DRAFT - FOR CONSULTATION

Assessment Improvements Code Amendment

by the State Planning Commission (the Designated Entity)

Contact details:

PlanSA

Email: plansa@sa.gov.au

Phone: 1800 752 664

Contents

1. WHAT IS THE PLANNING AND DESIGN CODE? ... 4

1.1. Planning and Design Code Framework ... 4

1.2. Overlays ... 4

1.3. Zones ... 4

1.4. Subzones ... 4

1.5. General Development Policies ... 4

1.6. Amending the Planning and Design Code ... 5

2. WHAT IS PROPOSED IN THIS CODE AMENDMENT? ... 6

2.1. Need for the amendment ... 6

2.2. Affected Area ... 7

2.3. Summary of proposed policy changes ... 7

3. WHAT ARE THE NEXT STEPS FOR THIS CODE AMENDMENT? ... 7

3.1. Engagement ... 7

3.2. How can I have my say on the Code Amendment? ... 8

3.3. What changes to the Code Amendment can my feedback influence? ... 8

3.4. What will happen with my feedback? ... 8

3.5. Decision on the Code Amendment ... 9

4. INVESTIGATIONS ... 9

4.1. Rules of Interpretation ... 9

4.1.1. Performance Assessed Development – Relevant Policy Considerations ... 9

4.1.2. Performance Assessed Development – TNV Policy Weight ... 10

4.1.3. Spatial Mapping Updates – Minister's Determination (s71(e)) ... 10

4.1.4. Spatial Mapping Updates – Spatial Improvements ... 11

4.1.5. Policy Updates – Australian Standards ... 12

4.2. Language, Consistency and Policy Applicability ... 13

4.2.1. Use of 'And' and 'Or' in Policy ... 13

4.2.2. Rural Zones – Detached Dwelling – Second Dwelling Policy Linkages ... 14

4.2.3. Rural Horticulture Zone – Ancillary Accommodation – Deemed-to-Satisfy Pathway ... 15

4.2.4. Rural Type Zones – Workers' Accommodation – Performance Assessed Policy Linkages 17

4.2.5. Shop, Office and Consulting Room – Inconsistent Policy Linkages ... 18

4.2.6. Swimming Pool Pumps – Acoustic Enclosure Policy ... 19

4.2.7. Capital City Zone – Service Lanes v Lane Activation Policy ... 21

4.2.8. Accepted Development – Building Alterations – Loss of Carparking ... 22

4.2.9. Conservation Zone – Restricted Development Ambiguity ... 23

4.2.10. River Murray Tributaries Protection Area Overlay – Exclusions 25
4.2.11. Water Resources Overlay – Exclusions 26
4.2.12. Stormwater Management Overlay – Connection to Hot Water Service 26
4.2.13. Educational Establishment Policy – Marking of Accessible Car Parking 28
4.2.14. Advertisements – General Policy – Third Party Advertising 28
4.3. Referrals 29
4.3.1. State Heritage Overlays 29
4.3.2. Environment Protection Referrals 31
4.3.3. Department for Environment and Water Referrals 34
4.3.4. Gas Pipelines – Referral Duplication 36
4.3.5. Referral Duplication and Minor Development within Overlays 37
4.4. Land Use Definitions 38
4.4.1. Personal or Domestic Services Establishment 39
4.4.2. Workers' Accommodation 41
4.4.3. Commercial Forestry 41
4.4.4. New Definitions 42
4.5. Administrative Terms and Definitions 45
4.5.1. Building Height – Measurement Point Clarification 45
4.5.2. Primary Street 46
4.5.3. Excluded Building 49
4.6. Targeted Policy Updates 50
4.6.1. Local Heritage Place Overlay – Demolition Policy 50
4.6.2. Covered Car Parking Spaces 51
4.6.3. Community Title Land Division 53
4.6.4. Car Parking Rates for Major Open Spaces 54
5. STRATEGIC ANALYSIS 56
5.1. Strategic Planning Outcomes 56
5.1.1. Summary of Strategic Planning Outcomes 56
5.1.2. Consistency with the State Planning Policies 56
5.1.3. Consistency with the Regional Plan 57
5.1.4. Consistency with other key strategic policy documents 57
ATTACHMENT A – AMENDMENT INSTRUCTIONS 58
A1. Use of 'And' and 'Or' 58
ATTACHMENT B – STRATEGIC PLANNING OUTCOMES 60
B1. State Planning Policies 60

HAVE YOUR SAY

This Code Amendment is on consultation from 9 am Tuesday 10 December 2024 to 5 pm Tuesday 4 March 2025.

During this time, you are welcome to lodge a written submission about any of the changes proposed in this Code Amendment.

Submissions can be made:

- Via the YourSAy website at yoursay.sa.gov.au/assessment-improvements
- online at plan.sa.gov.au/en/codeamendments
- by email to plansasubmissions@sa.gov.au

  with subject "Submission – Assessment Improvements Code Amendment"
- by post mailed to:

  Code Amendment Team
  Planning and Land Use Services Division
  Department for Housing and Urban Development
  GPO Box 1815, Adelaide SA 5001

Online information sessions will be available during the consultation period. Practitioners will receive details of these events by direct invitation in engagement communications and one session will be opened up to the general public via the YourSAy website.

Questions regarding the Code Amendment can be directed to the PlanSA Service Desk on 1800 752 664 or plansa@sa.gov.au

1. WHAT IS THE PLANNING AND DESIGN CODE?

The Planning and Design Code (the Code) sets out the rules that determine what landowners can do on their land.

For instance, if you want to build a house, the Code rules will tell you how high you can build and how far back from the front of your land your house will need to be positioned. The Code will also tell you if any additional rules apply to the area where your land is located. For example, you might be in a high bushfire risk area or an area with specific rules about protecting native vegetation.

1.1. Planning and Design Code Framework

The Code is based on a framework that contains various elements called overlays, zones, subzones and general development policies. Together these elements provide all the rules that apply to a particular parcel of land. Information about how the Code works is available on the PlanSA website.

1.2. Overlays

Overlays contain policies and maps that show the location and extent of special land features or sensitivities, such as heritage places or areas of bushfire hazard.

They may apply across one or more zones. Overlays are intended to be applied in conjunction with the relevant zone. However, where policy in a zone conflicts with policy in an overlay, the overlay policy trumps the zone policy.

Overlays contain a procedural matters table which sets out any referral required for particular developments in that overlay.

1.3. Zones

Zones are areas that share common land uses and in which specific types of development are permitted. Zones are the main spatial building blocks of the Code and apply to all areas of the state.

The same zone should apply to similar areas. For example, an Urban Activity Centre Zone applying to Westfield Marion Shopping Centre also applies to similar centres like Westfield Tea Tree Plaza Shopping Centre.

Each zone includes policies which describe the types of development that are envisaged in that zone. Classification tables within the zone assign how particular types of developments are assessed against policies in the Code (calling up policies from overlays, zones, subzones or general development policies) and which assessment pathway they will follow. Procedural matters tables also set out which types of developments need to be publicly notified.

1.4. Subzones

Subzones enable variation to policy within a zone, which may reflect local characteristics. An example is Port Adelaide centre, which has many different characteristics to typical shopping centres due to its maritime activities and uses.

1.5. General Development Policies

General development policies outline functional requirements for development, such as the need for car parking or wastewater management. While zones determine what development can occur in an area, general development policies provide guidance on how development should occur.

Unlike overlays, zones and subzones, general development policies are not applied based on the location of a proposed development, but rather the type or class of development proposed.

1.6. Amending the Planning and Design Code

The *Planning, Development and Infrastructure Act 2016* (the PDI Act) provides the legislative framework for undertaking amendments to the Code. The State Planning Commission (the Commission) may initiate an amendment to the Code and undertake a Code Amendment process.

The Assessment Improvements Code Amendment (the Code Amendment) was initiated by the Commission on 15 August 2024.

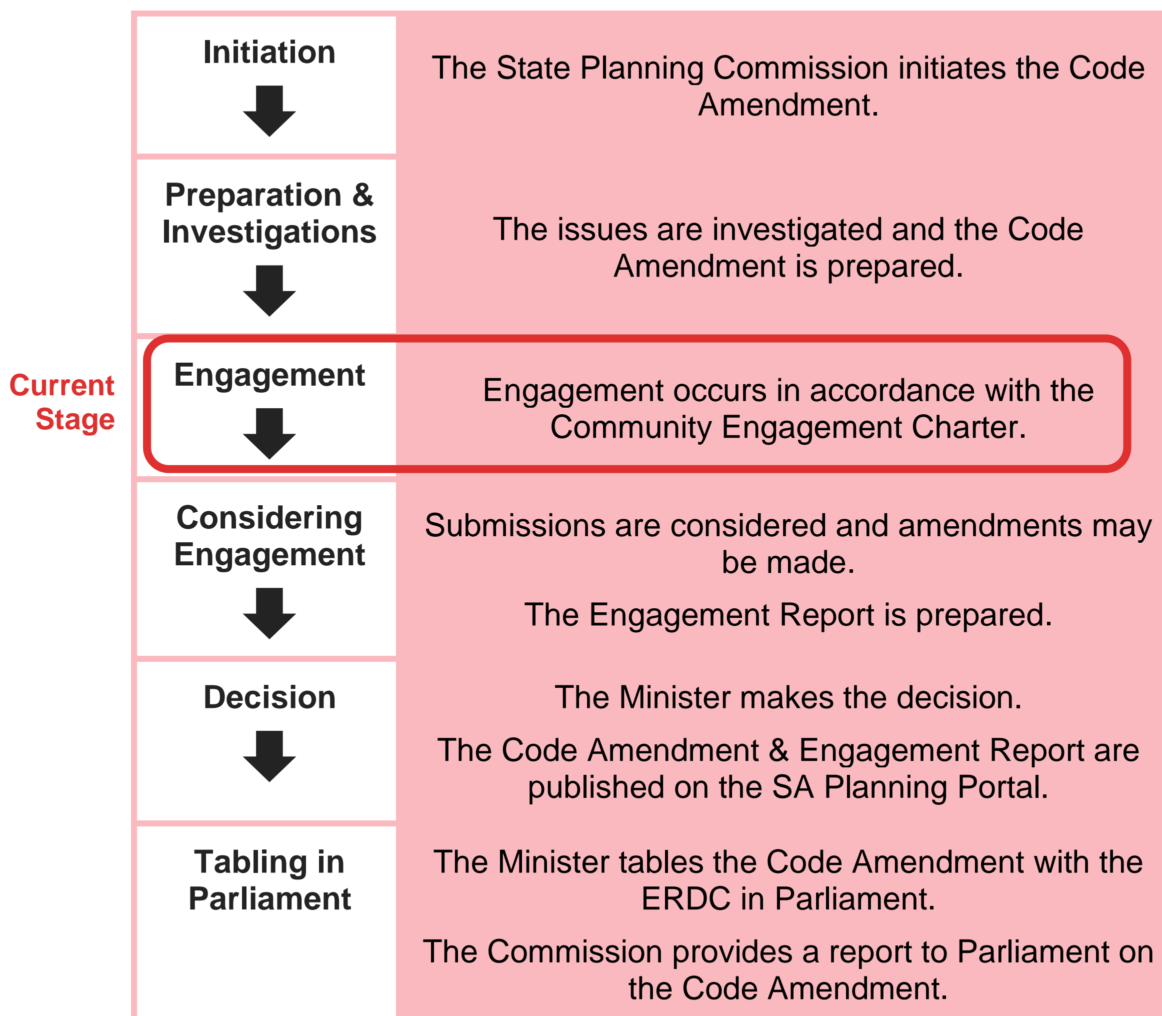
An approved Proposal to Initiate defined the scope of the Amendment and prescribed the investigations which must occur to enable an assessment of whether the Code Amendment should take place and in what form. A copy of the Proposal to Initiate for the Code Amendment can be downloaded from: https://plan.sa.gov.au/have_your_say/general_consultations.

