SUBMISSION

16 December 2022

Response to Further Review of the Planning & Building System in South Australia

MASTER BUILDERS
SOUTH AUSTRALIA

MASTER BUILDERS SOUTH AUSTRALIA

Submission

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1. Introduction

This submission is made on behalf of Master Builders Association of South Australian Inc ("Master Builders SA"), established in 1884 as the peak body representing South Australia's building and construction industry.

Master Builders SA is committed to building a productive industry and a prosperous South Australian community and economy. As part of this, certainty within the planning system Is a cornerstone to drive growth and balance the need for affordable and desirable housing, with appropriately zoned land for supporting these communities.

The South Australian building and construction industry directly employs more than 55,000 South Australians across all sectors, including residential, commercial, civil engineering, land development and building completion services. Indirectly, the industry supports tens of thousands more South Australian jobs.

The industry undertakes about $15 billion of work every year, contributing more than $1 for every $7 of economic activity within the State. Indirectly, more than one-quarter of South Australia's wealth is produced by the building and construction industry.

South Australia's building and construction industry is focused on the development and transfer of skills into a life-long career. Master Builders SA is proud of the industry it represents, the jobs it creates, the thousands of homes it builds and extends for families every year and the offices it has built for South Australian businesses.

2. Background

South Australia fully adopted the Planning, Development and Infrastructure (PDI) Act 2016 to govern development practices in this state in March 2021. The Planning and Design Code ('the Code') is the key instrument of planning policy under the PDI Act and Regulations.

Despite being 7 years in the making, the final version of the Code was, in the end, "rushed" together after the last round of consultation in late 2020 and with it came a raft of errors and omissions together with last minute changes the building industry and the general public alike were "blind-sided" by, including the increase of site area minimums proposed for row/terrace dwellings in the General Neighbourhood Zone from 200m^2 to 250m^2 and the introduction of site "soft landscaping" requirements for all development applications including minor additions and ancillary structures.

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It seemed that a hand-picked group of Local Government employees were the only ones privy to the final version of the Code prior to the designated day of its rollout. As a result, there were a number of key changes made to the Code derived from "in confidence" working groups involving this select group of people without the proper scrutiny and consultation with industry and the general public.

Even through the formal channels of consultation, many of the policy changes that Councils and industry professionals identified in submissions to the Department of Infrastructure and Transport (DIT) as erroneous in the November 2020 version of the draft Code, were not fixed for the final version.

Additionally, there are issues with the Plan SA portal that inhibit day-to-day productivity and provide an unacceptable level of detachment from what are legislative requirements in terms of application processing, such as the ability for an authority to allow the clock to go beyond zero in the verification process without any penalty for doing so.

Master Builders provided comments to many of the issues raised herein in the initial request for feedback to the "Miscellaneous Technical Enhancement (MTE) Code Amendment" in 2021. The MTE Code Amendment in its draft form does not appear to target many of the issues that were previously raised so these are again raised to ensure that such issues are looked at as part of the subsequent holistic review.

The Master Builders SA Submission targets a number of areas in the Code, ranging from land use definitions, administrative terms and explanatory information to notification triggers in Table 5 and corresponding performance outcomes as Technical Improvements, with Policy Improvements targeting some of the areas of concern that emanated from the change of the planning system, as well as specifically highlighting some of the issues being experienced within the network of Accredited Professionals who submit and manage applications on behalf of many of our members.

The focus of the review should be in having the biggest impact on the greatest number of applications to free up backlogs and enable greater certainty in the system, which was promised as part of the initial reform agenda. In order to do that, the review needs to look squarely at the types of development that make up the 90+% of all applications in the system, that being applications for dwellings and minor structures.

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3. Housing Affordability / Increase Housing Supply

It is noted that the review does not specifically address the issue of housing affordability, the ability for South Australians to own their own home, nor does the review consider the "build to rent" type housing arrangements that are emerging.

The cost of serviced, residentially zoned land is critical to entrench South Australia at its current competitive advantage to the eastern states, as the desirable and "affordable" alternative. The current rental crisis and ballooning costs of housing supply can be addressed through targeted land release, be that in peri-urban or regional areas, as well as improving the infill supply available and making development less costly, e.g. through putting caps on the ever-increasing open space contributions, sky-rocketing SA Water and SAPN costs associated with infrastructure, and allowing greater yield in areas that are within easy reach of services and transport nodes.

Noting that the increase in allotment sizes for row or terrace type dwellings occurred within the General Neighbourhood Zone between the draft Code and the version at 19.3.21 without the engagement of industry, one mechanism to assist in supply of infill housing in appropriate areas would be to re-introduce 200m^2 as a minimum benchmark for such housing where it is located within 400m of an Activity Centre, public open space, and/or certain transport nodes.

Master Builders believes that a reduced site area for terrace/row dwellings could also be provided for applications combining the land use and division which involve two storey dwellings, e.g. 200m^2 given the criteria of the Code can still be achieved with such dwellings despite a reduction in site area. It is noted that the existing policy allows an averaging of the frontages for such housing but not site areas. Noting that extra area is required for the houses at the "ends" of row housing arrangements, the same "averaging" approach should also apply to site areas.

Furthermore, the boundaries of the General Neighbourhood Zone should be expanded to target areas that contain large allotments and a high percentage of post-war housing stock in which outdated Development plan policy from yesteryear appears to have been carried over to the Code, stifling development opportunities that thwart housing supply in what are sought after locations. The examples especially include:

- The whole of St Marys, parts of Daw Park, Melrose Park, lower lying parts of Panorama and Pasadena in City of Mitcham (covered by Suburban Neighbourhood Zone and with outdated policy for infill retained as Technical and Numeric Variations in the Code such as 500m^2 site areas and minimum 15m frontage requirements for detached housing)

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- Some of the "lower" elevated areas south of Seacombe Road that were previously earmarked for Part 2 of the Marion Council's Housing Diversity Development Plan Amendment, where closer to shops, public transport and/or major transport routes, which are currently limited to 700m^2 minimum site area for sites with gradient 1 in 8 or shallower.

4. Supply of Commercial and Industrial Land

A number of our commercial members are citing a significant increase in the cost of commercial land as thwarting their clients' ambitions to expand within the areas in which they are currently operating. The global supply chain crunch across many sectors is driving an increase in demand for local production.

Firmly in the radar of Government should be the consideration of future land supply to cater for niche industry in the State, as well as increase in local manufacturing of smaller scale.

Areas where Home Industry Zone still applies should be looked at as part of the review, with widespread recognition that the zone is not desirable, encouraging land use conflict between businesses and redundant housing to continue in areas such as Athol Park and parts of Wingfield. Converting this land to Employment Zone will provide businesses greater certainty in establishing in such areas and gradually erode the undesirable piecemeal and often dilapidated housing that exists in these areas.

