only released six months after the NAPGC Act was passed, i.e. well after planning consent was effectively given to the project by declaring it to be DTS development but with no DTS criteria.

Lack of transparency in assessment

The State government has made statements regarding the avoidance and minimisation of environmental impacts of the golf course redevelopment, and the use of experts, but has not provided the data, impact assessments, biodiversity surveys and other relevant assessments that support its claims.[56] It has not given reasons why these assessments have not been released. They would usually be available to the public when development is assessed under the PDI Act as performance assessed development. While it is possible to make

[56] See for example, Government of South Australia, *News>News archive>North Adelaide Public Golf Course plans revealed* (webpage, no date) <https://premier.sa.gov.au/media-releases/news-items/north-adelaide-public-golf-course-plans-revealed>; Government of South Australia, Department of Premier and Cabinet, *Responsibilities> Major Projects>North Adelaide Public Golf Course>Environmental Management* (webpage, no date) <https://dpc.sa.gov.au/responsibilities/major-projects/north-adelaide-public-golf-course/environmental-management >.

a Freedom of Information application to seek the assessment documents in relation to the redevelopment, members of the community should not be forced to use (and pay for) Freedom of Information procedures to obtain environmental impact assessment and management documents in relation to a redevelopment of this nature on the Adelaide Park Lands.

Lack of opportunity for public participation in the planning process

Planning decisions affect many people and communities. The Planning Institute of Australia has stated that:

> *Australians belong to many 'communities'. They belong to communities of interest, of affiliation and of place. Planning decisions affect all these kinds of community, and often their members reasonably seek to participate in these decisions. Planning decisions also affect communities whose members are not able to participate or be easily consulted, including children, and people who for one reason or another are, or feel, dispossessed, disrespected or bypassed in planning processes. By its very nature planning involves activities that are complex and have long term impacts that may not be realised for some time. Careful consideration of many points of view and competing interests is an essential part of good professional practice.*[57]

In South Australia, the PDI Act sets out certain rights of the public to participate in the planning system. Including such rights in legislation is 'based on the belief that those who are affected by a decision have a right to be involved in the decision-making process'.[58] Furthermore,

> *Opportunities to be consulted and to participate in planning processes are important parts of the broader democratic process. They are also components of due diligence in planning practice and are important safeguards for the planning authority and decision makers. Engagement through participation processes is a governance responsibility.*[59]

The South Australian Government's Department for Housing and Urban Development (DUHD), which manages South Australia's planning and land use systems, has also recognised that public participation is important to the planning system:

> *Public notification plays an important role in the planning system by giving people the opportunity to formally support or oppose certain developments at the application stage. Community input is a key part of decision-making and helps ensure feedback is considered when assessing proposals.* [60]

Given the iconic nature of the Adelaide Park Lands and the special role the Park Lands Association and the community have played in the preservation and protection of the Park Lands, the planning regime and/or the Adelaide Park Lands Act should enshrine rights of public participation concerning proposed developments of this nature in the Park Lands.

As explained above, but for the NAPCG Act, the golf course redevelopment would have been categorised as performance assessed development. For performance assessed development, there is a default requirement under the PDI Act that notice must be given to an owner or occupier of each piece of adjacent land and that members of the public must be notified by a notice placed on the relevant land.[61] The Code can provide an exclusion or exemption from this requirement, but the Code does not exclude or exempt for the notification

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[57] Planning Institute of Australia, *National Public Participation Position Statement* (31 May 2023), 1.

[58] Ibid, 2.

[59] Ibid, 1.

[60] South Australian Government, Department for Housing and Urban Development, 'Planning Ahead', *Newsletter* (May 2026).

[61] PDI Act, s 107(3).

requirements for the golf course redevelopment as performance assessed development.[62] Information about the development is also published on the PlanSA website to notify the public. Where notification is given, members of the public have the right to make representations to the relevant planning authority within 15 days, in relation to the granting or refusal of planning consent. However, there is no right for a member of the public or a person who has made a representation to appeal a decision to grant development approval.

By categorising the redevelopment as DTS development in the NAPGC Act, the government has taken away the rights of participation that would otherwise apply to the redevelopment as performance assessed development. There are no rights of public participation at all for DTS development i.e. there is no right to be notified of a development application, no right to make representations, or to appeal a decision to grant development approval.

Removing the rights of community participation that would otherwise apply to the redevelopment has taken away the ability of the community to access information and provide feedback about the design of the redevelopment and its potential environmental impacts. This has arguably undermined the 'broader democratic process' as members of the community have been 'dispossessed, disrespected or bypassed in [the] planning process', leading to community protests at the site of the redevelopment and outside Parliament House, and an online petition against the redevelopment that has amassed over 50,000 signatures.[63] It has also adversely affected the ability of the Park Lands Association and the community to continue to act to preserve and protect the Park Lands – one of the recognised criteria of the National Heritage Values upon which National Heritage Listing was achieved.

The removal of trees and impacts on climate and biodiversity

The NAPCG Act has removed any requirement to assess the impacts of removing 585 mature trees on biodiversity and climate change outcomes. Unlike many areas in the State and the developed urban and peri urban areas of Adelaide, the Park Lands have a significant complement of mature trees, providing a range of ecological services. The 585 trees slated for removal equate to 6-7% of the area's approximately 9,000 trees. As of 26 June, 400 trees had been removed, many of them falling within the significant or regulated tree category, with 185 now subject to Federal Court injunction.[64] Assessment against the Code has been replaced by a requirement to plant not less than three new trees (or three new seedlings for not less than three new trees) for each mature tree that is removed. There is no indication of the type or location of these replacement seedlings.

Possum Park is not the only area at risk. A driving range is proposed for the John E. Brown Park adjacent to Possum Park, and the government has more recently announced the proposed removal of unspecified trees and vegetation to facilitate the MotoGP track in the eastern Park Lands.[65]

While the requirement to plant three seedlings for each mature tree that is removed may appear to provide a net benefit over time, the ecological benefits may not outweigh the immediate losses. Moreover, according to a

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[62] Planning and Design Code, Part 2 - Zones and Sub Zones, Adelaide Park Lands Zone, Table 5 - Procedural Matters (PM) – Notification.

[63] See <https://www.change.org/p/protect-possum-park-pete>.

[64] On 12 June 2026, Feutrill J ordered the State of South Australia to provide 48 hours notice of intention to remove any trees over 3.5 m tall: see Order of Feutrill J in *Edwin Kemp Attrill and anor v State of South Australia* (Federal Cout of Australia, SAD134/2026, 12 June 2026).

[65] 'Adelaide Parklands works to continue despite parliamentary inquiry' (n 27).

recent study in Adelaide context, the economic benefits of mature trees are also significant.[66] It will take decades for a tree to reach sufficient maturity to provide the same ecosystem services as those removed. Before the seedlings mature, the city and the community will lose all the benefits provided by the trees that are removed. The seedlings will provide negligible benefit for decades, if they reach the equivalent age. Moreover, changing climate conditions and uncertainty around where those three seedlings per tree are to be planted, and what species they will be, makes it difficult to predict the benefits with certainty. The government has not released any expert evidence assessing the immediate losses compared to the benefits that planting seedlings will provide.

The most information that is available to the public can be gleaned from the planning consents granted by the State Planning Commission. The first planning consent for 'tree damaging activity' was granted on 20 April 2026, and a 'part retrospective' variation to the application/consent was lodged on 21 July 2025 and granted on 22 July 2026. Condition 2 of the initial planning consent was that:[67]

> *The recommendations detailed in the Regulated and Significant Tree Assessment report, dated 01/04/2026 prepared by Succession Ecology shall be fully incorporated into the development. Such measures shall be implemented and made operational prior to the occupation or use of the development and maintained at all times to the satisfaction of the State Planning Commission.*

Condition 2 of the variation is that:[68]

> *The recommendations detailed in the Regulated and Significant Tree Assessment report (Document # ES032603) dated 19 July 2026 prepared by Succession Ecology shall be fully incorporated into the development. Such measures shall be implemented and made operational prior to the occupation or use of the development and maintained at all times to the satisfaction of the State Planning Commission.*

These documents show that Succession Ecology prepared an initial Regulated and Significant Tree Assessment report (1 April 2026), which was then amended or updated on 19 July (or replaced with a new report) after the removal of trees took place in May 2026, and after the application for an injunction was lodged in the Federal Court in June 2026. Neither assessment report has been publicly released and therefore their content is unknown. Had the golf course redevelopment been assessed under the PDI Act as performance assessed development, the Regulated and Significant Tree Assessment report would have been released to the public. Releasing the assessment report(s) would provide information of key interest and importance to the community.

From an ecological perspective, the process in advance of, and during removal of the trees, foreshadows significant community concerns about the management and conservation of this unique heritage area in South Australia. One issue is the apparent failure to consider landscape scale impacts of the development. Uniquely, the Park Lands is a landscape: not a scattering of individual trees, but part of an extensive open forested and diversely vegetated area of many hectares that operates as a discreet ecological community surrounding the Adelaide CBD. The Park Lands offer a unique complex of accessible remnants of functional vegetation that

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[66] Kandulu, J., Soebarto, V., Caddy-Retalic, S., Lowe, A., Kumar, P., Tefera, Y., & Williams, C, 'Advancing context-sensitive valuation of street tree benefits in contrasting urban socioeconomic settings' (2026) 122 *Urban Forestry and Urban Greening* 129516-1-129516-12.