The Commission is responsible under the PDI Act for ensuring the Code is maintained, reflects contemporary values relevant to planning, and readily responds to emerging trends and issues.

As designated entity for this Code Amendment, the Commission has undertaken investigations and will run the engagement process. The Commission will also provide a report on the Code Amendment (including compliance with the Community Engagement Charter) at the final stage of the Code Amendment process.

A summary of the Code Amendment process is outlined in **Figure 1**.

Figure 1. Summary of the Code Amendment process



2. WHAT IS PROPOSED IN THIS CODE AMENDMENT?

2.1. Need for the amendment

In 2022 the Government established the Planning System Implementation Review Expert Panel (the Expert Panel) to undertake a review of the planning legislation (the PDI Act) and the Planning and Design Code (the Code) as part of an ongoing process of continuous improvement and to ensure we have a contemporary and effective planning system in South Australia.

The scope of the Expert Panel's work included a review of the Code and statutory instruments as it related to matters such as residential infill policy, trees, character, heritage, and car parking. All the above issues were a particular focus of the Expert Panel's review and the submissions it received from the community and other stakeholders (including councils) during consultation.

This Code Amendment will assist in the delivery of some of the recommendations outlined in the Final Report of the Expert Panel (released by the Minister for Planning in April 2023) including:

Covered Car Parking Spaces

Refine car parking policy for dwellings to remove the requirement to provide undercover car parking, but with provision of space for a covered car park to still be made available behind the face of the dwelling (Recommendation 51).

Heritage

Refine Performance Outcome 6.1 in the Local Heritage Place Overlay to exclude deterioration due to neglect as a supporting factor for demolition, as in State Heritage Place Overlay (Recommendation 72.13).

Development to State Heritage Places should not attract a referral in certain circumstances (Recommendation 72.2).

Language and Consistency

Planning and Land Use Services undertake a language and consistency check of the Planning and Design Code to ensure the same terms and expressions are used throughout (Recommendation 72.16).

Definitions

Definitions within the PDI Act and Code should be reviewed and additional definitions included (Recommendation 72.1).

Policy Applicability

The Code should be reviewed to ensure requirements are reasonable and practical (Recommendation 72.19).

Car Parking Requirements

Investigate the application of specified car parking rates for major open space (Recommendation 72.18)

The Code Amendment builds on the Commission's earlier Miscellaneous Technical Enhancements Code Amendment (December 2021 – June 2023), which represented the first of what will continue to be a regular review and "tune-up" of any technical or operational aspects of the Code.

It provides another opportunity to further enhance the general performance, interpretation, and consistency of the Code and is informed by submissions received through the Expert Panel review process, the experiences of planning practitioners and other users, as well as the deliberations of the Environment, Resources and Development Court on development assessment matters.

Policy amendments resulting from this Code Amendment are generally of a technical or interpretive nature, other than those specific to an Expert Panel recommendation that seek a targeted policy amendment.

Lager topic-based issues identified by the Expert Panel like tree and heritage protection will be address though separate Code Amendments or via other statutory means.

2.2. Affected Area

The Code Amendment will apply to the whole of South Australia.

2.3. Summary of proposed policy changes

The Amendment primarily focuses on the policies and wording within:

- Part 1 – Rules of Interpretation
- Part 2 – Zones and Sub Zones
- Part 3 – Overlays
- Part 4 – General Development Policies
- Part 7 – Land Use Definitions
- Part 8 – Administrative Terms and Definitions
- Part 9 – Referrals

Due to the structure of the Code and the diverse nature of the issues raised, some of these changes may spread across multiple parts of the Code. For example, an issue may result in proposed changes to policies within a zone/s and to the definition of a land use to ensure alignment with the proposed policy change (e.g. a proposed change to policy wording within Part 2 – Zones and Sub Zone and the refinement in the definition within Part 7 – Land Use Definitions). The issues have been identified within the most relevant Part but will also acknowledge any other Part of the Code proposed for change.

To assist in the readability of this Amendment and given the scope of the issues/topics under review, each is addressed in the same manner. The issue/topic is first identified (with background when appropriate) followed by a description of the relevant investigations undertaken and the resulting changes proposed to the Code. The recommended changes will give a summary of how the Code is proposed to be amended. The investigations for each issue are contained in Section 4 of this Code Amendment.

To understand the specific detail and structure of the proposed Code change, refer to the draft amendment instructions in **Attachment A.** This has been purposefully prepared as an attachment given the very technical nature of some of the proposed changes. All topics within this Code Amendment and the Amendment Instructions contained in **Attachment A** use the same numbering and topic headings.

3. WHAT ARE THE NEXT STEPS FOR THIS CODE AMENDMENT?

3.1. Engagement

Engagement on the Code Amendment must comply with the Community Engagement Charter (the Charter), as required under the PDI Act. The Charter sets out the following principles for engagement:

- engagement is genuine
- engagement is inclusive and respectful
- engagement is fit for purpose
- engagement is informed and transparent
- engagement processes are reviewed and improved.

An Engagement Plan has been prepared for this Code Amendment to ensure that engagement will be conducted and measured against the principles of the Charter. For more information on the Community Engagement Charter go to the SA Planning Portal at (www.plan.sa.gov.au).

A summary of the engagement that is occurring for this Code Amendment is as follows:

- Letters sent via email
- Policy forum presentations
- Online information sessions
- PlanSA website
- YourSAy
- Planning Ahead enews
- Video message from SPC Chair
- Social media
- FAQs
- Hard copy draft Code Amendment available for viewing at PLUS office
- PlanSA helpdesk (phone and email)
- Engagement Report

3.2. How can I have my say on the Code Amendment?

There are several ways in which you can provide feedback on the Code Amendment.

Submissions can be made:

- online at: plan.sa.gov.au/en/codeamendments
- by email to: plansasubmissions@sa.gov.au
  with subject 'Submission – Assessment Improvements Code Amendment'
- by post mailed to:
  Code Amendment Team
  Planning and Land Use Services Division
  Department for Housing and Urban Development
  GPO Box 1815, Adelaide SA 5001

3.3. What changes to the Code Amendment can my feedback influence?

Your feedback can influence the Code Amendment in the following ways:

- Change to the Code's policies

Feedback cannot influence instruments which are separate to the Code, such as the PDI Act and its associated regulations.

3.4. What will happen with my feedback?

The Commission is committed to undertaking consultation in accordance with the principles of the Community Engagement Charter and is genuinely open to considering the issues raised by people in the community.

All formal submissions will be considered by the Commission when determining whether the proposed Amendment is suitable and whether any changes should be made.

Each submission will be entered into a register and you will receive an email acknowledging receipt of your submission. Your submission will be published on the SA Planning Portal. Personal addresses, email and phone numbers will not be published, however company details will be.

The Commission will consider the feedback received in finalising the Code Amendment and will prepare an Engagement Report which will outline what was heard during consultation and how the proposed Code Amendment was changed in response to submissions.

The Engagement Report will be forwarded to the Minister, and then published on the SA Planning Portal.

3.5. Decision on the Code Amendment

Once the Engagement Report is provided to the Minister, the Commission may provide further advice to the Minister at the Minister's request, if the Code Amendment is considered significant.

The Minister will then either adopt the Code Amendment (with or without changes) or determine that the Code Amendment should not proceed. The Minister's decision will then be published on the SA Planning Portal.

If adopted, the Code Amendment will be referred to the Environment Resources and Development Committee of Parliament (ERDC) for their review. The Commission will also provide the Committee with a report on the Code Amendment, including the engagement undertaken on the Code Amendment and its compliance with the Community Engagement Charter.

4. INVESTIGATIONS

The extent of investigations that have been undertaken or will be undertaken as part of the Code Amendment have been detailed in the Proposal to Initiate. The investigations have largely been of a detailed technical nature to consider and review the effect of proposed changes with respect to ensuring they achieve the desired outcome.

4.1. Rules of Interpretation

4.1.1. Performance Assessed Development – Relevant Policy Considerations

Issue

Recent Court judgements have questioned the role of policies outside of those identified by Table 3 – Applicable Policies for Performance Assessed Development of a Zone in the case of a Performance Assessed Development.