Other areas where there is currently land close to Mineral Extraction areas (such as Greenwith, near Golden Grove) should also be expanded for increase in supply of land for commercial estates that are compatible with extractive uses and provide a buffer between residential development and mining.

5. Certainty for Development Approval

Many of our members have reported that when using accredited professionals in processing Deemed to Satisfy (DTS) planning applications as well as being privately certified for Building Rules Consent, the applications are nonetheless still being "blocked" by Councils at the final step – issue of Development Approval.

Councils have been providing correspondence to the effect that they do not recognise the consent issued as a valid consent based on questionable legal advice around the

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interpretation of minor variations and asserting that an accredited professional has overstepped their legislative powers.

While Master Builders acknowledges there is a responsibility for Accredited Professionals to act ethically within the limits of the legislation there are mistakes that can be made and there are areas of grey within planning that can be argued one way or the other. The fact that a professional within a Council makes a judgement call on something, versus a private accredited professional, does not make the former correct.

There needs to be accountability for all working within the system and abuse of regulatory powers investigated and dealt with as necessary, for anyone working in the system.

Master Builders believes that there should be a deemed approval process once all relevant consents have been issued, and an appeal being required to bring that deemed approval into question, to stop the withholding of approval on spurious grounds. The Deemed Approval process would require amendment to Section 99(2)(b)(ii) and 99(3) of the *Planning Development and Infrastructure (PDI) Act 2016*.

If a Deemed Approval is not supported, it is suggested that a change to allow an accredited professional (planning or building) to issue full Development Approval is enabled by legislative change.

A reduction in the statutory timeframe required to issue the final Development Approval to 3 business days (from 5 – see Regulation 53(7)) should be provided regardless.

Additionally, any minor variations to the plans that have no effect on planning matters should be able to be processed by the Accredited Professional (Building) without the need to go through the planning authority to verify this is the case and without the need for payment of a "variation" fee.

In many cases there are changes to internal layouts, minor locational changes to windows on side and rear elevations, truss manufacturer details changing, or the like and the process for dealing with such variations between consents is unwieldly and causes delays and incurs additional costs.

A process for an accredited professional to identify a variation and determine why they have considered the variation to have a minor consequence in planning terms should be available on the Portal to avoid such things being held up by Councils.

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6. Verification Process

Schedule 8 of the *Planning Development and Infrastructure (General) Regulations 2017* provides for information that is required for planning assessment.

Planning authorities are using Schedule 8's onerous level of information as a mechanism to delay verification and impose unnecessary burden on proponents at the front end, when such detail is not actually required to perform the key tasks of verification, in determining the elements, the assessment pathway, the relevant authority and the "appropriate" fees.

For example, Council planning authorities requiring soft landscaping plans, percentage of impervious surfaces and location and dimension of windows and ceiling heights on plans and elevations is not necessary to determine these things but is regularly being used as a means to delay verification.

As such Master Builders believes that a separate Clause that specifically identifies the information requirements for verification is needed to stop this practice.

It is also suggested Section 119 of the PDI Act and Regulation 31 of the PDI General Regulations be amended to prescribe the "appropriate" fee for lodgement as payment of the "Electronic Lodgement" fee or "Hard Copy Lodgement" fee:

- Provision should be made in Plan SA portal for applicants to pay the appropriate fee at the time they submit the application to the portal, to "lock in" the version of the Code at the time the application is verified by the relevant authority.

There should be accountability and consequences for the relevant authority not adhering to the timeframe enshrined by Regulation (i.e. 5 business days) to verify an application. It is suggested that the PDI Regulations include a regulation that prescribes days expended beyond 5 business days in the verification process being subtracted from the assessment time on the clock or alternative mechanism that allows the proponent to serve notice on the authority that the proposal has been verified and assigns the available pathway, with the authority needing to the apply to change that pathway.

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7. Poor Code Policy

Front setback references

Master Builders does not believe the General Neighbourhood policy for front setbacks to be appropriate for areas in which, clearly, a new streetscape character is sought. Reference to "existing" housing stock on adjacent sites facing the same street places limitation on infill and particularly where there is an ad hoc setback pattern in the street and the subject site happens to be alongside one or two remnant post-war dwellings much further from the street than what might be the emerging setback pattern seen in newer dwellings. A separate policy mechanism that recognises an emerging streetscape pattern is needed.

Additionally, front setbacks should not purely reference dwellings that face the same primary street, but consider the secondary street setback of an adjacent dwelling. This may be addressed with the MTE Code Amendment, but Master Builders highlights the need for this in case it is not addressed.

Stormwater Management Overlay

One of the profoundly flawed and unnecessary Code policies is DTS/DPF 1.1 Part (b) of the Stormwater Management Overlay with a requirement for the roof area of dwellings to comprise not less than 80% of the impervious area on the site.

The attainment of a minimum 80% dwelling roof coverage to total impervious surfaces for many dwellings is inherently difficult when one proposes a dwelling on a subdivided site and there is a minimum 900mm perimeter pathway *(as required by the Building Code with falls away from footings) and a standard width driveway.

Furthermore, the way to achieve the 80% threshold is often to increase the eaves width and then just vary the applicaiton at building rules consent stage through a Regulation 65 Amendment.

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The policy serves no planning purpose not achieved by other policy and does not correlate to the Performance Outcome, seeking to:

PO 1.1

Residential development is designed to capture and re-use stormwater to:

1. *maximise conservation of water resources*
2. *manage peak stormwater runoff flows and volume to ensure the carrying capacities of downstream systems are not overloaded*
3. *manage stormwater runoff quality.*

Part (a) of the DPF/DTS criteria outline the size of retention/detention tank dependent on the site area and the percentage of impervious land. The PO is attained by Part (a) without Part (b) being required. Limiting the proportion of the dwelling roof area to overall impervious area does not directly correlate to managing peak flows.

If the planning intent is to limit the amount of impervious area comprised by roof areas on any particular site, the site coverage provisions are already in place to deal specifically with this issue and there is no loophole to avoid these.

Site coverage is designed to limit the total built footprint on sites, presumably to also limit stormwater output from sites, but the Performance Outcome relevant to site cover does not specifically mention this as one of the reasons to limit coverage.

The site coverage provisions are called into the assessment for any additions, sheds and ancillary roofed structures. These are Zone specific and relate to the type of dwelling.

Overall, SW Management Overlay DPF/DTS 1.1 Part (b) serves no purpose other than create complexity in the documentation and assessment. Master Builders suggest removal of this altogether.

It is also highlighted that DTS/DPF 1.1 Part (a) includes an option to plumb rainwater to a hot water service. Having untreated roof water connected to a hot water service conflicts with the plumbing code (NCC Vol 3 and AS 3500.1 (a primary referenced document)) and may void warranties for hot water service units.

Where this is an option, it must be reinforced with policy that highlights the risks of this, and how these are to be overcome. Master Builders believes this to be poor policy and is better removed.