[67] PlanSA, *Decision Notification Form*, *Section 126(1) of the Planning, Development and Infrastructure Act 2016*, Development application no. 26011332 (28 April 2026) available from <https://plan.sa.gov.au/development_application_register?#view-26011332-DAP>.

[68] PlanSA, *Decision Notification Form*, *Section 126(1) of the Planning, Development and Infrastructure Act 2016*, Development application no. 26024019 (22 July 2026) available from <https://plan.sa.gov.au/development_application_register?#view-26011332-DAP>.

provide habitat and shelter to native species, including possums, parrots, flying foxes, woodland birds, as well as significant human benefit.

Over time the vegetation in the Adelaide suburban area has diminished in response to development pressure, particularly for housing.[69] The Park Lands provide a significant area of remnant vegetation. Removal of trees, and the associated introduction of more bare, unvegetated infrastructure, diminishes this resource for present and future generations.

Ecosystem services typically offered by a tree that is 100 years old or more, will include nesting hollows, nectar source when flowering (for marsupials birds and insects); pollination of surrounding plants by insects, birds and mammals attracted to the flowering; shelter, refuge, and safe above ground passage across the landscape.[70] As disproportionate providers of ecosystem services, retention of large old trees is critically important in urban environments.[71]

It cannot be assumed that organisms using the various services of the tree can move to another – there will usually be a full complement of animal and insect life making use of any naturally occurring resources. If one mature tree is removed, the life supporting capacity of the area is reduced. If 10 or 500 trees are removed, then the reduction is significantly greater. The bats, possums, reptiles, insects and birds that move through the landscape, using the old trees for various purposes, at different times of the year, cannot simply be absorbed into the depleted remaining vegetation. Species like possums, some nesting birds, are territorial, and will repel others whose normal territory has been compromised from 'moving in'. In the event that displaced animals cannot find another niche and food source, they will die, and the population and functionality of the area is compromised.

Many members of the community are therefore deeply concerned about the removal of the trees and the impact on fauna, and biodiversity, given the role of the Park Lands as a 'greenspace' around the city centre, and the environmental services provided by mature trees. Early consultation, public participation in the planning process, and the transparent provision of assessment reports are essential to addressing, managing and giving 'voice' to these community concerns.

Should the golf course redevelopment be impact assessed development?

One question raised by the golf course redevelopment is whether a redevelopment of this nature should be categorised as impact assessed development, for which an Environmental Impact Statement (EIS) must be prepared and made available to the public for comment. Among other things, an EIS must[72] for impact assessed development must include a statement of—

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[69] Global Nature Watch (previously Global Forest Watch) estimates that between 2020 and 2025 Adelaide lost 14 ha (13%) of forest equivalent tree cover: <https://www.globalforestwatch.org/dashboards/country/AUS/8/1/?category=forest-change/>. Using imaging technology, Nearmap estimates that half of the suburbs in Adelaide lost at least 9.8% of their tree cover in the decade to 2021: Nearmap, 'Study reveals tree canopy decline in Adelaide' (webpage, January 2023) <https://www.nearmap.com/au/newsroom/study-reveals-tree-canopy-decline-in-adelaide?utm_source=google&utm_medium=organic>.

[70] Land for Wildlife Queensland (2011) *Note V7: The Value of Habitat Trees* <https://www.lfwseq.org.au/wp-content/uploads/2026/02/LWF-Tech-Notes-VEGETATION-V7_The-Value-of-Habitat-Trees-WEB.pdf>.

[71] Le Roux DS, Ikin K, Lindenmayer DB, Manning AD and Gibbons P, 'The Future of Large Old Trees in Urban Landscapes' (2014) 9(6) *PLoS ONE* e99403, <https://doi.org/10.1371/journal.pone.0099403>.

[72] Subject to any practice direction.

(a) *the expected environmental, social and economic effects of the development;*
(b) *the expected effects of the development on the climate and any proposed measures designed to mitigate or address those effects; and*
(c) *the extent to which the expected effects of the development are consistent with the provisions of—*
  (i) *any relevant state planning policy; and*
  (ii) *the relevant regional plan; and*
  (iii) *the Planning and Design Code; and*
  (iv) *any matters prescribed by the regulations.*[73]

The EIS must be made publicly available and the public have the right to make submissions in relation to the EIS. This feedback is provided to the proponent (the government in this case), and a written response must be prepared in relation to the submissions made. This response must also be publicly available. The State Planning Commission will then prepare an Assessment Report. The Minister may grant or refuse to grant development authorisation, but crucially, must not grant a development unless an EIS and an Assessment Report, have been prepared (or previously prepared).[74]

We suggest that impact assessed development could be the appropriate category of development for the Golf course redevelopment because:

- the location in which the development is proposed to take place is sensitive, and there is a correspondingly high level of public concern over the potential impacts of the development;
- the National heritage values/criteria reference the longevity and importance of the role of the public in preserving and protecting the Park Lands, and this role should be recognised and enabled by the development assessment pathway;
- it should be expected that a large number of the public would want to participate in the assessment process by making submissions and expressing their views, and the EIS procedures provide an appropriate means of managing a high degree of community feedback; and
- the impact assessed development assessment procedures would provide transparency regarding the potential environmental impacts and their avoidance, mitigation and management, as well as claimed economic and social impacts.

The golf course redevelopment is not classified by the Code as impact assessed development. Although the PDI Act empowers the Minister for Planning to declare a particular development to be impact assessed development,[75] the Minister is not empowered to declare the golf course redevelopment to be impact assessed development. This is because the Act prohibits a declaration from applying 'with respect to a development or project within the Adelaide Park Lands (within the meaning of the Adelaide Park Lands Act 2005)'.[76] One disadvantage of the 'impact assessed' assessment pathway is that the Code is not binding on the decision-maker. By prohibiting a declaration from applying to a development in the Park Lands, the PDI Act protects the Park Lands from decisions that might be inconsistent with, or even seriously at variance with, the Code. However, in the case of the golf course redevelopment, the NAPGC Act has removed assessment against the provisions of the Code and essentially directed planning consent be granted, which is a poorer outcome in

[73] PDI Act, s113(4).

[74] Ibid, s115.

[75] Ibid, s108(c).

[76] Ibid, s108(5).

terms of transparency and rights of public participation than if the redevelopment was classified as impact assessed development.

Arguably, the more desirable outcome in this case would have been for the redevelopment to be assessed as performance assessed development, for two reasons. First, the decision on a performance assessed development must be based on an assessment against the Code, which is binding (in contrast to impact assessed developments). Secondly, the relevant public participation provisions would likely have been sufficient. They would have enabled the public to make representations that would have reflected the anticipated high level of public interest and concern over the golf course redevelopment.

4 Animal Welfare

In South Australia, the welfare of animals, including wildlife, is regulated by the *Animal Welfare Act 1985* (SA) and also, in the case of certain native animals, the *National Parks and Wildlife Act 1972* (SA). Prior to the removal of the trees, no information was provided to the public about the anticipated harm to native wildlife harm arising from this project; how that harm would be avoided, mitigated and managed; or the specific steps that would be taken to identify, protect, and rehouse affected animals. The lack of information caused uncertainty for members of the public and concerns regarding the impacts of the redevelopment on fauna, particularly in relation to possums.

In May 2026, the South Australian government made available a new webpage, which addressed the issue of animal welfare. The webpage states that 'detailed fauna identification and protection measures have been designed and implemented by expert licensed fauna handlers with over 10 years' experience' to ensure the welfare and safe management of fauna over project works.'[77] It explained the methods used to identify where animals are located; that comprehensive fauna population surveys were undertaken, with the possum population across the site specifically and carefully mapped; and that the fauna handlers had assessed 'the most appropriate relocation pathway for the animals', which included the installation of 50 new possum boxes throughout the project site.[78] The assessments and surveys have not been publicly released.

Photos taken by the ABC News and published online suggest that possums have been physically removed from trees shortly before felling, and then moved into new nest boxes in unfamiliar territory.[79] Providing additional nest boxes does not mean unhoused animals will be accepted into others' territory, or that they will be able to compete for food sources. Possums that cannot find a safe shelter for whatever reason, particularly territorial disputes, will be forced to the ground where they become easy prey.

The methods utilised do not appear to comply with the SA Government's own advice regarding possum relocation.[80] Relocation of a possum living in a house roof to a nestbox outside is common practice,[81] because it does not interfere with existing territoriality. Best practice as advised by the State Government is to trap the possum, keep it safe during the day, then release it at nightfall to find its way to the newly installed nestbox, still in the same territory.[82] In high density areas where territory and resources are limited, moving an individual from its home nest to another tree may expose it to attack from others that have already marked the space as territory. If the government released the fauna surveys and mapping to the public, this would help to allay concerns regarding the issue of relocation.

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[77] South Australian Government, Department of the Premier and Cabinet, 'Environmental Management' (n 57).

[78] Ibid.

[79] Photos credited to Lincoln Rothall, 'Wildlife carers fear possums and birds will be victims of tree felling at North Adelaide golf course' (online, 12 May 2026) <https://www.abc.net.au/news/2026-05-12/concerns-possums-birds-falling-victim-golf-course-redevelopment/106669474>.