Investigation

Geber Super Pty Ltd v The Barossa Assessment Panel [2023] SASC 154 made several observations regarding the interpretation of the Code, including that assessment of a development proposal is not limited to the provisions of the Code provided by the PlanSA Portal:

> '*It would be a bizarre result if a panel or other relevant authority were precluded from having regard to a provision of the Code that was objectively relevant merely because the computer had not produced that provision on an enquiry of the planning database.'*

Conversely, Part 1 - Rules of Interpretation [Application of Policies to Performance Assessed Classes of Development] states:

> *The Code applies policies to performance assessed development through an Applicable Policies for Performance Assessed Development Table relative to each zone - Table 3.*
>
> *The policies specified in Table 3 constitute the policies applicable to the particular class of development within the zone <u>to the exclusion of all other policies within the Code, and no other policies are applicable.</u>*

Whilst it is possible that a number of policy provisions within the Code may be relevant to a development proposal insofar as they assist in the interpretation of policies which the development must satisfy, the foregoing clause of Part 1 is clear that no policies beyond those produced by Table 3 of a Zone are applicable to the assessment of a particular class of Performance Assessed Development.

Recommendation

AMEND Part 1 - Rules of Interpretation [Application of Policies to Performance Assessed Classes of Development] to clarify:

- For all development classes listed in Table 3 (for every zone), only those polices identified are relevant to the assessment and that other Code policies can be only used for contextual, interpretation purposes.
- Those development classes not listed are to be assessed against:
  - All polices in Zones, Subzones and Overlays that spatially apply
  - All general development polices

4.1.2. Performance Assessed Development – TNV Policy Weight

Issue

Recent case law has considered the weight to be afforded to a Technical and Numeric Variation (TNV) which forms part of a Designated Performance Feature (DPF) for the purposes of Performance Assessment.

Investigation

The weight given to a departure from a numeric value forming part of a DPF during performance assessment was discussed in Parkins v Adelaide Hills Council Assessment Manager [2022] SAERDC 12 as follows:

> *'A DPF is a relevant policy and must therefore form part of the assessment… whilst quantum departure from the terms of a DPF is not, of itself grounds for refusal, I am not convinced that quantum departure can be completely ignored. It will, if nothing else, be a flag to the relevant authority to carefully ensure that, by way of alternative facts and circumstances of the matter, the performance outcome is met.'*
>
> *'The significance of any departure will depend… on the circumstances of the matter at hand.'*

Similarly, the Court's rationale in Parkins v Adelaide Hills Council Assessment Manager was upheld in Vikhlyaev v City of West Torrens Assessment Manager [2023] SAERDC 1 (18 January 2023):

> *'whilst any DPF numeric value is not to be read as a minimum, mandated, requirement, a 'quantum departure' would likely be a '...flag to the relevant authority...' that the particular facts and circumstances of the matter would need to be carefully weighed up to ensure a planning consent is merited. I would respectfully add that the greater the variance the more difficult it will be to establish suitable conformity with the intended outcome.'*

Given the above, it is reasonable to clarify that a numeric value which forms part of a DPF is not a mandatory requirement, but rather serves as a guide for a relevant authority when assessing a performance assessed development proposal against the requirements of a Performance Outcome. However, it is not considered necessary to clarify that a quantum departure from a numeric value may result in a lesser likelihood that a relevant authority may consider the Performance Outcome to be met, given that such an assessment must be made on the merits of the proposal against the relevant Code policies, and that section 107 of the PDI Act requires that a proposal which is seriously at variance with the Code must not be granted consent.

Recommendation

AMEND rules of interpretation to clarify that a numeric value forming part of a DPF serves to guide a relevant authority, and is not a mandatory requirement in the case of a performance assessed development.

4.1.3. Spatial Mapping Updates – Minister's Determination (s71(e))

Issue

The Miscellaneous Technical Enhancements Code Amendment introduced a policy mechanism within Part 1 – Rules of Interpretation [Ministerial Determinations] to enable changes to be made to the Code's spatial layers in specified circumstances without the need for a full Code Amendment under section 73 of the Act for example.

Investigation

The policy mechanism under section 71 of the PDI Act enables a designated instrument to provide that:

> *A designated instrument may – (e) other than in the case of a regional plan, provide that any matter or thing is to be determined, dispensed with or regulated according to the discretion of the Minister, the Commission, the Chief Executive or any other specified body or person.*

Ministerial Determinations provides that the Minister may alter the spatial application of certain overlays in accordance with circumstances specified by the Code. Ministerial Determinations currently outlines circumstances where a small number of Overlays may be altered. In line with feedback received from various government agencies and referral bodies, this Code Amendment proposes to expand upon the list of Overlays and the circumstances in which they may be updated under Ministerial Determinations policy mechanism.

This Code Amendment also proposes updates to the existing wording of Ministerial Determinations to provide greater clarity around the recording of information related to changes to spatial layers undertaken in accordance with this section, as well as to clarify that the Commission and Chief Executive have the same authority in relation to this section of the PDI Act.

Recommendation

AMEND Part 1 – Rules of Interpretation [Ministerial Determinations] to expand and enhance the list of Overlays which may be amended in accordance with this section, and the circumstances under which they may be amended.

4.1.4. Spatial Mapping Updates – Spatial Improvements

Issue

Feedback has sought greater clarity about circumstances where updates comprising minor or operational amendments to the spatial layers of the Code contained within the SA planning database can be made in order to maintain a correct relationship between spatial layers and land parcels.

Investigation

The Miscellaneous Technical Enhancements Code Amendment included changes to Part 1 – Rules of Interpretation specifically in relation to minor or operational amendments to the Code's spatial layers made on a regular basis to maintain a correct relationship between them and land parcel cadastre. The amendment introduced a mechanism whereby changes to spatial layers are able to occur without formal procedures, where the spatial application of the boundary of a zone, subzone or overlay is directly aligned or linked with the cadastre (being a parcel boundary or some other point or position within a parcel) and the cadastre is amended by the Surveyor-General:

> ***Cadastral Updates***
>
> *The zones, subzones and overlays of the Code are referenced to the cadastral boundaries shown in SAPPA. In the majority of cases a zone, subzone or overlay boundary is directly aligned with a cadastral boundary. In the case of roads the zone, subzone or overlay boundaries are often aligned with the centreline of that road.*

When cadastral boundaries are resurveyed and amended by the Surveyor-General there are often boundaries that are, as a result, found to be incorrectly spatially located and as a result of the re-survey, are represented in SAPPA in a different geographic location.

Where the spatial application of the boundary of a zone, subzone or overlay is directly aligned or linked with the cadastre (being a parcel boundary or some other point or position within a parcel) and the cadastre is amended by the Surveyor-General resulting in the movement of a cadastral boundary, the spatial application of the boundary of the zone, subzone or overlay will also move proportionate with the amended cadastre. This ensures that the existing approved spatial application of the boundary of the zone, subzone or overlay with the cadastre is maintained.

In line with feedback received from users of the system, it is considered appropriate to refine the wording of Part 1 - Cadastral Updates to further clarify the circumstances and process by which minor amendments to the boundaries of spatial layers can be made via this mechanism. Proposed refinements include making clear reference to the fact that new land divisions, resurvey work and data integrity procedures undertaken or approved by the Surveyor General are areas in which spatial layers can be updated and maintained to ensure that the intended spatial relationships between spatial layers and cadastre are aligned. It is considered appropriate to make clear that this process will occur in accordance with section 71(e) of the PDI Act, which enables a designated instrument to provide that:

A designated instrument may – (e) other than in the case of a regional plan, provide that any matter or thing is to be determined, dispensed with or regulated according to the discretion of the Minister, the Commission, the Chief Executive or any other specified body or person.

Recommendation

AMEND Part 1 – Rules of Interpretation to clarify the circumstances under which the boundaries of the Code's spatial layers may be aligned with cadastre.

4.1.5. Policy Updates – Australian Standards

Issue

Several provisions of the Code are based on or otherwise relate to criteria set out by various Australian Standards. The Miscellaneous Technical Enhancements Code Amendment made several updates to policy to ensure consistency with Australian Standards. However, there is currently no mechanism within the Code to enable policies to be updated to reflect changes to Australian Standards without the need to undertake a full Code Amendment process under section 73 of the PDI Act, meaning that there may be instances where Code policy is not aligned with the requirements of the Standards.

Investigation

Section 71(b) of the PDI Act provides that the Code may:

refer to or incorporate wholly or partially and with or without modification, a policy or other document prepared or published by a prescribed body, either as in force at a specified time or as in force from time to time

During the development of the Code, it was decided that reference to Australian Standards would not be included within Code policy as although the standards provide widely accepted guidance for the design and siting of various development types, they do not provide for a simple, clear and unambiguous Deemed-to-Satisfy pathway for development. Furthermore, Australian Standards are not freely accessible to the general public, meaning that there would be a cost involved with accessing the requirements relevant to a development type prior to ever lodging an application for planning consent. Rather, where Australian Standards were relevant to Code policies, policies were drafted to reflect the tangible requirements of the relevant Standards.

Standards which have been used to inform Code policy include:

- AS/NZS 2890.1:2004 | Parking facilities - Off-street car parking
- AS 2890.2:2018 | Off-street Commercial Vehicle Facilities
- AS 4299-1995 | Adaptable housing
- AS2021-2000 | Acoustics - Aircraft Noise Intrusion - Building Siting and Construction

An issue exists whereby there is no direct link between an update to the Australian Standards and those Code policies which reflect the requirements of a relevant Standard.

Regulation 19 lists Standards Australia as a prescribed body for the purposes of section 71(b). Similarly, section 71(e) of the PDI Act enables a designated instrument to provide that:

> *A designated instrument may – (e) other than in the case of a regional plan, provide that any matter or thing is to be determined, dispensed with or regulated according to the discretion of the Minister, the Commission, the Chief Executive or any other specified body or person.*

To enable updates to a relevant Australian Standard to be reflected in Code policy in a timely manner, it is considered appropriate to introduce a policy mechanism within Part 1 – Rules of Interpretation to enable Code policies to be updated to align with the requirements of a relevant Australian Standard without the need to undertake a full Code Amendment under section 73. A similar self-executing policy was inserted into Part 1 – Rules of Interpretation to enable the use of section 71(e) of the PDI Act via the Miscellaneous Technical Enhancements Code Amendment for the purposes of updating the spatial application of Overlays.