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8. Confusing Terminology that is not Defined

The Code introduces terms such as "employment" land use and "neighbourhood" when speaking to themes of encouraging certain forms of non-residential uses within the suite of Neighbourhood-type Zones, for improving activity, convenience and walkability. This is seen as follows in the General Neighbourhood Zone as an example:

Desired Outcome (DO) 1

> *Low-rise, low and medium-density housing that supports a range of needs and lifestyles located within easy reach of services and facilities. Employment and community service uses contribute to making the neighbourhood a convenient place to live without compromising residential amenity.*
>
> (emphasis added)

In addition to the Desired Outcome, Performance Outcomes PO 1.1, PO 1.3 and PO 1.5 of the General Neighbourhood Zone include use of the above terms, which are not defined in the Code.

There was much discussion surrounding what an "employment land use" entails in the context of the General Neighbourhood Zone in the recent matter of *Jahk Enterprises Pty Ltd ATF Jahk Trust v the Assessment Panel of City of Campbelltown* ERD 13-2022. A judgement is expected in the case in January 2023 and it is recommended that the expert panel consider the implications of that judgement in making any policy decisions in respect of such definitions.

When one considers "employment" uses that could mean virtually anything – surely these uses are not those actually envisaged in the "Employment" zones, i.e. larger commercial, storage, distribution and industrial uses.

There needs to be another term that includes specifically the types of non-residential uses encouraged in the various Neighbourhood-type Zones within the Desired Outcome and how these should be situated in the context of any given area within the Zone. The focus should be on "active street frontages" and "walkability" for the types of non-residential uses that complement residential uses in a neighbourhood-type zone.

Noting that the zones are now vast areas across multiple Council regions, if there is a wider catchment analysis required of planning authorities when considering the serviceability and convenience aspects of a non-residential proposal, that must be given

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some quantitative and qualitative guidance with appropriate terms. If using a term such as neighbourhood instead of zone or locality (which have a generally accepted definition) provide clarity as to what is meant by that (such as a specified distance to any given site).

9. The Missing Deemed to Satisfy or Accepted Development

Insofar as one of original intents of the state-wide Code being to make things more certain for proponents it is Master Builders' view that the delivery and intent could not be further apart. Anecdotal evidence suggests there has been a reduction in the number of applications that have been able to be assessed through an "as of right" assessment pathway even if the Code, in theory, provides a greater number of the types of development that can be assessed in such a manner.

There are two main reasons for this, as detailed below:

1. The documentation requirements of Schedule 8 are too onerous for simple forms of development and Council planning authorities are less likely to waive certain requirements to plans that may actually not assist the planning assessment.
    a. Where a proponent does not supply the level of documentation required by Schedule 8, the authority is able to channel the application into a performance assessed stream in lieu of DTS even though the ability for the development to occur as of right was there at the beginning.

2. The Overlays within the Code are either too limiting for a DTS pathway (i.e. the policy does not cater to "non-standard" situations) or they oust a DTS pathway altogether even though their policy may not be relevant to the assessment, or there is DTS policy that can easily be met. For example;
    a. The Hazards (Flooding – Evidence Required) Overlay requires dwellings/additions to be 300mm above the highest top of kerb adjacent to the development site. What about sites with more than one street frontage and the ability to drain to a secondary street, or allotments with a drainage easement at the rear? It would be an easy thing to provide DTS policy as a separate clause under DTS 1.1 of the Overlay to cater for such circumstances.
    b. The Hazards (Flooding – General) Overlay requires dwellings/additions to be 300mm above a 1% AEP level, which is not mapped in the Code or on SAPPA. The difficulty in obtaining this information from Council to Council varies, and it is considered that the failure to provide specific mapping of such a level should mean that the level is taken to be the same as the height of the top of adjacent kerb level in the absence of such data being available so a DTS pathway could still be available.

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c. Hazards (Bushfire – General) Overlay provides policy for dwellings and other habitable buildings in areas of general bushfire risk, assigned typically as BAL Low in BCA terms. There are policies for designated fire fighting water supply depending on the size of the site and the availability of mains water, (Schedule 8 requirement for any designated bushfire prone area) as well as access provision and asset protection zone. The Overlay completely removes the capacity for a DTS assessment pathway for a number of residential types of development including dwelling additions that were previously able to occur as of right under the former planning system. It applies across most regional areas without a specific bushfire risk level assigned and can include whole regional townships (such as Blanchetown and Swan Reach as examples), and places greater resource burden on councils that are the most financially stretched. Remapping this to remove townships, as well as providing DTS pathways for certain forms of low risk residential development seems logical.

d. Traffic Generating Development Overlay provides policy for larger development types within 250m of Urban Transport Routes and Major Urban Transport Routes as well as major roads in regional areas. The Overlay completely removes the capacity for a DTS assessment pathway for a land division (even a standard "one into two" land division) and this is irrespective of whether there are DTS approved dwellings on the subject site, noting that a DTS pathway still exists in many circumstances for dwellings on arterial-type roads. It is our belief that the Overlay has no role in the planning system, and it would make more sense for that very limited subset of larger developments spoken to by the Overlay to be dealt with by referral to the Department for Infrastructure and Transport by policy within Schedule 9 of the Regulations. Some policy, if needed, could be provided in a general module and specifically cater for those larger types of development.

Overall, there is a significant burden placed on proponents seeking to attain a Deemed-to-Satisfy assessment, and Master Builders estimates there to have been a dramatic reduction in the number of applications being channeled down an "as of right" assessment path than under the former planning system.

Focus on streamlining the verification process to discern between what information is required to verify an application and what is required to assess an application, as well as fixing a number of Overlays should be front and centre of any review that targets improving efficiencies in the system.

10. Overlays and their Function

Overlays can have a policy function, a referral function, or determine the assessment

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pathways available for certain types of development. They can do all three things.

Master Builders believes there are too many overlays and many that simply provide policy without really serving a purpose for the majority of the development applications which will call these in through SAPPA. There are those that have the unfortunate and unintended consequence of removing a potential DTS assessment pathway such as those previously mentioned.

In many instances a development is able to achieve what would be the DTS criteria of the relevant provisions of the Planning and Design Code (*the Code) that are generated by the SAPPA Wizard, but cannot be DTS by virtue of the fact there is an Overlay that ousts that assessment pathway.

Overlay policies that would be better applied in the General Modules

One of the more confusing elements of the new planning system is the excessive number of overlays. There are more than 70 and often Overlays that have little or no relevance to the assessment are called up when undertaking the "Wizard" search on a property and entering the type of development.

There is a greater issue at play here in the fundamentals of how the e-planning system is built, and potentially a future improvement of the system that identifies the *relevant* overlays using the search tools would assist with resolving this.

The more immediate improvements could involve transferring more 'generalised' policy within certain overlays into general policy modules.