[80] Government of South Australia, Department of Environment and Water, 'Managing Possums' (webpage, 2026) <https://www.environment.sa.gov.au/topics/animals-and-plants/living-with-wildlife/possums/managing-possums>.

[81] Eymann J, Herbert CA and Cooper DW, 'Management issues of urban common brushtail possums Trichosurus vulpecula: a loved or hated neighbour '(2006) 28(2) **Australian Mammalogy** 153–171. <https://doi.org/10.1071/AM06025>.

[82] Government of South Australia, "Managing Possums' (n 81).

The issue of management of wildlife during tree removal has been of concern to members of the community. The government webpage states that the fauna handlers, 'in conjunction with ecologists and arborists have coordinated all activities on site during tree removals to ensure wildlife is appropriately protected throughout the process'.[83] From an ecological perspective, a typical approach would be to locate and count species in the trees marked trees for removal in advance; the safe trapping and removal of those animals before trees are felled; safekeeping of those animals, and appropriate either on site or elsewhere. Taking animals out of trees as they are being felled is not a recognised means of protecting native wildlife. Similarly, whilst trapping and relocation of roosting birds is not an option, the impact of the removal of 400 large trees from a small area substantially changes the spatial dynamics, as well as reducing food sources, for birds and bats.

Rigorous expectations are imposed on the public and wildlife carers in relation to any native species in South Australia. If the community perceives that the government has failure to comply with these same standards, this can undermine trust in the government and the system of legislation.

5 Assessment under the Environment Protection and Biodiversity Conservation Act 1999 (Cth)

This section briefly explains the potential application of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act') to the golf course redevelopment. Under the EPBC Act, the proponent of an 'action' that has, or is likely to have, a 'significant impact' on one or more 'matters of national environmental significance' set out in the Act, must refer the action to the Commonwealth Minister for the Environment to determine whether assessment and approval is required under that Act.

A number of matters of national environmental significance are protected by the EPBC Act. Two of these may 'trigger' the EPBC Act in relation to the redevelopment. First, the Adelaide Park Lands is listed as a National Heritage place.[84] Sections 15B and 15C of the EPBC Act make it unlawful, in certain circumstances, to take an action has, will have, or is likely to have a 'significant impact' on the National Heritage values of a National Heritage place, unless a federal approval under the EPBC Act is in place.
Secondly, sections 18 and 18A make it unlawful to take an action that has, will have, or is likely to have, a 'significant impact' on a listed threatened species. The Grey-headed Flying Fox is a listed threatened species present in the Adelaide Park Lands.

The South Australian Government has not referred the implementation of the NAPGC Act, or the redevelopment itself, to the Commonwealth Minister for the Environment to determine whether approval is required under the EPBC Act. In May 2026, following community protests regarding the redevelopment, the South Australian Government stated that it had self-assessed the project and

[83] Ibid.

[84] Department of Climate Change, Energy, the Environment and Water, 'Adelaide Park Lands and City Layout' (Web Page, 16 April 2026) <https://www.dcceew.gov.au/parks-heritage/heritage/places/national/adelaide-parklands>.

concluded the redevelopment would not be likely to have a significant impact on any matter of national environmental significance, and therefore the redevelopment does not require referral.[85]

In June – after legal action had commenced against the government – the Department of the Premier and Cabinet published a four-page summary of the self-assessment.[86] However, as of 31 July, none of the 'technical investigations', 'advice from independent specialists' or 'targeted ecological and heritage studies' used in the self-assessment, and which informed the 'evidence-based understanding of the environmental context' and the potential impacts of the redevelopment, had been released to the public.[87] Releasing the expert evidence that the redevelopment would not be likely to have a 'significant impact' on one or more 'matters of national environmental significance' would not only have provided assurance to the community about the potential environmental impacts of the redevelopment, but it would provide a benefit to government (and taxpayers) by reducing the risk of litigation under the EPBC Act.

In the following discussion, we focus on the possible application of the EPBC Act in relation to protecting the National Heritage values of the Park Lands as a National Heritage place.

5.1 Is referral required under the EPBC Act?

There are two EPBC Act sections relevant to protecting the National Heritage values of a National Heritage place, which are of potential application to the golf course redevelopment.

- Section 15B(2) of the EPBC Act makes it unlawful for a **person** to take an **action** for the purposes of **international or interstate trade or commerce** if it has, or is likely to have, a **significant impact** on the **National Heritage values of a National Heritage place**, unless an approval under the Act is in place.
- Section 15B(1) of the EPBC Act prohibits a **constitutional corporation** from taking an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

The Adelaide Park Lands is listed as a National Heritage place for the purposes of the EPBC Act. If a 'constitutional corporation' were to take an action in the Adelaide Park Lands that has, will have or is likely to have a significant impact on its National Heritage values, referral would be required (section 15B(1)). The government is not a constitutional corporation. However, if the government is a legal 'person' and takes such an action 'for the purposes of' international or interstate trade or commerce, referral will be required.

This section explains the meaning of each of these legal requirements to discuss whether referral, assessment and approval under the EPBC Act is required.

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[85] South Australian Government, Department of the Premier and Cabinet, 'Environmental Management' (n 56).

[86] South Australian Government, Department of the Premier and Cabinet, *EPBC Act Self-Assessment Summary North Adelaide Public Golf Course Redevelopment* (webpage, no date) <https://dpc.sa.gov.au/__data/assets/pdf_file/0009/1418994/EPBC-act-summary-fact-sheet.pdf>.

[87] Ibid, 2.

5.1.1 Meaning of 'person'

The EPBC Act does not define 'person' and so the *Acts Interpretation Act 1901* (Cth) ('AIA Act') can be used to identify the meaning of person. Section 2C of the AIA Act states that person includes 'body politic', which includes a state government.

5.1.2 Meaning of 'action'

Section 523 of the EPBC Act defines 'action' to include a project, development, undertaking, activity or series of activities, or an alteration of any of these things. Undertaking the tree clearing and earthworks associated with the redevelopment would clearly fall under this definition. However, it is less clear whether the following key provisions of the NAPGC Act, which have excluded the rights of the Adelaide City Council and community groups from participating in the planning process that would otherwise apply, would fall within the definition of an 'action' regulated by the EPBC Act.

- **Land Tenure and Management Change:** The NAPGC Act changed the land tenure from Crown land managed by the Adelaide City Council to an estate in fee simple owned, controlled and managed by the state government.[88] As we will explain later, this is important because it has had an adverse impact on the role of the Adelaide City Council as 'conservator' of the Park Lands, which is part of the Park Land's National Heritage values.
- **Automatic Planning Consent excluding Community Input**: Designating the redevelopment as 'deemed-to-satisfy development' for the purposes of the PDI Act, has eliminated the opportunity for any public participation in the approvals process.[89] As we will see later, this is important because it has had an adverse impact on the role of the community in protecting the Park Lands, which is part of the Park Land's National Heritage values.

One complexity is that section 524 of the EPBC Act provides a carve-out for decisions of government bodies that provide authorisation 'for another person to take an action', stating that such decisions are not actions. The language 'for another person' is critical in the case of the NAPGC Act, insofar as the NAPGC Act grants authorisation from the state government for itself to take certain actions, not 'for another person' to do so.

The role of the language 'for another person' in EPBC Act section 524 was examined by the Federal Court in the first instance in *Save the Ridge v Commonwealth*.[90] Whitlam J found that the carve-out in section 524 only applied to an authorisation given for a person other than the grantor of the authorisation.[91] This conclusion was not altered on appeal,[92] but rather, the Full Court focused on the intent of section 524 being to remove the reach of the EPBC Act from government decisions, such as the administration of planning laws, and removing restrictions on otherwise prohibited land uses.[93]

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[88] NAPGC Act, ss 7, 8.

[89] Ibid, s 11(2).

[90] *Save the Ridge Inc v Commonwealth* [2005] FCA 17.

[91] Ibid [18].

[92] *Save the Ridge Inc v Commonwealth* 147 FCR 97.

[93] Ibid [18]-[20].

It may be difficult to argue that the provisions in the NAPGC Act changing the tenure of the land and designating the redevelopment as 'deemed-to-satisfy development' under the PDI Act, fall within the section 523 definition of 'action'. However, the implementation of those provisions may be considered an action. In *Secretary, Department of Primary Industries, Parks, Water and Environment v Tasmanian Aboriginal Centre Inc* (*'TAC Tarkine Case'*)[94] the Federal Court held 'the activities executing or implementing' an authorisation could be considered an action, even where the authorisation was not an action.[95] The above provisions of the NAPGC were implemented, first in April 2026, when the state government took control of the designated Park Lands from the Adelaide City Council, and then in May 2026, when the redevelopment began with tree-clearing and earthmoving without public consultation. The *TAC Tarkine Case* indicates these implementation activities may be 'actions' for the purposes of the EPBC Act.

5.1.3 Is the action for international and/or interstate trade and commerce?

Another threshold requirement of EPBC Act section 15B(2) is that the action is taken 'for the purposes of' international and/or interstate trade and commerce. The Premier of South Australia has stated the government is redeveloping the golf course for the purposes of hosting international golf tournaments and boosting tourism from overseas and interstate.[96] He stated, 'This will be a destination golf course for visitors to our state, helping grow our economy'.[97] This implies the cross-border trade and commerce criteria is met.