Standards Australia conduct online consultation processes for proposals that pass their initial assessment. Relevant industry experts and groups are also asked to review and comment on the proposal via their consultation portal. The consultation process occurs prior to the development of a standard and its purpose is to gauge the level of support amongst industry peers and other statutory bodies.

Any member of the public can register and provide their feedback.

Recommendation

AMEND Part 1 – Rules of Interpretation to clarify the circumstances under which a Code policy may be amended under section 71(e) of the PDI Act to reflect the requirements of an Australian Standard.

4.2. Language, Consistency and Policy Applicability

4.2.1. Use of ‘And’ and ‘Or’ in Policy

Issue

Minor and Operational Recommendation 16 of the Expert Panel Report called for Code policy to be reviewed to ensure the same terms and expressions are used throughout. Further feedback on this recommendation called for greater clarity and consistency regarding DTS/DPF provisions which contain a list of requirements to be achieved, so that users of the system are more easily able to discern where every item listed in a DTS/DPF provision is required to be met, versus where only one, or a combination of the listed requirements are to be met.

Investigation

A review of policies across all Zones, Subzones and Overlays, as well as a number of key General Development Policies has identified inconsistencies and opportunities for greater clarity with regard to the interpretation of DTS/DPF provisions which contain lists of requirements. It is considered appropriate to amend these provisions where required to clarify where one or more of the outcomes listed within a DTS/DF provision must be achieved.

Investigations also identified duplication of a PO and its associated DTS/DPF within the Urban Renewal Neighbourhood Zone (PO and DTS/DPF 1.4 specifically). It is proposed that the duplicate be deleted.

Recommendation

In Part 2- Zones and Subzones, Part 3 – Overlays, and Part 4 – General Development Policies, **AMEND** DTS/DPF provisions containing lists to clarify which combination of listed requirements must be achieved. It is recommended that the following drafting methodology be applied:

- Where a DTS/DPF provision lists two requirements or outcomes and both are to be met, INSERT 'AND' between items (a) and (b)
- Where a DTS/DPF provision lists two requirements or outcomes and one or the other are to be met, INSERT 'OR' between items (a) and (b)
- Where a DTS/DPF provision lists more than two requirements or outcomes and all are to be met, INSERT 'satisfy all of the following' at the end of the introductory statement before the listed items.

  NOTE: depending on the context of the introductory statement, the exact wording may need to be altered e.g., satisfy (a) to (g) inclusive, and superfluous reference to 'and' and 'or' removed.
- Where a DTS/DPF provision lists more than two requirements or outcomes and one (or more) are to be met, INSERT 'satisfy one of the following' at the end of the introductory statement before the listed items.

  NOTE: depending on the context of the introductory statement, the exact wording may need to be altered, e.g. 'satisfy (a), (b) or (c)', 'satisfy (a) to (k), inclusive', 'satisfy one or more of the following' or 'satisfy at least one of the following', etc.
- Where a DTS/DPF provision lists more than two requirements or outcomes and a specific combination are to be met, INSERT 'satisfy [INSERT COMBINATION]' at the end of the introductory statement before the listed items.

  FOR EXAMPLE 'satisfy (a) and (b), or (a) and (c)'

There are instances where a DTS/DPF provision lists outcomes which a development must not achieve, e.g. exceedance of height criteria, creation of a new public road, etc. In such instances, "do not result in either/any of the following", or an equivalent statement will be added to the provision following the same guidelines as above.

4.2.2. Rural Zones – Detached Dwelling – Second Dwelling Policy Linkages

Issue

Feedback has identified that PO 5.2 and the associated DTS/DPF of the Rural Zone are not linked to Performance Assessed Detached Dwellings, despite relating specifically to dwellings.

Investigation

PO and DTS/DPF 5.2 of the Rural Zone read as follows:

PO 5.2	DTS/DPF 5.2
Development resulting in more than one dwelling on an allotment supports ageing in place for the owner of the allotment or multi-generational management of farms in a manner that minimises the potential loss of land available for primary production.	Dwelling that will result in more than one dwelling on an allotment where all the following are satisfied: (a) it is located within 20m of an existing dwelling (b) shares the same utilities of the existing dwelling (c) will use the same access point from a public road as the existing dwelling (d) it is located on an allotment not less than 40ha in area (e) will not result in more than two dwellings on the allotment.

Identical provisions exist within the Productive Rural Landscape Zone (as PO and DTS/DPF 5.3) which are linked to the Performance Assessed pathway for a Detached Dwelling in Table 3 of the Zone. As such this represents an inconsistency in approach to identical policies across rural type zones.

Given that a Detached Dwelling need only be located on its own site, rather than on a separate allotment and that the definition makes no mention about connection to separate utilities, etc. there is nothing specifically preventing a second dwelling on a rural allotment from being regarded as detached.

Addition of this provision to Table 3 in Rural Zone would add clarity regarding the provision of second dwellings for the purposes of ageing in place and management of ongoing primary production activities.

Recommendation

AMEND Table 3 of the Rural Zone to ensure that PO and DTS/DPF 5.2 are applied to Performance Assessed Detached Dwellings.

4.2.3. Rural Horticulture Zone – Ancillary Accommodation – Deemed-to-Satisfy Pathway

Issue

Feedback has identified that ancillary accommodation does not have a deemed-to-satisfy pathway in the Rural Horticulture Zone where it does in the Productive Rural Landscape Zone and the Rural Zone.

This is despite it being listed in Table 3 - Applicable Policies for Performance Assessed Development in the Rural Horticulture Zone.

Investigation

Below is a comparison of policies applied to deemed-to-satisfy – ancillary accommodation in the Rural Horticulture, Rural and Productive Rural Landscape Zone:

Deemed to Satisfy – Assessment Pathway

Exclusions	Zone Policy	General Policy	Overlay Policy
Rural Horticulture Zone			
No pathway			
Rural Zone **Productive Rural Landscape Zone**			
Coastal Areas Overlay Hazards (Bushfire - General) Overlay Hazards (Bushfire - High Risk) Overlay Hazards (Bushfire - Medium Risk) Overlay Hazards (Bushfire - Regional) Overlay Hazards (Flooding) Overlay Heritage Adjacency Overlay Historic Area Overlay Interface Management Overlay Local Heritage Place Overlay	None	Clearance from Overhead Powerlines DTS/DPF 1.1 Design [All development [Earthworks and sloping land]] DTS/DPF 8.1 Design [All Residential development [Ancillary Development]] DTS/DPF 13.1, DTS/DPF 13.2 Infrastructure and Renewable Energy Facilities [Wastewater Services] DTS/DPF 12.2 Transport, Access and Parking [Corner Cut-Offs] DTS/DPF 10.1	Aircraft Noise Exposure Overlay [Land Use and Intensity] DTS/DPF 1.1 Aircraft Noise Exposure Overlay [Built Form] DTS/DPF 2.1 Airport Building Heights (Aircraft Landing Areas) Overlay [Built Form] DTS/DPF 1.1 Airport Building Heights (Regulated) Overlay [Built Form] DTS/DPF 1.1 Building Near Airfields Overlay DTS/DPF 1.1, DTS/DPF 1.2, DTS/DPF 1.3 Defence Aviation Area Overlay [Built Form] DTS/DPF 1.1

Exclusions	Zone Policy	General Policy	Overlay Policy
Mount Lofty Ranges Water Supply Catchment (Area 1) Overlay Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay Ramsar Wetlands Overlay River Murray Flood Plain Protection Area Overlay River Murray Tributaries Protection Area Overlay Significant Interface Management Overlay Significant Landscape Protection Overlay State Heritage Area Overlay State Heritage Place Overlay			Future Local Road Widening Overlay [Future Road Widening] DTS/DPF 1.1 Future Road Widening Overlay [Future Road Widening] DTS/DPF 1.1 Gateway Overlay [Landscape Amenity] DTS/DPF 2.1 Hazards (Acid Sulfate Soils) Overlay [Land Use and Intensity] DTS/DPF 1.1 Hazards (Bushfire - Outback) Overlay [Habitable Buildings] DTS/DPF 1.1 Hazards (Bushfire - Outback) Overlay [Vehicle Access - Roads and Driveways] DTS/DPF 2.2 Hazards (Flooding – General) Overlay [Flood Resilience] DTS/DPF 2.1 Hazards (Flooding - Evidence Required) Overlay [Flood Resilience] DTS/DPF 1.1 Native Vegetation Overlay [Environmental Protection] DTS/DPF 1.1 Resource Extraction Protection Area Overlay [Protection of Strategic Resources] DTS/DPF 1.1 Scenic Quality Overlay [Earthworks] DTS/DPF 4.1 State Significant Native Vegetation Areas Overlay [Environmental Protection] DTS/DPF 1.1 Water Resources Overlay [Water Catchment] DTS/DPF 1.5

*subzone policy has been deliberately removed from the above comparison table.

General Development Policies – Design DTS/DPF 13.1 (and Design in Urban Areas – DTS/DPF 19.1) also includes policy that talks to ancillary accommodation as being envisaged in the Rural Horticulture Zone:

> ***Design DTS/DPF 13.1***
>
> *Ancillary buildings:*
>
> *….*
>
> *(l) in relation to ancillary accommodation in the Rural Zone, Productive Rural Landscape Zone, or Rural Horticulture Zone, is located within 20m of an existing dwelling.*

In addition, all three zones have a performance assessed pathway as set out in Table 3 of each zone. The linked policies are the same across the three zones.

Based on the above, it is considered that ancillary accommodation should be provided with a deemed-to-satisfy pathway in the Rural Horticulture Zone. This will provide consistency across the three zones and contribute to housing supply and ageing in place in rural areas.

Recommendation

AMEND Table 2 – Deemed-to-Sastify Development Classification of the Rural Horticulture Zone to include ancillary accommodation, apply the same overlay exceptions and link the same policies as those applied in Table 2 of the Rural / Productive Rural Landscape Zone.

AMEND Table 5 - Procedural Matters (PM) – Notification to include ancillary accommodation in Item 2 of the table as a class of development that does not require notification.

4.2.4. Rural Type Zones – Workers' Accommodation – Performance Assessed Policy Linkages

Issue

Feedback has identified that Table 3 – Applicable Policies for Performance Assessed Development in the Productive Rural Landscape Zone is missing policy linkages to the Significant Interface Management Overlay for workers' accommodation.