Noting there is a spatial application of the overlays, another mechanism would be needed to identify where "general" policy applies for the specific aspects of policy. For example, planning policy within the Significant and Regulated trees Overlay could easily be provided in general development policy, as could Urban Tree Canopy, Affordable Housing and Stormwater Management, Prescribed Water Resources and Prescribed Wells Area, however within a subset of planning rules applicable to metropolitan Adelaide and other select locations. After all, apart from the Prescribed Wells Area, these overlays apply mostly within metropolitan Adelaide.

Prescribed Water Resources Overlay and Prescribed Wells Area Overlay

The Prescribed Water Resources Overlay is called up when using SAPPA on any address

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where this applies, but the types of development applicable to the policy within the overlay are limited to a select range of uses that impact on natural surface flows, such as dams, commercial forestry, horticulture, aquaculture and other activities predisposed to affecting the health and natural flow paths of water resources.

Similarly, the Prescribed Wells Area Overlay is called up for assessment of a range of irrelevant forms of development. Both of these overlays contain policy that is applicable to a very limited subset of land uses and types of development.

Master Builders, while acknowledging the spatial application of the policies in these particular areas, raises concern about the confusion that arises from bringing in irrelevant policy for consideration in the assessment of residential and similar land uses.

Fundamentally, the electronic planning system needs to be re-built in a manner that dissects the relevant overlays for assessment from the irrelevant ones, depending on the data input (i.e. type of development). This is something that is naturally outside of the Code review, but an important issue that should be 'front and centre' of future system improvements.

Significant & Regulated Trees, Urban Tree Canopy and Stormwater Management

As the significant and regulated tree provisions only apply to metropolitan Adelaide, as do a number of other overlays such as Urban Tree Canopy and Stormwater Management it would make sense to separate the policies applicable to metro Adelaide by simpler means. Those that only apply in metropolitan Adelaide could fall under a separate umbrella of "metropolitan Adelaide" general policy that in some cases is triggered only for the *relevant* forms of development entered in the Wizard.

Significant and regulated trees applies across the whole of metropolitan Adelaide so would be easy to transfer to a metropolitan Adelaide general policy module.

The Urban Tree Canopy is similar, but only applies where there are Neighbourhood type Zones, and could just as easily transfer into an Adelaide metro-based policy module, applicable for residential development comprising new dwellings within Neighbourhood type zones.

The Stormwater Management Overlay commands that a specific amount of retention and detention is provided for new dwelling applications and applies likewise to Neighbourhood type zones and is limited to metropolitan Adelaide. Again, this could apply as general policy within a metropolitan Adelaide based module and the relevant triggers being "new dwellings". The overlay is spatially applied over Neighbourhood type

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zones generally, but there are some parts of Adelaide not covered by the policy, presumably areas with their own council managed retention and detention schemes such as Aquifer Surface Recharge (ASR) schemes (e.g. parts of Marion and new development at Moana, south of Karko Drive and west of Commercial Road). Policy could be written within a general module to exempt development serviced by such a scheme.

Native Vegetation Overlay

This Overlay applies not only in Hills and regional areas but in areas in which much of Adelaide's future growth is being accommodated at present, and can be found in parts of the Masterplanned Neighbourhood Zone in which there is little or no native vegetation.

The redefinition of the boundaries of the Native Vegetation Overlay should be investigated as part of the Code review to exclude new residential subdivisions in the Masterplanned Neighbourhood Zone (e.g. new parts of Moana) and Masterplanned Township Zone (e.g. Two Wells extension), and built up areas within country townships (e.g. within the Township Zone).

Affordable Housing Overlay

Master Builders questions the spatial application of policy for affordable housing policy in principle. There is a growing demand for affordable housing and some of the areas that are not covered by the overlay are perplexing. For example, the almost the whole north-western quadrant of Adelaide including areas such as Seaton, Royal Park, Albert Park, Woodville North and Croydon Park where there are large areas or pockets of social housing, current and former SAHT properties ripe for renewal, not covered by the Overlay. The following map depicts the issue with spatial application:

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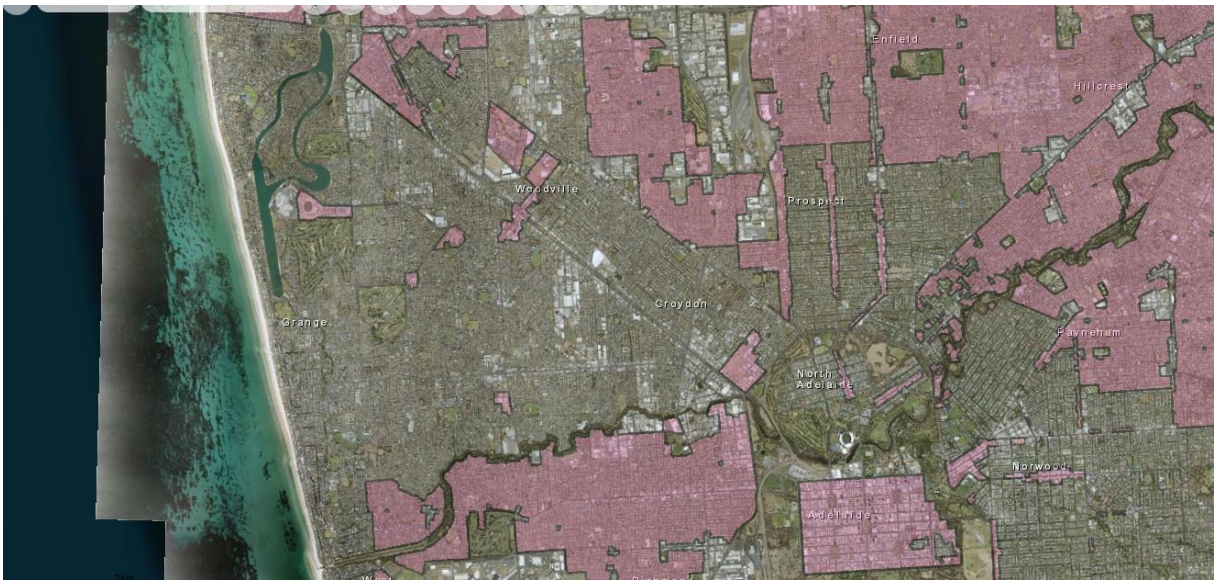

SAPPA extract showing the Spatial application of the Affordable Housing Overlay

Master Builders question the legitimacy of the Government's commitment to providing for future affordable housing stock when the application of the Overlay appears to be 'ad hoc' missing critical areas in Adelaide, while including some areas in which realistically property sale prices will never be within the value thresholds to meet the affordable housing criteria, such as around Crafers and Stirling.

Affordable housing policy allows for greater uplift in the development potential of land and there are a number of members that are ready and willing to step into this market to provide for the shortage of this type of stock, if financial viability is there.

Quite simply, Master Builders sees no rationale for affordable housing policy to be within overlays. It should apply across the board through South Australia.