5.1.4 Constitutional corporation

A constitutional corporation is a foreign corporation, or a trading corporation or financial corporation formed within the limits of the Commonwealth. If the actions of a corporation such as a construction company, or a corporation undertaking the design of the golf course, or a corporation holding a golf tournament, were likely to have a significant impact on the National Heritage values of the Adelaide Park Lands (as a National Heritage place), then legal action could potentially be sought against that corporation if the action had not been referred to the Commonwealth Minister.

5.1.5 Significant Impact on National Heritage Values

Sections 15B(1) and (2) of the EPBC Act refer to an action that has or is likely to have a significant impact on 'the National Heritage values of a National Heritage place'. The *TAC Tarkine Case* affirmed that the National Heritage values protected by the EPBC Act are those included in the 'National Heritage List' for the place,[98] and can be found in the decision for National Heritage listing as published in the Commonwealth Gazette.[99] For the Adelaide Park Lands, the protected National Heritage values can be found in a Gazette Notice dated 7

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[94] *Secretary, Department of Primary Industries, Parks, Water and Environment v Tasmanian Aboriginal Centre Inc* [2016] 244 FCR 21 (*'TAC Tarkine Case'*).

[95] Ibid [77]-[79].

[96] Government of South Australia, 'North Adelaide Public Golf Course plans revealed' (Media Release, 18 December 2025) <https://premier.sa.gov.au/media-releases/news-archive/north-adelaide-public-golf-course-plans-revealed>.

[97] Ibid.

[98] *TAC Tarkine Case* [85]-[86].

[99] Ibid [21]-[22].

November 2008.[100] Certain social, historical and community values are highlighted under Criteria (a) and (g). Criterion (a) pertains to the 'importance in Australia's natural or cultural history' and the National Heritage value listed under that criterion includes the following:

> *The Adelaide Park Lands is also significant for the longevity of its protection and conservation. The Adelaide Municipal Corporation Act (1840) established the city council as the 'conservators' of the city and park lands. The establishment of the Park Lands Preservation Society in 1903, along with successive community organisations marks a continuing pattern in community support for safeguarding the significance of the Park Lands for the Adelaide community.*

Criterion (g) pertains to strong or special associations with community groups and includes the following in the National Heritage value:

> *The longevity of the involvement of community groups in campaigning for the protection and safeguarding of the Park Lands is exceptional.*

Referral, assessment and approval under the EPBC Act is only required if an action will have, or is likely to have, a 'significant impact' on the National Heritage values of the Adelaide Park Lands. A 'significant' impact is one that is 'important, notable or of consequence having regard to its context or intensity'.[101] The Commonwealth Department of Climate Change, Energy, the Environment and Water ('DCCEEW') has produced 'Significant Impact Guidelines' to assist proponents to understand the meaning of 'significant impact' and therefore self-assess an action to determine whether they must refer that action to the Commonwealth Minister for the Environment under the EPBC Act.[102] These Guidelines are not legally binding but provide important guidance to proponents when assessing whether there is likely to be a significant impact on the National Heritage values of a National Heritage place.

The Significant Impact Guidelines state that an action is likely to have a significant impact on National Heritage values if there is a 'real chance or possibility' that it will cause ***one or more*** of the National Heritage values to be lost, degraded or damaged, or 'notably altered, modified, obscured or diminished' (emphasis added).[103] The Significant Impact Guidelines also state that

> *it is not necessary for an action to impact upon the whole of a National Heritage place, all the values of a National Heritage place, or a whole value of a National Heritage place. It is sufficient if an action is likely to have a significant impact on a part, element, or feature of a National Heritage place which embodies, manifests, shows, or contributes to the values of that place.*[104]

While the guidelines are not legally binding, in *Australian Brumby Alliance Inc v Parks Victoria Inc,* the Federal Court accepted, in the application of section 15B(5), that there may be a significant impact 'even though the impact of the proposed action is not on all of the listed values of a place or the whole of a value of a place'. [105]

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[100] Commonwealth of Australia, *'Environment Protection and Biodiversity Conservation Act 1999* - INCLUSION OF A PLACE IN THE NATIONAL HERITAGE LIST: The Adelaide Park Lands and City Layout' (Gazette Notice, 7 November 2008) <https://www.dcceew.gov.au/sites/default/files/env/pages/77631837-15de-45b4-8ec4-30e82f33e688/files/10575801.pdf>.

[101] *Booth v Bosworth* (2001) 114 FCR 39 (Branson J).

[102] Department of Climate Change, Energy, the Environment and Water, *'Matters of National Environmental Significance - Significant Impact Guidelines 1.1*' (2013) <https://www.dcceew.gov.au/sites/default/files/documents/nes-guidelines_1.pdf>.

[103] Significant Impact Guidelines, 19.

[104] Ibid, 22.

[105] *Australian Brumby Alliance Inc v Parks Victoria Inc.* [2020] FCA 605 (8 May 2020), [227] (O'Bryan J).

The NAPGC Act's implementation, which has removed the traditional roles of the Adelaide City Council, and the opportunity for community groups to participate in the planning process and management of the Adelaide Park Lands, may have had a significant impact on the National Heritage values listed under Criteria (a) and (g) of the National Heritage listing. The South Australian Government has not addressed this issue on its website or in the summary of its self-assessment, neither of which mention the criteria we have raised in this paper, that is, the role of the Adelaide City Council and the people of Adelaide in conserving and protecting the Park Lands. It has not provided evidence from cultural heritage experts to support the assertion that the action(s) would not have, or would not be likely to have, a significant impact on the National Heritage values of the Park Lands.

5.2 Challenging the NAPGC Act under Commonwealth Law

This section has shown how the implementation of certain key provisions of the NAPGC Act could be considered unlawful under sections 15B(1) or (2) of the EPBC Act without referral or approval under the EPBC Act. In the absence of the Commonwealth Minister for the Environment 'calling-in' this action for review under the EPBC Act,[106] the only way the lack of referral can be challenged is by a person with standing seeking an injunction under section 475 of the Act to order that certain conduct breaching the Act cease, and that certain steps be taken to remedy a breach. Under section 475, only 'interested persons' have standing to bring such a suit. This includes (a) individuals or organisations 'with interests affected by the conduct'; and (b) individuals or organisations who have engaged in in environmental protection or conservation activities in the past two years.[107]

Two members of the Adelaide community have commenced proceedings against the South Australian Government in the Federal Court, seeking an injunction.[108] At the directions hearing on 12 June, Feutrill J did not order an injunction, but ordered the state government to give the courts and the applicants 48 hours' written notice if the government plans to remove a tree more than 3.5 metres tall at the North Adelaide Golf Course site,[109] which will enable the applicants to seek an injunction when any of the remaining trees are at imminent risk of being felled. On 24 June, Charlesworth J set the trial date for 17 August.[110]

It is not appropriate for this paper to comment on legal proceedings that are underway. We do note first, that the South Australian Government released the summary of its self-assessment under the EPBC Act[111] after legal proceedings had commenced. Insofar as an inference could be drawn that the proceedings contributed to the government's decision to release the summary of the self-assessment, that can be seen as a benefit. However, releasing the assessments and evidence that provide the basis for self-assessment would provide much-needed transparency to the public, and in relation to future developments, could reduce the risk of litigation.

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[106] See EPBC Act s 70.

[107] EPBC Act ss 475(6)-(7).

[108] Helen Karakulak, 'Second activist joins park lands court battle', *InDaily*, 3 June 2026 <https://www.indailysa.com.au/news/in-depth/2026/06/03/second-activist-joins-park-lands-court-battle>.

[109] Order of Feutrill J in *Edwin Kemp Attrill and anor v State of South Australia* (Federal Cout of Australia, SAD134/2026, 12 June 2026).

[110] Order of Charlesworth J in *Edwin Kemp Attrill and anor v State of South Australia* (Federal Cout of Australia, SAD134/2026, 24 June 2026).

[111] Government of South Australia, *EPBC Act Self-Assessment Summary* (n 86).

Secondly, it is important for the community to understand that referring an action under the EPBC Act does not mean the Commonwealth Environment Minister will deny approval to a project. Applications for approval under the EPBC Act are rarely denied: the majority of applications are approved,[112] with conditions attached. Had the South Australian Government referred the action to the Commonwealth Minister for the Environment, the Minister may have approved the golf course redevelopment.

[112] From the commencement of the EPBC Act in 2000 to 30 June 2019, of 6253 proposed actions referred to the Minister, 5088 were approved and 21 were not approved: Australian National Audit Office, *Auditor-General Report No.47 of 2019–20*, 'Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999', para [3], <https://www.anao.gov.au/work/performance-audit/referrals-assessments-and-approvals-controlled-actions-under-the-epbc-act>.

6. Aboriginal Cultural Heritage

6.1. Significance of Kaurna Heritage

Adelaide is an Indigenous landscape. Yet in comparison to the early colonists of Adelaide, which have highly visible built heritage, the Aboriginal heritage of the city is less accessible and perhaps to most, invisible. This is not only due to urbanisation, which has disturbed and removed most evidence of its existence, but also the difficulty non-Aboriginal people have in recognising Aboriginal cultural heritage.[113] Since 1836, the systematic, relentless removal of Aboriginal heritage sites means very little of the material culture of Kaurna people has survived, other than stone artefacts and culturally modified trees in some places.[114] This creates a limited impression of the diversity and scale of occupation of this area.