In addition, it is noted that the Productive Rural Landscape Zone has its own policy for workers' accommodation whereas the Rural and Rural Horticulture Zone link zone policy relating to second dwellings instead.

Investigation

In the Rural and Rural Horticulture Zones, the following policies from the Significant Interface Overlay are linked to performance assessed workers' accommodation:

PO 1.1	DTS/DPF 1.1
Intensification of sensitive uses and / or sensitive receivers, inclusive of land division for either purpose, is not undertaken to avoid increasing resident or community exposure to potential adverse hazards or emissions unless: (a) each source of adverse hazard or emission has ceased operation or (b) it can be demonstrated that the site of the proposed development is not unreasonably impacted by the hazard or emissions from a relevant source, including as a result of environmental or operational improvements that have been or will be made to reduce the hazard or emissions from each source to an acceptable level.	Development does not comprise a sensitive use, sensitive receiver and / or land division for a sensitive use or sensitive receiver purpose unless: (a) it is a replacement dwelling where the total floor area is no greater than the existing or previous dwelling (b) each source of hazard and / or emissions has ceased to operate or has been superseded by another use such that it cannot be revived.

This policy is not linked as an applicable policy to performance assessed workers' accommodation in the Productive Rural Landscape Zone. For consistency reasons PO and DTS/DPF 1.1 of the Significant Interface Overlay the policy should be linked in this zone as it considered relevant to the assessment of workers' accommodation.

Both the Rural Horticulture Zone and the Productive Rural Landscape Zone contain the following policy which relates specifically to workers' accommodation:

Workers' accommodation	
PO 9.1	DTS/DPF 9.1
Workers' accommodation provides short-term accommodation for persons temporarily engaged in the production, management or processing of primary produce.	Workers' accommodation: (a) is developed on a site at least 2ha in area (b) has a total floor area not exceeding 250m^2 (c) is in the form of a single building or part of a cluster of buildings that are physically connected (d) amenities accommodate not more than 20 persons at any one time (e) is setback at least 50m from a road boundary (f) is setback at least 40m from a side or rear allotment boundary (g) is located within 20m of an existing dwelling on the same allotment (h) does not result in more than one facility being located on the same allotment.

This policy is linked to performance assessed workers' accommodation in Table 3 in both these zones. However, in the Rural Zone, no specific policy for workers' accommodation exists. Instead, Rural Zone PO 5.2, 5.3 and 5.4, which relate to second dwellings, are linked. Comparable policies in the Productive Rural Landscape and Rural Horticulture Zones are not linked.

To provide for a consistent approach to the assessment of workers' accommodation across the three zones it is proposed that the PO 9.1 above be added to the Rural Zone and applied to performance assessed – workers' accommodation and that Rural Zone PO 5.2, 5.3 and 5.4 be unlinked as applicable policy.

Recommendation

AMEND Table 3 – Applicable Policies for Performance Assessed Development of the Productive Rural Landscape Zone by applying Significant Interface Overlay PO 1.1 to class of development workers' accommodation.

INSERT the following new policy and heading in the Rural Zone and link it to performance assessed – workers' accommodation in Table 3 of that Zone.

Workers' accommodation	
PO 9.1 Workers' accommodation provides short-term accommodation for persons temporarily engaged in the production, management or processing of primary produce.	DTS/DPF 9.1 Workers' accommodation: (a) is developed on a site at least 2ha in area (b) has a total floor area not exceeding 250m^2 (c) is in the form of a single building or part of a cluster of buildings that are physically connected (d) amenities accommodate not more than 20 persons at any one time (e) is setback at least 50m from a road boundary (f) is setback at least 40m from a side or rear allotment boundary (g) is located within 20m of an existing dwelling on the same allotment (h) does not result in more than one facility being located on the same allotment.

AMEND Table 3 – Applicable Policies for Performance Assessed Development of the Rural Zone by removing Rural Zone PO 5.2, 5.3 and 5.4 as applicable zone policies for class of development workers' accommodation.

4.2.5. Shop, Office and Consulting Room – Inconsistent Policy Linkages

Issue

User feedback has identified an inconsistency in the application of Zone provisions relating to shops, offices and consulting rooms throughout various Zones. It has similarly been found that where a Zone includes provisions relating to a change of use to one or other of these development types, these provisions have only been applied to deemed-to-satisfy assessment pathways and not to the associated Performance Assessed pathways.

Investigation

A review of Performance Assessed pathways for shop, office and consulting rooms has identified the following zone policies that have not been linked as applicable zone policy despite being relevant to the land use:

Land Uses	Policies Linked	Missing Policies
Business Neighbourhood Zone		
Consulting rooms	PO 1.1, PO 1.2, PO 1.3	
Office	PO 1.1, PO 1.2	PO 1.3
Shop	PO 1.1	PO 1.2, PO 1.3
Suburban Business Zone		
Consulting rooms	PO 1.1, PO 1.2	PO 1.4
Office	PO 1.1, PO 1.2, PO 1.4	
Shop	PO 1.1	PO 1.2 PO 1.4
City Main Street Zone		

Land Uses	Policies Linked	Missing Policies
Consulting rooms	PO 1.1, PO 1.2, PO 1.4, PO 1.5, PO 1.6	PO 1.7
Office	PO 1.1, PO 1.2, PO 1.4, PO 1.5, PO 1.6	PO 1.7
Shop	PO 1.1, PO 1.2, PO 1.4, PO 1.5, PO 1.6	PO 1.7
Suburban Main Street Zone		
Consulting rooms	PO 1.1, PO 1.2, PO 1.3	PO 1.7
Office	PO 1.1, PO 1.2, PO 1.3	PO 1.7
Shop	PO 1.1, PO 1.2, PO 1.3, PO 1.6	PO 1.7
Township Main Street Zone		
Consulting rooms	PO 1.1, PO 1.2	PO 1.6
Office	PO 1.1, PO 1.2	PO 1.6
Shop	PO 1.1, PO 1.2, PO 1.5	PO 1.6
Local Activity Centre Zone		
Consulting rooms	PO 1.1, PO 1.4	PO 1.5
Office	PO 1.1, PO 1.4	PO 1.5
Shop	PO 1.1, PO 1.4	PO 1.5
Suburban Activity Centre Zone		
Consulting rooms	PO 1.1	PO 1.6
Office	PO 1.1	PO 1.6
Shop	PO 1.1	PO 1.5, PO 1.6
Township Activity Centre Zone		
Consulting rooms	PO 1.1	PO 1.4, PO 1.5
Office	PO 1.1	PO 1.4, PO 1.5
Shop	PO 1.1	PO 1.4, PO 1.5
Urban Activity Centre Zone		
Consulting rooms	PO 1.1, PO 1.2, PO 1.6	PO 1.7
Office	PO 1.1, PO 1.2, PO 1.6	PO 1.7
Shop	PO 1.1, PO 1.2, PO 1.6	PO 1.7
Township Zone		
Consulting rooms	PO 1.1, PO 1.2, PO 1.5	
Office	PO 1.2, PO 1.5	PO 1.1
Shop	PO 1.1, PO 1.2, PO 1.5	
Capital City Zone		
Consulting rooms	PO 1.1	PO 1.2
Office	PO 1.1	PO 1.2
Shop	PO 1.1	PO 1.2

Given that these provisions relate to all three of the aforementioned development types, and that the preamble to Table 3 – Applicable Policies for Performance Assessed Development states that 'Unless otherwise specified in another class of development, the reference to a class of development includes a reference to a change in the use of the relevant land or building work (including construction of a new building, or alteration/addition of an existing building)', it is considered appropriate to ensure that all relevant Zone provisions, including those related to a change of use are consistently applied to Shops, Offices and Consulting Rooms in Table 3.

Recommendation

AMEND Performance Assessed pathways for Shop, Office and Consulting Room to ensure consistent application of Zone policies related to these development types, as well as those policies related to a change of use to one of these development types in all relevant Zones.

4.2.6. Swimming Pool Pumps – Acoustic Enclosure Policy

Issue

Feedback has identified inconsistencies between the requirements for the location and provision of noise mitigation measures for swimming pool filtration systems in Accepted Development Tables and General Development Policies.

Investigation

Inconsistencies in wording between policies contained within Accepted Development tables and General Development Policies have been identified as follows:

Various Zones: Table 1 - Accepted Development

Swimming pool or spa pool and associated swimming pool safety features	6. Location of filtration system from a dwelling on an adjoining allotment: (a) not less than 5m where the filtration system is located inside a solid structure that will have material impact on the transmission of noise; or (b) not less than 12m in any other case.

General Development Policies – Design

PO 13.3	DTS/DPF 13.3
Fixed plant and equipment in the form of pumps and/or filtration systems for a swimming pool or spa is positioned and/or housed to not cause unreasonable noise nuisance to adjacent sensitive receivers.	The pump and/or filtration system is ancillary to a dwelling erected on the same site and is: (a) enclosed in a solid acoustic structure that is located at least 5m from the nearest habitable room located on an adjoining allotment or (b) located at least 12m from the nearest habitable room located on an adjoining allotment.

General Development Policies – Design in Urban Areas

PO 19.3	DTS/DPF 19.3
Fixed plant and equipment in the form of pumps and/or filtration systems for a swimming pool or spa positioned and/or housed to not cause unreasonable noise nuisance to adjacent sensitive receivers.	The pump and/or filtration system is ancillary to a dwelling erected on the same site and is: (a) enclosed in a solid acoustic structure that is located at least 5m from the nearest habitable room located on an adjoining allotment or (b) located at least 12m from the nearest habitable room located on an adjoining allotment.

Interface between Land Uses

PO 4.3	DTS/DPF 4.3
Fixed plant and equipment in the form of pumps and/or filtration systems for a swimming pool or spa are positioned and/or housed to not cause unreasonable noise nuisance to adjacent sensitive receivers (or lawfully approved sensitive receivers).	The pump and/or filtration system ancillary to a dwelling erected on the same site is: (a) enclosed in a solid acoustic structure located at least 5m from the nearest habitable room located on an adjoining allotment or (b) located at least 12m from the nearest habitable room located on an adjoining allotment.