Traffic Generating Development Overlay

The Traffic Generating Development Overlay is one that Master Builders is particularly aware of due to the fact it ousts many simple forms of land division from a potential Deemed-to-Satisfy pathway and has no role to play in assessment of simple forms of residential development.

In fact, the policy applicable in the Overlay has no relevance to most types of development and land uses. Even the land uses that are targeted in the policy are those of a higher 'traffic generating' potential, such as residential land divisions over 50 allotments, industry with a gross leasable area of 20'000m², educational facilities with a

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capacity of 250 students or more and retail development with a gross leasable area of 2'000m². This applies in metropolitan Adelaide for any land that is located within 250m of a State maintained road.

There is no reason that a specific General policy module could not be provided to specifically deal with traffic generating types of development. The advantage of the General module is that it can be used for a range of development scenarios that the policy may not capture if only spatially applied, and would not be called up for 99% of development applications.

Hazards - Bushfire (Urban Interface Area) Overlay

Similar to the Traffic Generating Development Overlay, this applies to a very small subset of development, yet appears on the assessment "wizard" for a wide range of development in many areas. Its policy concerns larger land divisions catering for "through" access being provided from higher bushfire risk areas via roadways allowing ready escape routes from more hazardous fire prone areas.

The policy could just as readily be transferred to a "General" module that relates specifically to land divisions greater than 9 allotments and abutting more bushfire prone environments. The CFS referral trigger could easily be put into Part 9 of the Planning and Design Code for such land divisions.

11. Dwellings in Masterplanned Areas

Some of our members are reporting issues with dwellings being able to occur "as of right" in areas that previously could have been 'residential code' or complying in the previous Development Plans due to the Emerging Activty Centre Subzone.

Others are reporting that Councils are withholding Development Approval on dwellings that are Accepted Development in the Masterplanned Neighbourhood Zone even when the accepted development criteria have been met and the Building Rules Consent has been granted.

Emerging Activity Centres Subzone

The Emerging Activity Centre Subzone within the Masterplanned Neighbourhood Zone is unrealistic in its ambitions in many cases and problematic for *existing* residential parcels of

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land that have clearly been earmarked for detached standalone housing stock, rather than mixed uses.

If the Emerging Activity Subzone is to be taken seriously, the Performance Outcomes should focus on larger "development lots" within Masterplanned Neighbourhood Zones, for example, >1500m² allotments reserved for future mixed use, residential flat buildings or social housing development in a masterplan, even if its spatial application extends over wider areas of Masterplanned Neighbourhood Zones.

In some areas the manner in which this subzone has been applied spatially can only be described as ad hoc, without specific reference to the plans for master-planned areas.

Where there *is* a Concept Plan that underpins the Masterplanned Neighbourhood Zone it would be logical to remove the subzone altogether to reduce the layers of policy through consolidating Activity Centre type policy within the Zone and having reference to "where located in an activity centre as delineated on a Concept Plan".

Complexity of Assessment

The layers of policy required of one to sift through within some parts of master-planned areas just to confirm whether a dwelling on a parcel of land clearly earmarked for a detached dwelling can be assessed as DTS are mind-boggling.

Any site within a masterplanned area where there is no existing character to reference, should be able to have an easy DTS pathway where there are a set of standardised rules that can be navigated by any lay person.

The following example at Andrews Farm is just one of many where the process to assess the application is too convoluted. This example requires review of Zone and Subzone policy, 10 separate overlays and 3 concept plans. The most baffling thing is that Heritage Adjacency overlay appears, which removes any potential DTS pathway altogether. There are no heritage places near the development site.

Location: 17 SAMPHIRE AV ANDREWS FARM SA 5114 LT 535
Valuation: 2906930609
Title Prefix: CT
Title Volume: 6245
Title Folio: 868
SAILIS: Link
Planning Report: Print Report

Planning & Design Code:
All policies that apply to this address
Policies for a development at this address

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Zones
Master Planned Neighbourhood - MPN

Subzones
Emerging Activity Centre - EAC

Overlays
Affordable Housing
The Affordable Housing Overlay seeks to ensure the integration of a range of affordable dwelling types into residential and mixed use development.
Building Near Airfields
The Building Near Airfields Overlay seeks to ensure development does not pose a hazard to the operational and safety requirements of commercial and military airfields.
Defence Aviation Area - All structures over 15 metres
The Defence Aviation Area Overlay seeks to ensure building height does not pose a hazard to the operational and safety requirements of Defence Aviation Areas.
Hazards (Bushfire - Urban Interface)
The Hazards (Bushfire - Urban Interface) Overlay seeks to ensure urban neighbourhoods adjoining bushfire risk areas allow access through to bushfire risk areas, are designed to protect life and property from the threat of bushfire and facilitate evacuation to areas safe from bushfire danger.
Heritage Adjacency
The Heritage Adjacency Overlay seeks to ensure development adjacent to State and Local Heritage Places maintains the heritage and cultural values of those places.
Hazards (Flooding - General)
The Hazards (Flooding - General) Overlay seeks to minimise impacts of general flood risk through appropriate siting and design of development.
Noise and Air Emissions
The Noise and Air Emissions Overlay seeks to protect new noise and air quality sensitive development from adverse impacts of noise and air emissions.
Prescribed Wells Area
The Prescribed Wells Area Overlay seeks to ensure sustainable water use in prescribed wells areas.
Regulated and Significant Tree
The Regulated and Significant Tree Overlay seeks to mitigate the loss of regulated trees through appropriate development and redevelopment.
Traffic Generating Development
The Traffic Generating Development Overlay aims to ensure safe and efficient vehicle movement and access along urban transport routes and major urban transport routes.

Variations
Concept Plan - 18
Concept Plan 18 - Playford North
Concept Plan - 19
Concept Plan 19 - Playford North Infrastructure
Concept Plan - 81
Concept Plan 81 - Edinburgh Defence Airfield Lighting Constraints