The importance of this is that sites such as *Piltawodli* (Possum Park) and *Karrawirraparri* (the River Torrens), in the heart of the city, have a special significance and immediacy. According to Harris amongst others,[115] *Piltawodli* had enough undisturbed surface evidence to suggest that more heritage may still exist under the surface. Such sites are rare, crucial and ephemeral. Not only did they support considerable numbers of Aboriginal people prior to invasion, but they are sites of early and often devastating first contact.[116] An understanding of the site is closely tied to an understanding of the ongoing effects of dispossession: decreasing access to culturally important places, dramatic alterations to the physical landscape, and removing resources and both tangible and intangible evidence, are part of the continuum of colonisation. The site cannot be seen as an isolated site or event even in relation to space directly surrounding it.

There are numerous references to Kaurna heritage and activities in the Application Area,[117] including diaries from Schürmann in 1839; the 'Protector of Aborigines' Walter Bromley in 1846; many maps including by George Kingston from 1842 and Freeling's Map of Adelaide from 1849 showing the 'Aborigines Location'; and sketches by Eugene von Gurard depicting the area in 1855. Situated within the Application Area, this was the place where Aboriginal people 'most commonly had their camp'.[118] The area housed several missionaries, a Kaurna school, colonial store and ten brick fenced sheds which were built to house Aboriginal people (initially three Kaurna and seven from the Murray tribes).[119] Both Aboriginal and non-Aboriginal people were hung at or near the Iron store and buried nearby, and it is recorded as a site of 'regular hangings of Indigenous men

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[113] See for example, McConnell A, Janke T, Cumpston Z, Cresswell ID (2021). Heritage: Indigenous heritage. In: *Australia State of the environment 2021*, Australian Government Department of Agriculture, Water and the Environment, Canberra, <https://soe.dcceew.gov.au/heritage/environment/indigenous-heritage>.

[114] For example, City of Adelaide (2026) *Kaurna Voices: Cultural Mapping of the City of Adelaide Parklands* <https://www.cityofadelaide.com.au/communiy/reconcilaition/kaurna-voices/>; City of Charles Sturt (2012) *Kaurna Meyunna Cutural mapping: A People's living cultural landscape* < City-of-Charles-Sturt,-Kaurna-Meyunna-Cultural-Mapping,-A-Peoples-Living-Cultural-Landscape.pdf>.

[115] Harris, R (1999). *Archaeology and Post-Contact Indigenous Adelaide*. Unpublished Honours thesis, Flinders University; Neale Draper & Associates (2023) *City of Adelaide Pirltawarldli Mini Golf Design Phase Kaurna Cultural Heritage Assessment*, <https://meetings.cityofadelaide.com.au/documents/s11015/Attachment%20B%20-%20Heriatge%20Report.pdf>

[116] Hemming, S and Harris, R (1998) *Tarndanyungga Kaurna Yerta. A Report on the Indigenous Cultural Significance of the Adelaide Parklands, Adelaide Parklands Management Strategy*. Report prepared for the Kaurna Aboriginal Heritage Committee, Hassell Pty. Ltd., and the Adelaide City Council.

[117] The Application Area consists of Pirlatwardli (Park 1) and John E. Brown Park (Park 27A) which includes the three Aboriginal Heritage Sites ID 40, ID 41 and 6628-503; Harris, S., Fitzpatrick R. and Thomas M., *Aboriginal Heritage Impact Assessment: A report on potential effects of salinity in irrigation on subsurface Indigenous archaeology in the Adelaide Parklands*. (2006). Unpublished report to SA Water, Adelaide.

[118] Harris, S., Fitzpatrick R. and Thomas M. (n 117) 16.

[119] Jones, D., '*Possum Park/Pirltawardli (Park 1) Report for the City of Adelaide*' (2007) <https://coa-bertha.s3.amazonaws.com/PDFs/possum-park-piltawodli-report.pdf>.

reinforcing the dominance of colonists over Indigenous peoples'.[120] For example, a public execution took place 'from a large gum tree on the present-day golf course at the base of a hill a 100 yards from the iron store'[121] and thus there is high potential for burials to be present within the Application Area.

The Application Area for the golf course redevelopment intersects *Karrawirraparri* (River Torrens), itself a significant heritage site, a waterway and a site for camping, hunting, stories, ceremonies, and burials. The area is listed on Aboriginal Affairs and Reconciliation (AAR's) central archives as *Kaurna Mythological Site*. As part of the consultation process under the *Aboriginal Heritage Act 1988* (SA) (see below), AAR released consultation materials for the golf course redevelopment, dated 30 June 2025.[122] These materials indicate the whole of the Project area is rich in Aboriginal heritage.

6.2. Protection of Aboriginal cultural heritage: the *Aboriginal Heritage Act 1988 (SA)*

6.2.1 Requirement for authorisation

Section 21 of the Aboriginal Heritage Act ('AHA') makes it an offence to excavate land for the purpose of uncovering Aboriginal sites, objects or remains, without authorisation from the Minister for Aboriginal Affairs. Under s 23 of the AHA, it is an offence to damage, disturb and/or interfere with Aboriginal heritage without authorisation from the Minister for Aboriginal Affairs. The decision whether or not to issue approval is granted to the Minister: Traditional Owners or a site's Custodians have no right to refuse developments that may damage, disturb and/or interfere with cultural heritage. The 'Traditional Owner' of an Aboriginal site or object is defined to be 'an Aboriginal person who, in accordance with Aboriginal tradition, has social, economic or spiritual affiliations with, and responsibilities for, the site or object'.[123]

Before granting an authorisation, the Minister for Aboriginal Affairs is required by s 13 of the AHA to consult with any Aboriginal organisation, traditional owner, or Aboriginal person that, in the opinion of the Minister, has a particular interest in the matter. AAR, a division of the Attorney-General's office, is responsible for administering the consultation process, and as part of this, prepares and releases consultation materials.

The AHA does not explicitly require project proponents/applicants to consult with Traditional Owners: rather, consultation takes place through the process administered by AAR as part of discharging the Minister's obligation to consult under s 13. The AHA itself refers to the obligation to 'consult', rather than placing an obligation to conduct, for example, meaningful engagement, and it does not require or facilitate the co-design of projects. As part of the authorisation process, the Minister must consult with the State Aboriginal Heritage Committee, which is an advisory body. The State Aboriginal Heritage Committee can make recommendations

[120] Ibid, 86.

[121] Ibid.

[122] Aboriginal Affairs and Reconciliation (2025) *Consultation Information Pack - North Adelaide Golf Course* <https://www.agd.sa.gov.au/__data/assets/pdf_file/0005/1166306/Consultation-Information-Pack-North-Adelaide-Golf-Course-incl.-attachments-v2-A3152618.pdf>.

[123] AHA, s 3.

regarding applications, but these recommendations do not have to be observed or implemented by the Minister.[124]

Further, certain aspects of 'best practice' (or even standard practice) in relation to heritage protection, such as undertaking cultural heritage surveys, and developing and abiding by cultural heritage management plans, are not required by the AHA itself, or by subordinate legislation such as regulations or Ministerial Determinations. Although the Minister for Aboriginal Affairs has published Guidelines under the Act, these are not legally binding; they have not been given the force of law by a requirement in the Act of Regulations that the Guidelines must be observed. The Minister may place conditions on an authorisation requiring a proponent to prepare and abide by a cultural heritage management plan. However, there is no express legislative requirement to do so, and there are no legally binding quality controls in relation to the content of surveys or plans nor the minimum professional qualification for those who prepare them.

To redevelop the North Adelaide Public Golf Course, the Department of the Premier and Cabinet (the project proponent) submitted an application to the Minister for Aboriginal Affairs for authorisation under sections 21 and 23 of the AHA to damage, disturb and/or interfere with Aboriginal heritage. There are concerns regarding the application that was made. While we (the authors of this brief) are not Traditional Owners/Custodians and cannot 'speak for Country' in relation to the redevelopment, we identify shortcomings in the application process under the AHA.

6.2.2 Criticisms of the application

The timing of the process

Where development projects are announced as a '*fait accompli*', before necessary approvals have been obtained, then there is a risk that project proponents will assume all approvals will be granted and that the process of obtaining authorisations will become a 'tick box' exercise. If in addition to this, project activities must take place to meet external deadlines, then there is a risk that consultation and engagement processes will be either bypassed or implemented in way that is designed to meet project timelines, not best practice for meaningful engagement and/or co-design. These processes may therefore fall short of standards required to meet the principle of Free, Prior and Informed Consent (FPIC), and other rights recognised in the *United Nations Declaration on the Rights of Indigenous Peoples*.

In the case of the golf course redevelopment, the submission of an application for s21 and s23 authorisation under the AHA occurred *after* the Premier had already announced that the redevelopment would proceed. All works were to be completed in time for South Australia to host the LIV golf tournament in 2028. All authorisations needed to be obtained, and the golf course design and project works need to be concluded, within a timeline that would ensure the LIV golf tournament could be held at the North Adelaide Public Golf Course in 2028.

[124] Ibid, s 8, 13.