With respect to Accepted Development Tables, it is considered appropriate to amend policy to replace references to 'a solid structure that will have material impact on the transmission of noise' with 'acoustic structure', given this will serve the same intent whilst avoiding the potential for uncertainty around the meaning of 'material impact' for the purposes of assessment.

With respect to General Development Policies, the above provisions of the Design, Design in Urban Areas, and Interface between Land Uses are essentially the same, save for slight inconsistencies in grammar. Furthermore, Design - PO and DTS/DPF 13.3, as well as Design in Design in Urban Areas - PO and DTS/DPF 19.3 are not currently called up for the purposes of assessment in any Zone development classification tables. As these provisions would only apply in the case of a swimming pool or spa pool where it would default to an 'all other Code assessed' Performance Assessed class of development, it is considered reasonable to delete these provisions from the Design and Design in Urban Areas General Development Policies to reduce unnecessary duplication within the Code.

Recommendation

AMEND policies related to swimming pool filtration systems in Accepted Development Tables (Zone Table 1) and General Development Policies to ensure consistency in wording.

DELETE from the General Development Policies – Design PO and DTS/DPF 13.3, as well as Design in Design in Urban Areas - PO and DTS/DPF 19.3.

4.2.7. Capital City Zone – Service Lanes v Lane Activation Policy

Issue

It is understood that PO 3.11 in the Capital City Zone is being interpreted as requiring active uses along service laneways. Whilst this is beneficial in some contexts, at other times it is appropriate for laneways to accommodate servicing of development, including vehicle access by heavy vehicles for refuse collection. The rigid application of the policy is understood to be limiting the ability of relevant authorities to drive good development outcomes that respond appropriately to context.

In addition, PO 4.2 provides a framework within which exceedances of an applicable TNV for height may be contemplated. It provides that such a building should either involve retention, conservation and reuse of a State Heritage Place or incorporate measures that will provide substantial additional gain in sustainability, and demonstrate other beneficial design elements such as incorporating high quality open space that is universally accessible and directly connected to (and well integrated with) public realm areas of the street. Four of nine possible incentives are required to met.

PO 4.2(b)(vi) is one of the nine incentives for additional height and can be achieved through the provision of at least 75% of the ground floor street fronts as active frontages.

Investigation

A review of PO 3.11 in the Capital City Zone was undertaken with a view to promoting flexibility in development assessment. The PO currently requires consideration of the local context of the development site, but then proceeds to focus on activation, pedestrianisation and fine-grained form as outcomes:

PO 3.11
Development along minor streets and laneways is informed by its local context to maintain the prevailing built form pattern and structure, and designed to provide a sense of enclosure, and enable fine-grain uses at street level to create an intimate, active, inclusive and walkable public realm.

This can conflict with policies that seek access minimisation on primary frontages, creating a need for servicing via laneways/secondary frontages. There is a need to enable these matters to be balanced in an assessment. Accordingly, additional flexibility in PO 3.11 is considered appropriate.

PO 4.2 stands as an incentive-based policy enabling additional height where high-quality design elements are provided elsewhere within the building:

PO 4.2

Development exceeding the building height specified in the *Maximum Building Height (Levels) Technical and Numeric Variation layer and the Maximum Building Height (Metres) Technical and Numeric Variation* layer is generally not contemplated unless:

(a) the development provides for the retention, conservation and reuse of a building that:
  (i) is a State or local heritage place and the heritage values of the place will be maintained
  (ii) provides a notable positive contribution to the character of the local area

  or

(b) the building incorporates measures that provide for a substantial additional gain in sustainability and it demonstrates at least four of the following are met:
  (i) the development provides an orderly transition up to an existing taller building or prescribed maximum height in an adjacent Zone or building height area on the *Maximum Building Height (Levels) Technical and Numeric Variation layer* and *Maximum Building Height (Metres) Technical and Numeric Variation* layer
  (ii) incorporates high quality open space that is universally accessible and directly connected to, and well integrated with, public realm areas of the street
  (iii) Incorporates high quality, safe and secure, universally accessible pedestrian linkages that connect through the development site to the surrounding pedestrian network
  (iv) provides higher amenity through provision of private open space in excess of minimum requirements by 25 percent for at least 50 percent of dwellings
  (v) no on site car parking is provided
  (vi) at least 75% of the ground floor street fronts of the building are active frontages
  (vii) the building has frontage to a public road that abuts the Adelaide Park Lands;
  (viii) where the development includes housing, at least 15% of the dwellings are affordable housing
  (ix) the impact on adjacent properties is no greater than a building of the maximum height on the *Maximum Building Height (Levels) Technical and Numeric Variation layer* and *Maximum Building Height (Metres) Technical and Numeric Variation* layer in relation to sunlight access and overlooking.

In this context, the building features that may be relied upon to enable the additional height above the TNV should be relatively aspirational and drive high-quality design. There is, nonetheless, a need for such policies to be reasonable and enable balanced outcomes across all facets of a development.

Whilst it may be appropriate in some contexts and be viewed as promoting a vibrant street environment, requiring 75% of the ground floor street fronts to be active frontages can limit the capacity of development to provide for safe and convenient servicing by heavy vehicles and, at times, limits the capacity of development to respond to its local context. This policy would benefit from a more nuanced application that facilitates good, innovative design outcomes.

Recommendation

AMEND PO 3.11 in the Capital City Zone to recognise that development along laneways should be appropriate to local context and that the desire for active frontages needs to be balanced against the requirements of other policies that guide design away from utilising primary frontages for vehicle access and other service utilities.

AMEND PO 4.2(b)(vi) to enable a more nuanced application of the policy by exempting areas required for servicing from the calculation as they cannot feasibly be active frontages.

4.2.8. Accepted Development – Building Alterations – Loss of Carparking.

Issue

Accepted Development pathways for Building Alterations do not address loss of off-street parking through the conversion of a carport or garage to a room.

Investigation

It has been identified that Deemed-to-Satisfy and Performance Assessed pathways for Dwellings and Dwelling Additions, including a 'change of use' to these development types, call up the required parking rates from the Transport, Access and Parking module. Likewise, Deemed-to-Satisfy and Performance Assessed pathways for ancillary structures including ancillary accommodation, carports, outbuildings and verandahs call up provisions which ensure that these development types do not result in less parking than specified by the parking rate tables.

Conversely, the Accepted development pathway for ‘building alterations’ does not account for the loss of an off-street parking space through the conversion of a carport or garage to a room, which in some cases may only require an assessment against the Building Rules, rather than planning consent, depending on the nature of the work required, i.e. replacement of a roller door with a wall or windows. This could come down to a matter of interpretation around whether conversion of a garage into a room is a building alteration, or if it constitutes a change of use/dwelling addition.

Recommendation

AMEND the Accepted Development pathway for Building Alterations in all relevant Zones to clarify that a building alteration cannot result in less vehicle parking than required by the Transport Access and Parking / Affordable housing Overlay.

4.2.9. Conservation Zone – Restricted Development Ambiguity

Issue

Issues with the restricted development triggers of the Conservation Zone have been identified that are resulting in dwelling replacements (where the dwelling has already been demolished) and minor boundary realignment proposals falling into the restricted development pathway.

Investigation

The restricted development threshold is a procedural trigger applied under the Code to development that typically requires a more rigorous planning assessment by the Commission. The threshold does not indicate whether a development is suitable. This determination is made based on the applicable policy (e.g. the DOs, POs and DTS/DPF criteria).

As part of the Miscellaneous Technical Enhancement Code Amendment (2023) a review of restricted development and associated triggers was undertaken to remove those that do not necessarily require assessment by the Commission and could instead be performance assessed by an Assessment Manager or Council Assessment Panel.

To help guide and assist in what classes of development should be listed as a ‘restricted’ form of development, the Commission established the following principles:

> **Principle 1: Warrants assessment by the Commission to consider the strategic implications and impacts.**
>
> For example, large-scale out-of-centre retail warrants State assessment as it may have a broader impact on the form and pattern of development across a region and could disrupt the role of activity centres in providing equitable and convenient access to shopping, administrative, cultural, entertainment and other facilities.
>
> **Principle 2: Requires detailed investigations and assessment beyond that provided through a performance assessed pathway, and may require consideration of other documents outside of the Code**
>
> For example, special industry has the potential to endanger or detrimentally affect the health of people and property and would therefore benefit from a more detailed assessment process.

The Miscellaneous Technical Enhancement Code Amendment removed several restricted classes of development from the Code based on these principles.

In the Conservation Zone both dwelling and land division are restricted classes of development subject to the following exclusions:

Table 4 - Restricted Development Classification

Dwelling	Any of the following: (a) detached dwelling in the **Dwelling Subzone** and will not result in more than one dwelling per allotment (b) detached dwelling that will replace an existing lawfully erected dwelling (c) detached dwelling in the **Small Scale Settlement Subzone** and will not result in more than one dwelling on an allotment.
Land division	Any of the following: (a) land division that meets Conservation Zone DTS / DPF 2.1 (b) land division in the **Visitor Experience Subzone** to create an allotment with an area of 5ha or more for existing tourist accommodation (c) land division in the **Small Scale Settlement Subzone**.

Dwelling

In relation to dwelling, one of the exceptions (exception (b)) allows for a detached dwelling that replaces an existing lawfully erected dwelling to be assess via the performance assessed pathway rather than as a restricted class of development.

A recent example has emerged where an existing dwelling was demolished prior to the submission of an application for a replacement dwelling. This has resulted in the application falling into the restricted development pathway. Had the dwelling not have been demolished, Council would have been the relevant authority. It is considered that this is an anomaly in the Code, and a development application of this nature is not one that meets the principles for restricted development.

A time limitation should however be imposed so that the provisions are not exploited to the detriment of the Conservation Zone's objectives and outcomes. For example, it would be unreasonable to allow a dwelling replacement where the existing dwellings was demolished 100 years ago.

Using the definition of 'replacement building' as guidance, 3 years is considered reasonable.

Replacement building	The construction of a new building in the same, or substantially the same, position as a building which was demolished within the previous 3 years and has the same, or substantially the same, layout and external appearance as the previous building.