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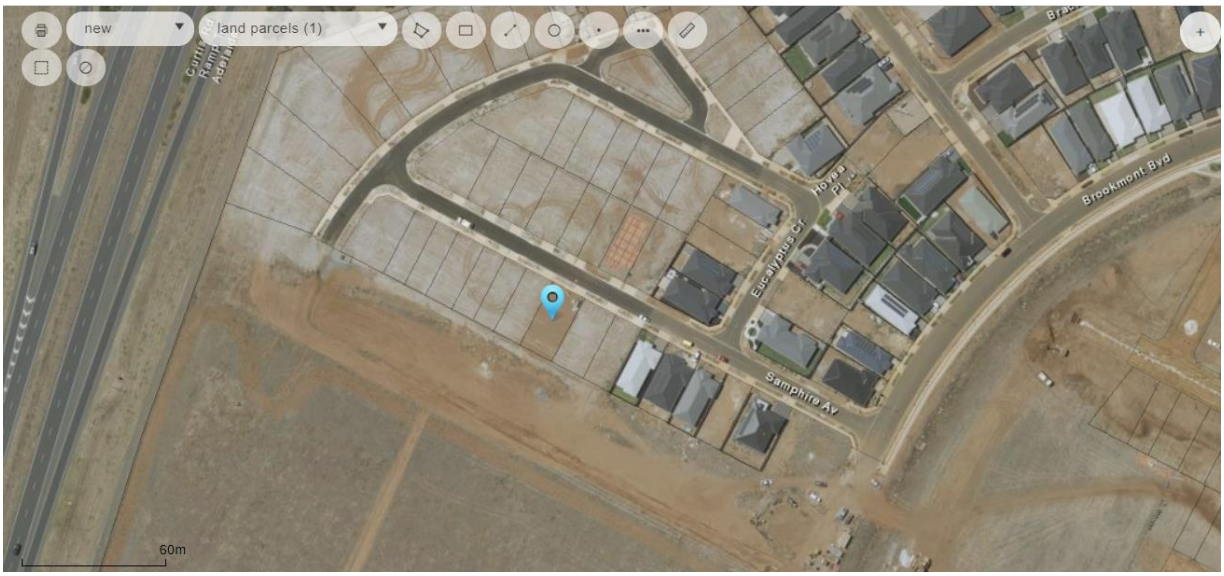

SAPPA extract showing the example at 17 Samphire Avenue, Andrews Farm

12. Relief for Flood Affected Areas

A number of our members work in regional areas affected by floods, and/or within the insurance building sector and are likely to face a significant increase in work in the rebuild effort as floodwaters recede in 2023 from the impact of the 2022 River Murray flood, which at this time appears to now be on track to become the second biggest flood of post-European settlement and affects over 4000 properties along the River Murray.

Master Builders believes that the best way to deal with the crisis that will likely follow from the impact of the 2022 River Murray Floods will be via regulation, to provide a tailored, fast-tracked, more certain assessment pathway for those affected.

The main Councils affected by the floods are those with a disproportionately high number of shack areas and regional towns on the River Murray, including Mid Murray Council (by far containing the largest number of shack communities), Berri Barmera, Loxton Waikerie, Renmark Paringa, Murray Bridge and Alexandrina.

The former of these Council regions are heavily reliant on external resourcing in their planning sections, and under-resourced to cope with what will likely be a significant influx of applications to deal with the re-build effort along the Murray communities. Enabling the private sector to assist with the significant demand for resourcing in this area is key to ensuring that a substantial backlog of work does not get held up and impose further stress on those made homeless by recent events.

Master Builders believes that a fast-tracked assessment pathway could occur by changing Schedule 6B to cater for flood impacted areas from the recent floods, with specific areas mapped on SAPPA for inclusion in this. This is due to the fact the provisions

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in the Regulations (Schedule 6B) that cater for "Home Builder" applications to be Accepted Development that no longer have work to do in the system.

An overhaul of this with introduction of policies derived from the Rural Shack Settlement Zone, Township Zone or Rural Neighbourhood Zone (whichever as may be relevant) and the River Murray Floodplain Protection Area Overlay, as well as relevant Hazards overlays should be considered in informing policy for the following aspects relating to rebuilding of dwellings:

- Being within a *designated shack site* as relevant to shack areas;
- Site Coverage
- Minimum underfloor clearances
- Building Height and Wall Heights
- External colours and materials
- Front, side and rear setbacks (and setbacks as relevant to the River Murray)
- Underfloor areas (their use, maximum area, methods of enclosure)
- Native vegetation
- Wastewater management
- Infrastructure (water supply etc)
- Bushfire Protection as relevant
- Car parking & movements

Noting the requirement for connection to a Community Wastewater Management Scheme in many instances and the involvement of the Department for Environment and Water on behalf of the Minister administering the River Murray Act 2003 for areas in the River Murray Protection Area, there could be a nuanced type of DTS assessment that assists in relieving the Councils of basic planning functions and provides proponents greater certainty and an opportunity for a fast-tracked planning assessment but requires environmental health permits and external referral comments to be provided by the proponent up front, with endorsement of plans and documentation being required for this pathway to be available.

Where a proponent has an environmental health authorisation for an existing effluent management system and that is less than 10 years old and is still operational, evidence of this having been installed and being compliant with the Wastewater Code (e.g. Certificate of Compliance from a Licensed Plumbing Contractor) could be provided in lieu of a new environmental health permit.

A separate subregulation that specifically deals with outbuildings could also be provided

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to ensure that those affected can start moving their belongings back to their allotments in the meantime, provided that there is a concurrent, valid consent for a replacement dwelling or an existing dwelling remains on the site.

13. Technical Improvements to reduce Delays

Land Division Process

Some of our members are reporting that there are issues with land division consent process and timeframes and uncertainty around infrastructure requirements, which vary greatly between Councils. There is also no "deemed consent" process available for land division consent, so authorities are reportedly offending timeframes for this part of the assessment without penalty.

Master Builders believes a Practice Direction around bonding and legislated timeframes for Council to assess engineering design, and inform Statement of Requirements for Clearance would be helpful to improve the efficiency of this process and the delivery of much needed land supply in certain areas.

Such a project would need industry participation and Master Builders would like the opportunity to participate.

Internal Referrals

Some of our members are reporting that there are conflicting requirements between infrastructure sections of Councils and the crossover requirements in the Code, as well as different clearances between crossovers and street trees or infrastructure.

It is Master Builders' position that a set benchmark should be established to define these clearances as well as design standards so there is consistency across the board, at the least with the basics of crossover widths, street tree clearances and infrastructure clearances. This should be in the Local Government Act as well as the Code and be consistent so that engineering sections in Councils cannot have their own separate rules.

Referral processes to internal departments within Council occur outside of the Portal and there is no visibility of decisions made by engineers and street tree departments. The Portal should be such that internal referrals are visible and the comments and decisions made by the engineering sections of Councils are made publicly visible, and their time limits provided within the assessment clock.

Also, noting that less experienced planning staff are often reluctant to go against the

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advice of their engineering counterparts it needs to be made abundantly clear that the planning decision rests with the planning authority and that internal referral comments are not binding. A practice direction should be provided for dealing with this issue.

Duplication of Referrals

Some of our members are reporting that applications are being referred multiple times to the same Department. There is no mechanism in the Portal to address a "resubmission" response to an Agency Referral. This should be a Portal improvement made to ensure that there is not a reset of the statutory timeframe for the Agency to respond.

Additionally, where there is a DTS development that has been granted consent (such as infill dwellings on an arterial road) the land division is then performance assessed and requires a referral to the Commissioner of Highways. Even if the dwellings went through a performance assessed pathway and comments dealing with access and road safety issues have been provided previously, it does not make sense for the subsequent land division to be referred to the Commissioner.