Making the announcement that the golf course redevelopment would proceed, prior to the AHA application process and consultation, is not consistent with Australian heritage management guidelines.[125] The government has dual roles, as the project proponent (Department of the Premier and Cabinet) and the legal body responsible for issuing authorisation to damage, destroy or interfere with Aboriginal Heritage (the Minister for Aboriginal Affairs and Reconciliation). It is important that as proponent and regulator that the government model best practice standards for meaningful engagement with Aboriginal Peoples and/or co-designing projects. Ideally, this involves meaningful and respectful consultation and engagement with Aboriginal Peoples *prior* to an announcement that a project will proceed, with consultation conducted according to timeframes, and on the basis of information about the impacts of development proposals that are consistent with the principle of FPIC.

The application is too broad

The Department of the Premier and Cabinet – in which Aboriginal Affairs and Reconciliation sat before being transferred to the Attorney-General's department on 1 July 2022 - was aware of the heritage significance of the area prior to making the application under the AHA. Despite this, the application requested authorization to remove and destroy the entire archaeological record of the Application Area and authorise an extensive class of people and organisations to excavate, damage, destroy, and interfere with, any and all Aboriginal sites, objects and/or human remains that may be in the Application Area, without a time limitation. This includes itself, any other Ministers, agencies and instrumentalities of the Crown, and all employees, agents, advisors, contractors and subcontractors of the above. The scope of the application was excessive for a redevelopment of this nature.

The application lacks sufficient detail on the proposed management of heritage

The consultation materials (the 'Consultation Information Pack') provided for the AHA application by AAR[126] do not provide sufficient heritage or project information for consultees to consider. They consist of a background to the heritage that summarises prior reports; the applicant's Project Description; maps; and information on proposed management of heritage, which are general 'recovery' principles and are not project-specific. The application does not model minimum heritage management processes to other proponents.

The Project Description prepared by the Department of the Premier and Cabinet's planning consultant, URPS, describes project works as a 'guide for understanding', and that 'the full extent of ground-disturbing activities will be confirmed as the Project design progresses'. It states the area is of known importance to Kaurna people and that 'project will therefore include a range of strategies to manage impacts to Aboriginal heritage'.[127] However, there are no other singular sentences dedicated to Aboriginal heritage in the document and the section on 'Current and Historical Use' starts at the year 1900 with the golf course operations.

The application's description of how the Department of the Premier and Cabinet proposed to manage the discovery of Aboriginal objects and remains vague, with insufficient reference in the consultation materials to

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[125] See HCOANZ (Heritage Chairs of Australia and New Zealand) (2020). *Dhawura Ngilan: a vision for Aboriginal and Torres Strait Islander heritage in Australia and the best practice standards in Indigenous cultural heritage management and legislation*, Australian Government Department of Agriculture, Water and the Environment, Canberra.

[126] Aboriginal Affairs and Reconciliation (2025) *Consultation Information Pack - North Adelaide Golf Course* (n 122).

[127] Ibid.

Aboriginal heritage management principles. There are no detailed photos or descriptions; there was no prior survey of the site; and no statements from Kaurna or other Traditional Owners, only excerpts of reports. There is limited indication and certainty as to where heritage may be impacted or any indication about project flexibility should it be found.

There was no prior on-site survey with Traditional Owners to co-develop a meaningful cultural heritage management plan as occurs in other jurisdictions, nor to consider how such a process would be managed. There is no commitment to reburying any excavated ancestral remains: only that they will be recovered and recorded by a qualified archaeologist, and that storage of 'salvaged Aboriginal heritage' will be done in consultation with Traditional Owners. Although the application proposes that any uncovered heritage may be 'returned directly to the Aboriginal Community', it does not define which Aboriginal community nor address what they are to do with any Aboriginal objects or remains that are found. Samples areas of material culture will also be 'salvaged'. Many Traditional Owners view large-scale 'salvage' as the destruction of a place and perception of heritage as 'rubbish', with 'salvage' framed as an acceptable trade-off for development.[128]

The consultation materials do not include information about Aboriginal heritage monitoring; do not include a commitment to fund and support or engage Kaurna and other relevant Traditional Owner bodies to manage or to oversee works; and do not mention a requirement to conduct Aboriginal heritage site induction workshops for any staff, who may fail to recognise what the Aboriginal heritage they are damaging during excavation and stripping of the site looks like. These are all basic operational elements of a cultural heritage management plan.

Although the consultation materials make reference to using 'qualified' archaeologists, 'current heritage industry practices', 'heritage discovery protocols' and a 'cultural heritage management plan', there is insufficient detail. These inclusions indicate that the Department of the Premier and Cabinet will incorporate elements of 'best practice' when it decides how it will manage heritage, but only after it has been authorised to destroy it.

The materials for the golf course redevelopment do not disclose what potential there is for consultees to influence Project design, given the consultation materials state that construction will begin in 2025 and be completed in 2028 'or as early as 2027'. It is not written in a manner for Aboriginal consultees to understand the scope and nature of impacts or be able to make fully informed comments.

Where there is a lack of information it may be difficult for Traditional Owners to understand the likely impacts to heritage, the nature of the sites impacted, and the risks of damaging heritage, which may affect the ability of Traditional Owners to provide specific advice in relation to proposed development.

Failure to Consider Significance

The AHA protects sites and objects that are of 'significance' according to Aboriginal tradition or Aboriginal archaeology, anthropology or history, as well as Aboriginal remains. Although it can be seen that all Aboriginal heritage is significant, assessing the what, why and the how of 'significance' is a key part of determining the

[128] Victorian Aboriginal Heritage Council, *'Taking Care of Culture': State Of Victoria's Aboriginal Cultural Heritage Report* (Discussion Paper, 2020) <https://www.aboriginalheritagecouncil.vic.gov.au/sites/default/files/2021-01/Taking%20Care%20of%20Culture%20Discussion%20Paper_04012021_2.pdf>.

potential impacts on cultural heritage and how they can be avoided, mitigated and managed. Significance and the concept of a 'Statement of Significance' serves as the foundational metric within heritage practice. By assessing sites and objects against established criteria such as rarity, as prescribed in significance guidelines such as the Burra Charter,[129] archaeologists decide which material remains are critical to preserve for future generations.

In the case of the golf course redevelopment, the significance of the site is not assessed against any established benchmarks, nor explicitly stated or addressed, in the consultation materials. Rather, arbitrary and definitional meanings of the term 'significance' are used and based within the broad definition in the AHA as being significant to Aboriginal tradition, archaeology, anthropology or history. The consultation materials only state that this place is of significance 'primarily to Kaurna' but also to everyone, 'due to its central role in the history of South Australian race relations',[130] and not *why* it is significant. The material further states that 'undoubtably' the ground beneath the proposed golf course redevelopment still contains important archaeological evidence of the history of the area,[131] but not why this material is or is not significant to find, recover, keep or leave *in situ*.

Without consideration of the significance of the site, the consultation process for the proposed golf course redevelopment is fundamentally flawed. For example, *Piltawodli* holds intense, living social and spiritual significance for the Kaurna community. It serves as a foundational anchor of identity, tied to cultural continuity, Dreaming narratives, and historical memory. The profound community distress regarding the redevelopment, tree clearing, and the potential unearthing of ancestral remains, highlights its active, contemporary social value. Due to its proximity and inclusion of *Karrawirraparri*, the area possesses exceptionally high sub-surface archaeological potential. Ground-disturbing works risk intersecting with ancient occupational deposits, hearth sites, stone artefacts, and burials. This scientific value should trigger comprehensive archaeological site surveys and the implementation of a strict cultural heritage management plan prior to any application being lodged. The location's aesthetic value is anchored in its natural riverine topography and heritage trees. For the Kaurna people, old-growth vegetation represents physical monuments of country, and their removal for course reshaping severely disrupts the tangible and intangible sensory landscape elements of the site.

A valid consultation process relies on the principle of informed decision-making, which necessitates the disclosure of sufficient, objective information. In this instance, the cultural, archaeological, and historical significance of the site were not assessed against any recognised, objective evaluation criteria or established heritage benchmarks. Instead, the consultation materials rely on arbitrary, broad, and subjective assertions of significance under the general definitions of the Act. By omitting an explicit, evidence-based statement of significance, and substituting rigorous subsurface archaeological testing with speculative assertions (i.e., that the site 'undoubtably' contains subterranean evidence), a clear baseline of information was not provided. Failing to quantify and disclose the precise heritage values at risk undermines the ability of Traditional Owners,

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[129] See *The Burra Charter: the Australia ICOMOS Charter for Places of Cultural Significance 2013* https://australia.icomos.org/wp-content/uploads/The-Burra-Charter-2013-Adopted-31.10.2013.pdf.

[130] Aboriginal Affairs and Reconciliation (2025) *Consultation Information Pack - North Adelaide Golf Course* (n 122).

[131] Ibid.

the State Aboriginal Heritage Committee and the Minister to meaningfully evaluate the impacts of a proposed development, and deprives the community of the opportunity to make fully informed submissions as part of the consultation process.

Procedural Fairness

Under section 13 of the Act, the state is obliged to provide applicants and consultees with procedural fairness. As explained above, key project details are lacking in the consultation materials for the golf course redevelopment, which may have deprived the community of a fair opportunity to make informed submissions as part of the consultation process. Only one Aboriginal Community Consultation meeting about this application was initially scheduled to be, for 19 July 2025, which was attended by less than ten individuals.[132] Although the location is said to be where people from the 'Murray' were housed, it is unclear if Aboriginal peoples from along the River Murray were consulted.