In addition to the above, an inconsistency has been identified when comparing part (a) of the exceptions for dwelling and part (c). Both refer to the words 'and will not result in not more than one dwelling per / on an allotment' but are written slightly differently. The exclusions should be worded consistently and as the Code contains a definition for 'more than one dwelling on an allotment', part (a) should be updated to reflect the same.

Land division

The second issue relates to part (a) of the exceptions for land division. On the face of it the exception reads clearly, however ambiguity in the wording of DTS/DPF 2.1 is causing difficulties in determining the correct assessment pathway (performance assessed vs restricted) for some development proposals. It is recommended that the policy be reviewed and simplified to make it clear and easy to interpret.

Land Division	
PO 2.1 Land division supports the management or improvement of the natural environment including avoiding: (a) further fragmentation of land that may reduce effective management of the environment (b) parcel arrangements that increase direct property access to waterfront areas (including access via a public reserve) (c) additional allotments with frontage to the coast or River Murray.	DTS/DPF 2.1 Land division satisfies (a) and (b): (a) does not create any additional allotments (b) for a boundary realignment that does not result in any additional allotments with frontage or direct access to the coast or River Murray (including access via a public reserve) and will satisfy one of the following: (i) is for the creation of a public road or a public reserve (ii) is to remove an anomaly in existing boundaries with respect to the location of existing buildings or structures (iii) is for the management of existing native vegetation (iv) the resultant allotments are not less than: **Minimum Site Area** Minimum site area is 10 ha Minimum site area is 100 ha Minimum site area is 1,200 sqm Minimum site area is 2,000 sqm Minimum site area is 2 ha Minimum site area is 20 ha Minimum site area is 200 ha Minimum site area is 40 ha Minimum site area is 600 sqm In relation to DTS/DPF 2.1, in instances where: (c) more than one value is returned in the same field for DTS/DPF 2.1(b)(iv), refer to the *Minimum Site Area Technical and Numeric Variation* , layer in the SA planning database to determine the applicable value relevant to the site of the proposed development (d) no value is returned for DTS/DPF 2.1 (b)(iv) (i.e. there is a blank field), then none are applicable and the relevant development cannot be classified as deemed-to-satisfy.

A recent application for boundary realignment identified another issue in relation to part (b)(ii). In this example the application was for a minor boundary realignment to follow an existing driveway and access point, however the exclusion provided by DTS/DPF 2.1(b) only relates to removing anomalies for existing buildings or structures. The application was therefore

classified as restricted. It is considered that a development application of this nature is not one that meets the principles for restricted development and should be performance assessed rather than subject to State assessment. Amending part (b)(ii) to allow for the correction of anomalies in relation to vehicle access arrangements in addition to the location of existing buildings and structures is recommended.

Recommendation

AMEND the restricted development exclusions as they relate to 'Dwelling' class of development in the Conservation Zone to clarify that the replacement of an existing lawfully erected dwelling includes one that was demolished within the previous 3 years. Also correct the inconstancy in wording between part (a) and part (c) so that that they both refer to the defined term 'more than one dwelling on an allotment.'

AMEND part (a) of the restricted development exclusions as they relate to 'Land division' class of development in the Conservation Zone by using the word 'satisfies' instead of 'meets' to make it consistent with other Code policy.

AMEND DTS/DPF 2.1 of the Conservation Zone to clarify the types of land division that are considered to satisfy PO 2.1. Allow for the creation of additional allotments for the purpose of creating a public road or public reserve and with respect to boundary alignments allow the correction of anomalies that related to existing vehicle access points.

4.2.10. River Murray Tributaries Protection Area Overlay – Exclusions

Issue

A number of development types are excluded from the Accepted and Deemed-to-Satisfy Assessment Pathways in various Zones where the site is located within the River Murray Tributaries Protection Area Overlay, despite the provisions of the Overlay being irrelevant to the development type, or otherwise not applied to that development type for related Performance Assessed pathways.

Investigation

The Miscellaneous Technical Enhancements Code Amendment made amendments in line with feedback which suggested that Overlays are, in some cases, preventing a DTS or accepted development pathway and/or applying additional policies where it is unnecessary to do so.

Amendment Instruction 2.3.2.14 of the Miscellaneous Technical Enhancement Code Amendment proposed that the River Murray Tributaries Protection Area Overlay should not exclude minor structures, such as carports outbuildings, verandahs or swimming pools from the Accepted Development Pathway. However, the River Murray Tributaries Protection Area Overlay was retained as an exclusion for fence and retaining wall structures within the Accepted Development Pathway.

Furthermore, the construction of a detached dwelling within the Master Planned Neighbourhood Zone, Master Planned Township Zone and Master Planned Renewal Zone is accepted development under Schedule 6A—Accepted development of the Planning Development and Infrastructure Regulations 2017. However, feedback received post-Miscellaneous Technical Enhancement has suggested that the presence of this Overlay exclusion from the Accepted Development Pathway is preventing dwellings from being assessed under the Accepted Development pathway where a fence and retaining wall combination is proposed on-site.

It is considered unnecessary to exclude a fence and retaining wall structure from the Accepted Development Pathway where located within the River Murray Tributaries Protection Area Overlay given that such an exclusion for detached dwellings does not exist within these Zones.

Further investigation has highlighted that the River Murray Tributaries Protection Area Overlay also serves as an exclusion for dwellings and ancillary accommodation from the Deemed-to-Satisfy assessment pathway, despite not being linked as applicable policies for the Performance Assessed Pathway. As the policies of the Overlay speak to the construction of a dam, wall or other structure that will collect or divert surface water flowing over land, as well as ensuring water intensive activities have a sustainable water source, it is considered unreasonable to exclude DTS pathways where the Overlay would have no applicability to performance assessment.

Recommendation

REMOVE the River Murray Tributaries Protection Area Overlay exclusion from Accepted Development – Fence and retaining wall structure, Retaining wall classes of development and Deemed-to-Satisfy – Ancillary accommodation and dwelling classes of development.

4.2.11. Water Resources Overlay – Exclusions

Issue

A number of development types are excluded from Deemed-to-Satisfy Assessment Pathways throughout various Zones where the site is located within the Water Resources Overlay, despite the Overlay containing DTS/DPF provisions which could reasonably be applied to a Deemed-to-Satisfy pathway.

Investigation

The Miscellaneous Technical Enhancements Code Amendment made amendments in line with feedback which suggested that Overlays are, in some cases, preventing a DTS or accepted development pathway and/or applying additional policies where it is unnecessary to do so.

Amendment Instruction 2.3.2.14 of the Miscellaneous Technical Enhancement Code Amendment proposed that the Water Resources Overlay should not exclude dwellings in neighbourhood-type Zones from the Deemed-to-Satisfy Assessment Pathway and that DTS/DPF 1.5 of the Overlay be applied in place of an exclusion:

> DTS/DPF 1.5
>
> A strip of land 20m or more wide measured from the top of existing banks on each side of the watercourse is free from development, livestock use and revegetated with locally indigenous vegetation.

However, the Water Resources Overlay was retained as an exclusion for dwellings in other Zones, despite DTS/DPF 1.5 of the Overlay being similarly applicable. Similarly, the exclusion was retained for a dwelling or residential flat building undertaken by the SA Housing Trust.

It is considered unnecessary to exclude dwellings from the Deemed-to-Satisfy Assessment Pathway where the site is located within the Water Resources Overlay given that suitable DTS/DPF provision exist within the Overlay.

Recommendation

REMOVE the Water Resources Overlay exclusion from Deemed-to-Satisfy dwellings in all zones and apply Overlay policy in its place.

4.2.12. Stormwater Management Overlay – Connection to Hot Water Service

Issue

DTS/DPF 1.1 of the Stormwater Management Overlay requires that residential development comprising detached, semi-detached or row dwellings, or less than 5 group dwellings or

dwellings within a residential flat building includes rainwater tank storage that is connected to toilets, laundry cold water outlets or hot water services. The Plumbing Code of Australia does not, however, allow direct connection of a rainwater tank to hot water services.

Investigation

DTS/DPF 1.1 of the Stormwater Management Overlay reads as follows:

DTS/DPF 1.1

Residential development comprising detached, semi-detached or row dwellings, or less than 5 group dwellings or dwellings within a residential flat building:

(a) includes rainwater tank storage:
  (i) connected to at least:
    A. in relation to a detached dwelling (not in a battle-axe arrangement), semi-detached dwelling or row dwelling, 60% of the roof area
    B. in all other cases, 80% of the roof area
  (ii) connected to either a toilet, laundry cold water outlets or hot water service for sites less than 200m^2
  (iii) connected to one toilet and either the laundry cold water outlets or hot water service for sites of 200m^2 or greater
  (iv) with a minimum total capacity in accordance with Table 1
  (v) where detention is required, includes a 20-25 mm diameter slow release orifice at the bottom of the detention component of the tank
(b) incorporates dwelling roof area comprising at least 80% of the site's impervious area

Table 1: Rainwater Tank

Site size (m^2)	Minimum retention volume (Litres)	Minimum detention volume (Litres)
<200	1000	1000
200-400	2000	Site perviousness <30%: 1000 Site perviousness ≥30%: N/A
>401	4000	Site perviousness <35%: 1000 Site perviousness ≥35%: N/A

Conversely, part B5 Cross-connection control of the Plumbing Code of Australia classifies the connection of a rainwater tank to a drinking water service as a hazard requiring specific contamination control devices to be installed:

(1) A hazard exists wherever it is possible for water or contaminants to enter a drinking water service or supply via any potential cross-connection between—
  a. the drinking water service; and
  b. any of the following:
    i. A non-drinking water service.
    ii. A rainwater service.
    iii. An alternative water supply.
    iv. A swimming pool.
    v. Pipes, fixtures or specialist equipment (including boilers and pumps) containing chemicals, liquids, gases or other substances which may be harmful to health or safety.
(2) Each hazard must—
  a. be assigned an Individual protection Hazard Rating or Zone protection Hazard Rating in accordance with S41C4 and S41C5; and
  b. be isolated from the drinking water service by an appropriate backflow prevention device which is selected and installed in accordance with Section 4 of AS/NZS 3500.1.
(3) Where a site is served by a Network Utility Operator's drinking water supply, appropriate containment protection must be selected and installed in accordance with Section 4 of AS/NZS 3500.1.