Public Notification Triggers

Where a public notification trigger affects only ONE neighbouring property (e.g. wall heigh on boundary) a separate notification process that limits the notification to that property with a reduced statutory timeframe be provided by Regulation, without the need for a sign on the land. This could be 7 business days to provide a written response instead of 15 as an example.

14. Resolving Conflict of Code Policy

Hierarchy/Application of Code Policy and Conflicting Provisions

The hierarchy of which policy prevails is quite clear in terms of policy within Overlays taking precedence over Subzone policy over Zone policy, over General Policy Modules. However, there are instances where there are conflicting policies in separate modules of General policy, each of which could theoretically simultaneously be called up in seeking to achieve a Deemed to Satisfy (DTS) assessment pathway for a given type of development, and naturally this creates a problem.

As an example, there is conflict in relation to driveway width and on-street parking

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provision, as an example, between the General, Design in Urban Area DPF/DTS 23.3 or Design DTS/DPF 19.3 and Transport, Access and Parking DPF/DTS 3.6, as below:

Design DTS/DPF 19.3

Driveways and access points on sites with a frontage to a public road of 10m or less have a width between 3.0 and 3.2 metres measured at the property boundary and are the only access point provided on the site.

Design in Urban Areas DTS/DPF 23.3

Driveways and access points satisfy (a) or (b):

a) *sites with a frontage to a public road of 10m or less, have a width between 3.0 and 3.2 metres measured at the property boundary and are the only access point provided on the site*
b) *sites with a frontage to a public road greater than 10m:*
    i. *have a maximum width of 5m measured at the property boundary and are the only access point provided on the site;*
    ii. *have a width between 3.0 metres and 3.2 metres measured at the property boundary and no more than two access points are provided on site, separated by no less than 1m.*

Transport, Access and Parking DTS/DPF 3.6

Driveways and access points:

a) *for sites with a frontage to a public road of 20m or less, one access point no greater than 3.5m in width is provided*
b) *for sites with a frontage to a public road greater than 20m:*
    i. *a single access point no greater than 6m in width is provided*
    or
    ii. *not more than two access points with a width of 3.5m each are provided.*

Noting that Design in Urban Areas 23.4 is referenced from Zone policy when generating policy for a Land Division within the General Neighbourhood Zone (as an example), does this mean this takes precedence in this instance over the DTS/DPF 3.6 in Transport, Access and Parking, which is not called up by Zone policy in this instance?

Irrespective of the hierarchy there should not be two directly conflicting provisions that speak to the same aspect of planning policy where these are not spatially applied. Irrespective, the content of the provisions is considered to be restrictive for many forms of infill where there are limited front setbacks but double garaging can potentially occur as of right quite close to the street (for example 10m wide sites where the front setback of the garage is 5.5m).

Master Builders considers that 3.5m should be the benchmark width of driveway instead of 3.0m to 3.2m at the front property boundary to allow for more orderly vehicle movement from garages less than 7m from the street, for example.

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15. Definitions & Notification Process

Additional Land Use Definitions

Some additional land use definitions would assist with the interpretation of how certain contemporary land uses may "fit" within the broader scheme of the Planning and Design Code, and Zones in which these are appropriate.

One that has been in the planning vernacular for some time now, but is yet to surface as a defined land use, is a training facility for trade, industry and vocational training. Often, such uses involve the operation in a learning environment of heavy machinery, cutting, finishing, moving or lifting processes or activities that would ordinarily be undertaken on a work site, such as within production line arrangements, building sites, industrial and commercial sites and major food preparation. The type of use is not an educational establishment and is often found wanting with regard to Zones that specifically contemplate this.

Hands-on learning activities may generate noise, fumes, vibration, smell or other externalities akin to industrial processes. Ordinarily, an Employment type Zone would appear to be the most appropriate Zone for such a use.

Master Builders believes a *Trade Training Facility*, a term widely known in the industry, is the appropriate definition and could be listed in the exclusions list of "educational establishment" in Part 7 (Land Use definitions) and defined separately. Master builders believes the above considerations should be relevant for appropriately defining the use.

Specific Excluded Land Use Classes (short term stays)

In a time where there is separate legislation tabled to deal with the amenity impacts of so-called "party houses" (places of transient and infrequent occupation for tourism on parts of residential sites) through platforms such as Air BnB & Stayz, there also needs to be specifically excluded land use classification so that this type of accommodation, where provided on a limited basis on a site in which there is prevailing permanent residential occupation (not necessarily being within the same building), does NOT alter the land use. The problematic short term let part of the market is by far the minority, but this is what gets the headlines.

Often land use arguments are dragged before Council Assessment Panels and the Courts due to the inconsistency with regard to how tourist accommodation is defined and applied. The legal position within SA remains unclear and the facts of each individual

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case will ultimately determine how the land use may be perceived in determining a "change" of land use.

Strictly speaking, without exclusion, the current definition of tourist accommodation in the Code does not consider the length of stays, whether there is residential use that prevails on the site, or total number of days for which a site is used for such purposes in a year. It leaves these elements as open to interpretation whether any non-permanent accommodation changes the land use, and reliant on conflicting and ambiguous case law.

Some Councils will take a pragmatic approach, while others will take a precautionary approach and some of the most obstructionist Councils are those that contain some of South Australia's greatest tourism drawcards.

The following is considered to be a mechanism to deal with the above issue:

Land Use Term (Column A)	Definition (Column B)	Includes (Column C)	Excludes (Column D)
Tourist accommodation	Means premises in which temporary or short-term accommodation is provided to travellers on a commercial basis.		Campground *Use of part of a site for short-term accommodation on a commercial basis in which there continues to be permanent residential occupancy on site (within the same building or a separate building on site) and such tenure does not involve more persons in short term accommodation at any one time on site than able to be accommodated in the balance of the land for permanent residential occupation; does not exceed total occupancy of 3 months of a calendar year, and no single lease comprises continued occupancy for a period of 28 days or more*

Administrative Definitions

The term *replacement building* must be reviewed such that it can include reference to a building that is not yet demolished rather than one that has been in the last 3 years. At present a building that is replacing an existing building yet to be demolished is not defined in such a manner and therefore, in many cases cannot be assessed as DTS.

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Public Notification / Fences, Retaining Walls and Earthworks

Master Builders notes that the Department is aware of an issue with Table 5 in the various Neighbourhood Zones with respect to the wording of "building walls or structures" exceeding 11.5m in length on a boundary triggering public notification, and the result of this wording causing unintentional public notification of fences and retaining walls on boundaries where these constitute development in their own right and exceed the thresholds.

It is noted that the MTE Amendment seeks to exempt retaining walls and fences from the notification process by alteration of Table 5, which is supported. Thresholds for these being accepted development should also be provided so that these do not invertedly remove a DTS pathway for a development combining dwellings and retaining walls and fences. Code policy around fencing and retaining walls would be required for this, and take into consideration floor areas where solid fences are not desirable, such as the River Murray Floodplain Protection Area Overlay.