More significantly, where a public announcement is made that a development will proceed before an application is lodged under the AHA, there is a real risk of a perception arising in the community that the outcome of the application is 'predetermined' i.e. a perception that there is no prospect that an application will be refused. The Premier announced that the LIV Golf tournament would proceed at the redeveloped golf course, before the application for ss 21 and 23 authorisation under the AHA was even lodged. Cabinet Ministers and the Premier publicly announced the redevelopment project would proceed, although it remained subject to the applications under the Act and referral to the State Aboriginal Heritage Committee. These announcements were made in the context of where a government department, as project proponent, requested a government Minister to grant an authorisation to the government to damage, destroy or interfere with Aboriginal heritage. These are the types of circumstances that are highly likely to lead to a *perception* that a procedure is unfair, irrespective of the *actual* fairness of the process.

6.2.3 Better practice is required in the future

The AHA is a blunt instrument that does not contain provisions to mandate due diligence. There are no legal provisions that set minimum standards, or require 'best practice', in relation to ss 21 and 23 applications, cultural heritage management plans, and consultation. This threatens the conservation of heritage and the cultural safety of Aboriginal people. Moreover, deficiencies in consultation and engagement practices may lead to breaches of human rights. Australia's commitment to the principle of FPIC dictates that engagement with Traditional Owners must not be a superficial, tick-box administrative exercise. True consent requires an informed basis, which cannot be achieved when the proponent provides deficient consultation materials.

In the case of the golf course redevelopment, after consultation, the authorisations under s 21 and 23 were approved by the Minister for Aboriginal Affairs in October 2025 with 31 conditions to protect Aboriginal heritage,[133] and a partial exclusion zone for *Pitlawodli*. However, because the consultation materials omitted essential facts required to make a self-determined decision, and the community cannot be fully informed under

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[132] Helen Karakulak, 'Fears for 'sacred site' amid LIV Golf course plans to churn up park lands' (n 4).

[133] 'Protected Heritage Area Established at North Adelaide Golf Course', *Golf Industry News* (18 October 2025) <https://www.golfindustrycentral.com.au/golf-industry-news/protected-heritage-area-established-at-north-adelaide-golf-course/>.

these conditions, a subsequent claim of successful consultation or assumed consent could be seen as invalid in terms of international standards for FPIC.

In New South Wales and Victoria, pre-commencement heritage due diligence is dictated by distinct, highly structured statutory frameworks designed to manage operational risk prior to the issue of permits. Under the *National Parks and Wildlife Act 1974* (NSW), developers mitigate strict liability exposure by adhering to a *Due Diligence Code of Practice*. Victoria enforces a prescriptive, risk-based trigger mechanism under the *Aboriginal Heritage Act 2006* (Vic). Proponents are legally barred from commencing works if a high-impact activity intersects with a designated Area of Cultural Heritage Sensitivity. This intersection triggers a mandatory, multi-stage cultural heritage management plan that must be formally evaluated and approved by the relevant Registered Aboriginal Party before any structural development or operational resource licenses can be lawfully granted.

In its *Taking Care of Culture* discussion paper,[134] the Victorian Aboriginal Heritage Council advocates for a critical shift from historical models of protection toward a holistic, living framework anchored in true self-determination. The discussion paper highlights that while the *Aboriginal Heritage Act 2006* (Vic) empowered Traditional Owners, contemporary heritage is still under threat. To achieve genuine protection, the document argues that culture must be managed as an interconnected, living ecosystem—comprising land, water, language, and knowledge—where Traditional Owners maintain autonomous, statutory control.

The AHA has not yet caught up with thinking about due diligence measures for protection and recovery, or the integration of Indigenous Cultural and Intellectual Property protocols[135] as is occurring in Victoria and New South Wales. Best practice requires genuine prior consultation, ongoing, meaningful engagement with Traditional Owners and mandated due diligence measures; as well as policies and mechanisms to prevent premature and/or deficient applications going to public consultation.

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[134] Victorian Aboriginal Heritage Council (n 128) 93.

[135] Terri Janke, *Our Culture: Our Future — Report on Australian Indigenous Cultural and Intellectual Property Rights* (1998, Report, Michael Frankel & Company).

7 OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

The Organisation for Economic Co-operation and Development, of which Australia is a member, has published *Guidelines for Multinational Enterprises on Responsible Business Conduct* ['OECD Guidelines']. These set out non-binding recommendations for multinational enterprises (MNEs) for responsible business conduct, including that MNEs carry out 'risk-based due diligence' to avoid and address adverse impacts on the environment and human rights that are associated with their operations, supply chains and other business relationships.

Where MNEs operating in Australia fail to conduct risk-based due diligence, a complaint may be made to the Australian National Contact Point (AusNCP). After a complaint is made, an Independent Examiner will assess the complaint to determine if it merits further consideration, publishing an Initial Assessment. If further consideration is warranted, the AusNCP will offer to engage in a dispute resolution process with the parties (known as 'good offices') to help both parties resolve their dispute. This is a key benefit of the process, as the AusNCP can assist the complainant and MNE to work together to ensure better protection of the environment and/or human rights, for example, by changing project design, and/or engagement practices. If the MNE does not accept the good offices and withdraws from the process, or the dispute is otherwise not resolved, it will proceed to examination, where an Independent Examiner will determine whether or not the Guidelines were breached, and publish the outcome of the complaint, including recommendations for the MNE. The AusNCP will follow up in 12 months to review the MNE's implementation of the recommendations and see if further AusNCP engagement is needed. The AusNCP will publish a 'Follow Up Statement'.

Chapter IV of the OECD Guidelines sets out the recommendations for MNEs in relation to international human rights (including the rights of Indigenous Peoples), while Chapter VI sets out recommendations in relation to the environment. Enterprises should, among other things, 'conduct their activities in a manner that takes due account of the need to protect the environment, … avoids and addresses adverse environmental impacts and contributes to the wider goal of sustainable development'.[136] Among other things, MNEs should conduct risk-based due diligence with respect to identifying and assessing adverse environmental impacts as part of an environmental management system.[137]

The obligation to conduct due diligence does not only relate to a MNE that directly causes an adverse environmental impact. The due diligence obligation is enlivened where a MNE 'contributes to' an adverse environmental impact or is 'linked to' an adverse environmental impact to the environment by a business relationship.

> *An enterprise 'causes' an adverse environmental impact if its activities on their own are sufficient to result in the adverse impact. An enterprise "contributes to" an adverse environmental impact if its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact. Adverse environmental impacts can also be directly linked*

[136] *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023), 33.

[137] Ibid, Ch IV, Guideline 1 and 2, and para [67].

> *to an enterprise's business operations, products or services by a business relationship, even if they do not contribute to those impacts.*[138]

The OECD Guidelines identify adverse environmental impacts as '*significant* changes in the environment or biota which have harmful effects on the composition, resilience, productivity or carrying capacity of natural and managed ecosystems, or on the operation of socio-economic systems or on people'.[139] 'Significant' is not defined, but adverse impacts may be transboundary or 'localised' impacts; and the OECD Guidelines state that entities should carry out 'heightened due diligence' with respect to potential adverse impacts on biodiversity in protected areas.[140]

'Meaningful stakeholder engagement' is a key part of risk-based due diligence, including with stakeholders 'affected by adverse environmental impacts associated with an enterprise's operations, products or services'.[141] Meaningful engagement with First Nations peoples is also a key part of risk-based due diligence in relation to human rights. In South Australia, this may require engagement with Native Title holders (where native title exists over land and waters) and/or with Traditional Owners who are individuals with interests in cultural heritage protected under the *Aboriginal Heritage Act 1988* (SA).[142]

Complying with domestic authorisations is not enough to ensure due diligence

Importantly, recent assessments by the AusNCP, such as the Final Statement, *Complaint submitted by Andrew & Robert Starkey against Saab Australia P/L, Saab AB and Saab Bofors Dynamics* (17 October 2025) and the Initial Assessment, *Complaint submitted by Environment Tasmania Incorporated concerning Woolworths Group Limited* (2 March 2026) have made it clear that a MNE cannot rely on an authorisation issued under domestic legislation to avoid the obligation under the OECD Guidelines to conduct risk-based due diligence in relation to the adverse impacts of their operations on human rights and/or the environment. 'Compliance with domestic law does not ensure consistency with the OECD Guidelines' and the 'failure of governments to uphold the principles and standards consistent with the [OECD] Guidelines or their associated international commitments does not diminish the expectation that enterprises observe the [OECD] Guidelines'.[143]

Governments may cause MNEs to be directly linked to human rights harms

The Complaint against Saab arose from the discovery of an unexploded missile on Country around Lake Hart West, in southern central Australia. Lake Hart West lies within the Woomera Prohibited Area, which is regulated by the Australian Department of Defence, and used by the Australian Government for weapons testing. Mr Andrew Starkey and Mr Robert Starkey are Kokatha senior lawmen with custodial obligations under

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[138] Ibid, para [68].

[139] Ibid, 35.

[140] Ibid, paras [68] and [80].

[141] *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023), Ch II General Policies, para 28; Ch IV, Guideline 1 and 2.

[142] AusNCP, *Final Statement, Complaint submitted by Andrew & Robert Starkey against Saab Australia P/L, Saab AB and Saab Bofors Dynamics* (17 October 2025); AusNCP, *Final Statement: Complaint by Andrew Starkey and Robert Starkey regarding ElectraNet Pty Ltd* (9 June 2021); AusNCP, *Follow up Statement: in relation to the complaint submitted by Andrew Starkey and Robert Starkey regarding ElectraNet Pty Ltd* (8 November 2022).

[143] AusNCP, *Initial Assessment, Complaint submitted by Environment Tasmania Incorporated concerning Woolworths Group Limited* (2 March 2026), paras [36] and [44].

Kokatha traditional law in relation to the site. They discovered the unexploded missile in January 2021 while engaged in cultural practice on Country.

The Independent Examiner found that by using the missile and failing to remove it, the DOD/Australian government directly caused human rights harms, by affecting the ability of Andrew Starkey and Robert Starkey and other relevant Traditional Owners to enjoy human rights protected by international law.[144] Saab failed to conduct due diligence because it had not assessed the 'downstream' impacts of its weaponry production and supply, that is, the impact that the use of its weapons may have on human rights. In this case, that failure did not itself cause or contribute to the human rights impacts experienced by Andrew and Robert Starkey. However – and crucially - the actions of the Australian Government through the DOD caused Saab Australia to be directly linked to the human rights harm that was caused by the Government.

MNEs are expected to use their leverage with government

When the actions of governments harm human rights, as in the Saab case, this can 'enliven the responsibilities of an enterprise under the OECD Guidelines'.[145] This is because the OECD Guidelines provide that MNEs should 'seek ways to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or service by a business relationship'.[146]

There is an 'expectation under the OECD Guidelines for an enterprise with direct links to an adverse impact to use its leverage 'to influence the entity causing the adverse impact to prevent, mitigate or remediate that impact'. Where an enterprise's leverage is limited, the enterprise should seek to create opportunities to increase its leverage".[147] Therefore, where its adverse human rights impacts are directly linked to a MNE, 'the Australian Government should expect – and consistent with OECD Guidelines encourage - enterprises to use and build their leverage to influence the entity causing the adverse impacts (which may include government agencies)'.[148]

The Independent Examiner discusses the issue of 'leverage'.[149] The Independent Examiner noted that Saab has 'immediate access to government' in ways that Andrew and Robert Starkey did not. Saab could seek to use its leverage not only with Defence, but other bodies, for example, the Woomera Prohibited Area Advisory Board, which oversees the co-existence framework in the WPA, to prevent future adverse human rights impacts. Noting that 'several Saab former or current employees are past or present participants on the WPA Board, or have had high-level positions in Defence at the Commonwealth and State levels', the Independent Examiner suggested Saab may be in a position to use these connections to encourage the WPA Board to seek input from First Nations people/Traditional Owners as to the 'appropriate weight to be given to cultural matters' in the governance of the WPA.[150]

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[144] AusNCP, *Final Statement, Complaint submitted by Andrew & Robert Starkey against Saab Australia P/L, Saab AB and Saab Bofors Dynamics (17 October 2025)*, para [113].

[145] Ibid, para [9.4]

[146] Ibid.

[147] Ibid, para [7.16].

[148] Ibid, paras [9.6] and [136]

[149] Ibid, paras [127]-[133].

[150] Ibid, para [30].

Another way to enhance leverage is by 'communicating the possibility of responsible disengagement if expectations around responsible business conduct are not met'.[151] In other words, MNEs should consider withdrawing their product to ensure the customer does not misuse it.

Application to the Adelaide Park Lands

The golf course redevelopment was initially announced to be for the purpose of holding the LIV Golf Tournament in Adelaide in 2027. LIV Golf was owned and financed by Saudi Arabia's sovereign wealth fund, the Public Investment Fund, until it withdrew funding for LIV Golf in April 2026, and the future of LIV Golf is somewhat uncertain. However, the South Australian government website states that from 2028 the course will host LIV Golf Adelaide and the Women's Australian Open. The entities that are directly involved in, or have already been identified as likely to benefit from, the redevelopment are:

- The owners/funders of LIV Golf;
- The owners/funders of the Women's Australian Open (operated by Golf Australia and the WPGA Tour of Australasia, co-sanctioned by the Ladies European Tour and the U.S.-based LPGA Tour);
- Greg Norman Golf Course Design (GNGCD), which operates as a subsidiary of the Greg Norman Company, a global corporation, and which is leading the design of the redeveloped golf course;[152] and
- Multinational construction companies involved in feeling trees or undertaking earthworks or construction for the redevelopment.

The MNEs that are involved in the redevelopment of the golf course in the Adelaide Park Lands are subject to the obligations under the OECD Principles to conduct risk-based due diligence to ensure they do not cause an adverse impact on human rights or cause adverse environmental impacts. The due diligence obligation is also enlivened if the MNEs contribute to an adverse impact on the environment or human rights; or *even if they do not contribute to those impacts*, if they are directly linked to an adverse impact, because of their operations or services by a business relationship. If, in redeveloping the golf course, the state government is responsible for causing an adverse impact on human rights or the environment, then these MNEs may be subject to a complaint to the AusNCP if they have not conducted risk-based due diligence. These entities will also need to show that they have used their leverage with the South Australian government to influence the latter to prevent, mitigate or remediate the adverse impact(s).

A key issue that would need to be addressed in a Complaint in terms of the obligation to conduct risk-based due diligence to avoid or address environmental impacts in the Adelaide Park Lands, is whether there has been an 'adverse impact' on the environment, in the sense of the redevelopment causing a 'significant' change in the environment.

Stakeholder engagement is a crucial part of due diligence. Multinational enterprises cannot rely on an authorisation issued under domestic legislation, such as the AHA or the NAPGC Act, to avoid the obligation

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[151] Ibid, para [128].

[152] Greg Norman Golf Course Design, 'GNGCD Tapped to Redevelop North Adelaide Golf Course' (17 February 2025) <https://gngcd.com/press/gngcd-tapped-to-redevelop-north-adelaide-golf-course/>.

under the OECD Guidelines to conduct risk-based due diligence in relation to their potential impacts on human rights, including the rights of Indigenous Peoples, and the environment.

Furthermore, if the South Australian government has caused adverse impacts to human rights and the environment by its actions in relation to the redevelopment, then any MNEs involved in the redevelopment may be directly linked to the human rights harm that was caused by the Government. This will enliven the responsibilities of those MNEs under the OECD Guidelines to 'seek ways to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or service by a business relationship'. This may require MNEs to show how they sought to use their leverage with the government to influence the government to prevent, mitigate or remediate that impact, and to consider the possibility of disengagement from the redevelopment.

General consequences for MNEs and governments

The findings and recommendations of the Independent Examiners are not binding in a court of law. However, failure to comply with the OECD Guidelines, withdrawing from the process, and/or filing to comply with the recommendations of the Independent Examiner gives rise to reputational and operational risk. These risks (including adverse publicity) can have serious consequences for MNEs that have caused, contributed to, or are linked to, adverse impacts on human rights or the environment. Although the Guidelines are not binding, compliance with them is a condition of lending by large multilateral investment bodies, superannuation funds, and banks such as the National Australia Bank. MNEs that do not comply with the Principles and are subject to complaints may find it harder to obtain investment finance.

This is not simply a matter for the MNEs but also the state government and Australian Governments, which must now consider the risks and consequences that their practices and policies in relation to human rights and the environment may have for large transnational corporations seeking to obtain finance to invest and/or operate in Australia. Further, national governments that consistently fail to ensure compliance with the OECD Guidelines may be at risk of losing their OECD status. Whether or not there has been an adverse impact on human rights or the environment in this particular case in relation to the golf course redevelopment, if the South Australian government is the subject of consistent complaints under the OECD Principles, this could have adverse consequences for the reputation of the state of South Australia and the Australian Government.

8 Conclusion

The Adelaide Park Lands have always been important for sport and recreational use, play spaces, community events such as the Adelaide festival, and the provision of community services in public buildings such as hospitals. However, the Park Lands are also a place of significance to the Kaurna people, who are the Traditional Custodians of the land and waters. The Park Lands are also a place of natural beauty and a type of protected area: the 'natural heritage and biodiversity within the Adelaide Park Lands is one of its most valuable components'.[153]

The Park Lands provide an important refuge for a healthy diverse representation of wildlife native to the Adelaide region. Already nominated as a Heritage Place for diverse reasons, the Park Lands might be considered as a distinct ecosystem. This is not a typical or 'natural' ecosystem, but an important functioning system that supports biodiversity within an urban environment. The Park Lands provide increasingly critical habitat at a time when native species are under enormous pressure and depend on diminishing remnant vegetation for survival. Protecting and conserving biodiversity, and enhancing the climate resilience of the Park Lands, are key strategies for the management of the Park Lands.[154]

The redevelopment of the North Adelaide golf course raises critical questions about the appropriate balance of uses in the Park Lands, and the rights of the community to be informed and consulted in regard to decisions about how the Park Lands are managed and used. Enshrining rights of community engagement and participation in planning assessment and approval procedures, and providing the community with timely, comprehensive and transparent information, are features of good environmental governance that should characterise the current and future management and use of the Adelaide Park Lands.

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[153] *Adelaide Park Lands Management Strategy: Towards 2036*, Part B – Priorities, Directions, Goals, Goal 3 – Natural Systems, Cultural Landscapes and Climate Resilience.

[154] Ibid.

Further enquiries

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Australian University Provider Number PRV14404
CRICOS Provider Number 04249J

Published August 2026