There is also an issue with respect to earthworks constituting development that the Department may not be as aware of. Where exceeding the relevant volume threshold, this is a type of development that is performance assessed and not specifically excluded from notification.

In many cases earthworks greater than 9 cubic metres (m^3) in specific Zones where they in their own right constitute development will have no impact on the boundaries of the site and adjacent properties (e.g. Hills Neighbourhood). It is the associated retaining walls and fences that have the potential visual and overshadowing impact with regard to boundaries.

The approach that Master builders considers appropriate would be to remove fences and retaining walls from Part 3 of Table 5 and have these, together with earthworks placed within their own section of the Table, and thresholds for notification being set for retaining walls and fences in relation to the lower of natural ground levels at *any point*.

Master Builders queries the rationale behind $9m^3$ being the relevant threshold in certain zones for this to be development in its own right. While floodplain environments (captured by Overlays) and in relation to heritage places is understandable, the threshold could be increased for the Hills Neighbourhood Zone (as an example) where the earthworks are ancillary to and associated with a form of development reasonably expected in the Zone. Naturally a regulation change (PDI (General) Schedule 3) would be required to deal with this, and that is outside of the Scope of the amendments but in preparation for this, Code Table 5 of the Hills Neighbourhood Zone could include changing the trigger for notification.

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The suggested wording is as follows (using Suburban Neighbourhood Zone as example):

3. Any development involving any of the following (or any combination of any of the following): *a) fence* *b) retaining wall* *c) earthworks*	*Except development that:* *1. involves retaining walls and/or fences that exceed 3m above the lower of adjacent natural ground levels at any point where the works affect a boundary external to the development site;* *or* *2. involves earthworks ancillary to a class of development in Clause 3 of this table and greater than 9m³ in relation to a local heritage place, or where a Heritage Adjacency Overlay applies*

Common types of development not having policy generated through the Wizard

There are numerous cases where undertaking the "wizard" search on a property and generating policy for a development type not specifically envisaged in a Zone that no policy is generated for a development that is within the list. This includes land uses that could reasonably be expected in a particular zone.

These are just a few examples:

- Service Trade Premises and Retail Fuel Outlets in a Township Mainstreet Zone
- Student Accommodation in the Suburban / General Neighbourhood Zones
- Shop, Office or Consulting room in a Neighbourhood type zone
- Tourist Accommodation in the Rural Living Zone or the Open Space Zone

Some uses are not located on the list of uses that one can search at all using the Wizard. This includes:-

- Preschool (Child Care Centre)
- Educational Establishment
- *Trade Training Facility*

Master Builders believes there is an opportunity to identify similar scenarios and improve the policy generation Wizard to consider not only uses specifically envisaged by a Zone (e.g. in PO 1.1), but uses commonly found in certain Zones as well, in pursuit of consistent

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application of Code policy for what are reasonably expected forms of development in particular zones.

While this does not strictly relate to amending the Code, it will improve the Code's useability having pre-populated policy available for common forms of development in Zones in which they may regularly be found.

16. Site Contamination

GENERAL POLICY MODULES

Site Contamination

Master Builders firmly believes the premise of the site contamination framework requiring any change of land use to a "more sensitive" use to be fundamentally flawed.

The term *sensitive receiver* is defined in the Code and includes:

1. any use for residential purposes or land zoned primarily for residential purposes;
2. pre-school;
3. educational establishment;
4. hospital;
5. supported accommodation;
6. tourist accommodation

MBASA firmly believe the site contamination framework needs to be refocused to sensitive receivers (or sensitive uses) rather than "more sensitive" land uses.

There appears to be no sound rationale for other land use classes to be brought into an overly costly, risk-averse and nonsensical regime whereby uses such as shops, commercial development, and even retail fuel outlets could be required to have a costly and time-consuming preliminary site investigation (PSI) provided by a site contamination consultant where there is an "increase" in land use sensitivity based on a Land Use Sensitivity Hierarchy (LUSH) table within a Practice Direction containing definitions that are not found in the Code.

The irony of the LUSH is that "light industry" is deemed to be lower on the hierarchy than a retail fuel outlet, which is a land use *known* to be predisposed to causing site contamination. So in essence, proposing to build a retail fuel outlet on a parcel of land that has been previously used as light industry would necessitate provision for a PSI in accordance with PO 1.1 (which refers to site contamination declaration). This is completely nonsensical and just one example.

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While Master Builders is represented on a working group with respect to the Site Contamination framework, the Code amendment process is able to arrest the momentum being driven by the Environment Protection Authority and Department driving irrational processes being required for land use changes where there is no sound reason to suggest site contamination is likely and/or exposure to contaminants is even possible, such as completely capped sites.

The elephant in the room is the provision for a new dwelling on a rural allotment that has been used for dryland cropping and/or grazing. Firstly, where there is an existing dwelling on the site it is noted that there is not a land use change and therefore no role to play for PO 1.1 in Site Contamination policy module.

Secondly, the introduction of tourist accommodation in such cases where the risk of exposure to human harm where an occupant will likely spend very few days or several weeks on a site, should not trigger the requirement for a PSI unless there is knowledge of a previous activity likely to have caused contamination. Most "human harm" associated with site contamination results from prolonged exposure.

This is where there needs to be a "common sense" approach that actually puts trust into Assessment Managers, which are Level 1 accredited professionals in the new system. There is no doubt there has been inconsistency in the local government approach to site contamination in the past, we are in a new era where there is supposedly greater professionalism. Let professionals make professional decisions and not be dictated by draconian policy that lacks reason.

If there is a vacant site in the middle of a country township or a vacant shack site in a shack community and somebody wants to build a house on it, which is a common occurrence, there should be no reason to trigger a requirement for a PSI (at a cost of up to $9000) to justify that a dwelling is appropriate on the site, unless there are known potentially contaminating uses adjacent or there is known or suspected site history of previous contaminating activity.

17. Conclusion

Master Builders SA believes changes to the planning system as part of the review need to focus on the key objectives of the initial reform agenda, by making things more certain, simpler and faster for those working in the system.

A suite of Code Amendments should be initiated to deal with the issues of land supply for urban expansion and infill as well as supply of appropriately zoned land for industrial and commercial land.

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More immediate regulatory intervention is needed to assist those with the thousands of flood-affected properties that will be subject to an otherwise complex, long-winded assessment process over the course of the next year or two in rebuilding due to inadequate capacity for existing regional authorities to manage this.

The greater involvement of accredited professionals in the industry as well as improved performance of the Code, provision of better development opportunities in inner to middle ring areas that are sought after for housing supply, and reduced complexity associated with assessment of simple residential types of development will have the largest effect on the efficiency in the planning system.

Master Builders SA thanks the Expert Panel for consideration of this submission and would welcome becoming involved in further workshopping of ideas that can drive the review.

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