Given that the DTS/DPF 1.1 of the Stormwater Management Overlay does not align with the requirements of the Plumbing Code, in that the Overlay requires connection to a hot water service despite this not being necessarily feasible, it is considered reasonable to remove this requirement from the Overlay.

Recommendation

AMEND Stormwater Management Overlay DTS/DPF 1.1 by removing references to a hot water service.

4.2.13. Educational Establishment Policy – Marking of Accessible Car Parking

Issue

Recent case law has highlighted the need for greater clarification regarding the meaning of 'specifically marked accessible car parking places' within PO 5.1 of the Transport, Access and Parking General Development Policies.

Investigation

PO 5.1 of the Transport, Access and Parking general Development Policies requires the following:

> *Sufficient on-site vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-site rate such as:*
>
> *(a) availability of on-street car parking*
> *(b) shared use of other parking areas*
> *(c) in relation to a mixed-use development, where the hours of operation of commercial activities complement the residential use of the site, the provision of vehicle parking may be shared*
> *(d) the adaptive reuse of a State or Local Heritage Place.*

Garden College v City of Salisbury [2022] SAERDC 10 made the following comments in relation to 'specifically marked accessible car parking places':

> *'Having regard to the underlying planning policy that there be sufficient onsite car parking having regard to factors that support a reduced on-site rate for primary and secondary schools, we consider it is also implicit that any pick up/set down area on the public realm within 300 metres of the site must be <u>specifically marked as such if it is to support reduced on-site parking</u>. The mere availability of sufficient spaces in unmarked areas does not meet the specified rate.'*

Contrary to comments made in Garden College v City of Salisbury [2022] SAERDC 10, for the purposes of Transport, Access and Parking PO 5.1, 'specifically marked accessible car parking places' does not refer to parking spaces which are marked as being related to the land use to which they are ancillary, but rather parking spaces for people with disabilities which are specifically marked, as per AS/NZS 2890.6-2009 Parking facilities Off-street parking for people with disabilities. It is considered reasonable to amend PO 5.1 to clarify this matter.

Recommendation

AMEND Transport, Access and Parking PO 5.1 to clarify the meaning of 'clearly marked accessible parking place'.

4.2.14. Advertisements – General Policy – Third Party Advertising

Issue

The Advertisements general module contains guidance on matters to do with the location and content of advertisements with a view to ensuring that the potential safety and amenity impacts of advertisements are appropriately managed.

In line with the Recommendation 19 of the Planning System Implementation Review, the Advertisement General Development Policies have been reviewed to ensure that the policy is reasonable and practical and does not duplicate other policies in the module.

Investigation

A review of the policies has identified that advertising content policy PO 3.1 duplicates policy guidance contained in other parts of the module, particularly PO 2.1 to 2.3, which deal with visual clutter arising from the proliferation of advertisements.

Advertising Content	
PO 3.1 Advertisements are limited to information relating to the lawful use of land they are located on to assist in the ready identification of the activity or activities on the land and avoid unrelated content that contributes to visual clutter and untidiness.	DTS/DPF 3.1 Advertisements contain information limited to a lawful existing or proposed activity or activities on the same site as the advertisement.

As PO 3.1 is about advertising content, matters of visual clutter and untidiness should be addressed through PO 2.1 to 2.3 to avoid policy duplication. This would also create a better relationship between PO 3.1 and its accompanying DTS/DPF.

Proliferation of Advertisements	
PO 2.1 Proliferation of advertisements is minimised to avoid visual clutter and untidiness.	DTS/DPF 2.1 No more than one freestanding advertisement is displayed per occupancy.
PO 2.2 Multiple business or activity advertisements are co-located and coordinated to avoid visual clutter and untidiness.	DTS/DPF 2.2 Advertising of a multiple business or activity complex is located on a single advertisement fixture or structure.
PO 2.3 Proliferation of advertisements attached to buildings is minimised to avoid visual clutter and untidiness.	DTS/DPF 2.3 Advertisements satisfy all of the following: (a) are attached to a building (b) other than in a Neighbourhood-type zone, where they are flush with a wall, cover no more than 15% of the building facade to which they are attached (c) do not result in more than one sign per occupancy that is not flush with a wall.

Recommendation

AMEND PO 3.1 of the Advertisements General Development Policies to avoid policy duplication with PO 2.1 to 2.3 of the same module.

4.3. Referrals

As part of its review into the implementation of the planning system, the Expert Panel recommended that the development of State Heritage Places should not attract a referral in certain circumstances. A review of heritage referrals has been completed to identify the circumstances this should apply to. The review was undertaken with advice from the State Heritage Branch of the Department for Environment and Water (the Heritage Branch).

A general review of other Overlay referrals and those contained in Part 9 has also been undertaken with the objective to remove any unnecessary referrals and to reduce duplication particularly in instances where applications have previously been referred at an earlier stage of development (e.g. land division application then residential development).

4.3.1. State Heritage Overlays

Issue

The Heritage Branch currently receives the 3rd highest number of referrals out of all referral bodies, although quite often the matters are not viewed as 'high risk' proportionate to the whole referral regime for the planning system.

Investigation

Refining the spatial extent of the State Heritage Place Overlay to listed buildings has been explored however this is somewhat constrained by the *Heritage Places Act 1993* which defines a 'place' as including the land upon which the heritage place is located. Spatial mapping for the purposes of the Code therefore errs on the side of caution and maps the whole allotment upon which a State Heritage Place is located.

Discussions with the Heritage Branch however has revealed the following opportunities to improve referrals regarding State Heritage Places and ultimately reduce the number of applications referred:

State Heritage Place Overlay

No specific changes have been identified to directly amend the referral triggers or spatial application of this Overlay, however the Heritage Branch intends to prepare advisory information (such as guides or fact sheets) for relevant authorities to provide greater clarity and guidance on the following referral exemption:

> *'the development is, in the opinion of the relevant authority, minor in nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral'*

Heritage Adjacency Overlay

There is scope to make some minor wording changes to the following referral triggers to provide better clarity through using more plain English expression and to better empower a relevant authority to determine that a particular application may not warrant a referral, as follows:

> *Development which in the opinion of the relevant authority ~~materially~~ substantially affects the visual context within which the State Heritage Place is situated.*

Currently there is varied interpretation regarding what constitutes a 'material affect' in the context of the Heritage Adjacency Overlay. It is considered that replacing this with the term 'substantially', whilst also introducing the word 'visual', will better clarify the overlay's role in relation to State Heritage Places and provide slightly more freedom for a relevant authority to not undertake a referral where appropriate.

In addition, the State Heritage Branch has advised that it receives approximately one referral per month in error for development applications adjacent to a Local Heritage Place (instead of a State Heritage Place). This is most likely due to confusion that the Heritage Adjacency Overlay creates a buffer area around both types of heritage places however the referral trigger only applies to State Heritage Places.

The referral trigger would therefore benefit from adding in an additional note to the effect that referrals are not required where the overlay relates to a Local Heritage Place.

Finally, it has been suggested that there may be benefit in reviewing the spatial application of the Heritage Adjacency Overlay to reduce circumstances where duplication in referrals occurs with the State Heritage Place Overlay. This would involve a separate, potentially extensive mapping exercise, and requires further investigation to ensure that inconsequential errors are avoided.

State Heritage Area Overlay

The Heritage Branch has advised that when it is assessing the visual impacts of development within State Heritage Areas, its primary consideration is the view from the public realm (as opposed to views from private property). The existing referral triggers are however worded such that referrals would be made for development which is visible from both public spaces (such as roads) or private spaces (such as residential allotments).

Accordingly, it is proposed to amend the referral trigger so it better reflects matters to which the State Heritage Branch are concerned with.

Historic Shipwrecks Overlay

The purpose of this overlay is to protect historic shipwrecks and relics from encroaching development. Typically, this is not a high referral generating overlay, however feedback from users suggests that the buffer applied around shipwrecks has the potential to unnecessarily delay development that is inland.

For many of the shipwrecks the buffer applied in the overlay has been clipped to the land (urban type zones or in the case of the River Murray 15 metres from the banks of the river), however this is not the case for all shipwrecks.

As mentioned in Section 4.1.3 of this Code Amendment, it is proposed to facilitate updates to this overlay via the section 71(e) provisions of the PDI Act to align with the overarching legislation under which the shipwrecks are protected. This would include redefinition of the spatial extent of the overlay to better reflect the location of shipwrecks and exclude obvious areas that are inland. To complement this amendment there would also be benefit in allowing the relevant authority to determine if a referral is required in examples where the development proposal is clearly not going to impact on an existing shipwreck, by virtue of the development's nature and location.

Recommendation

Heritage Adjacency Overlay

AMEND the referral trigger in the Heritage Adjacency Overlay to provide better clarity through using more plain English expression and to better empower a relevant authority to determine that a particular application may not warrant a referral.

AMEND the referral trigger in the Heritage Adjacency Overlay to include a note that referral is not required where the Overlay relates to a Local Heritage Place.

State Heritage Area Overlay

DELETE the referral triggers in the State Heritage Area Overlay that relate to new buildings or alterations/additions to buildings which are 'visually dominant in the State Heritage Area' (but retain the existing triggers for where they are visible from the public realm).

Historic Shipwrecks Overlay

AMEND the referral trigger in the Historic Shipwrecks Overlay to allow the relevant authority discretion to not refer an application if it is of the opinion that the development would not substantially impact the shipwreck (or associated relics).

4.3.2. Environment Protection Referrals

Issue

The Environment Protection Authority (EPA) has identified several areas in which their referrals can be improved to address duplication, remove items that are problematic and can be addressed at a different stage of development and to better align the triggers with the supporting legislation and policy under which they operate as an authority.

Investigations

Mount Lofty Ranges Water Supply Catchment Overlays (Areas 1 and 2) – Land division

The EPA has advised that it does not wish to retain the current land division referral trigger within both of the Mount Lofty Ranges Water Supply Catchment Overlays.

The trigger is:

> *(a) land division creating one or more additional allotments, either partly or wholly within the area of the overlay*

The EPA considers the current referral is problematic when trying to determine if the proposed land division would have a neutral or beneficial effect on water quality. A land division application is not generally required to provide information, plans or designs about the intended future use or how wastewater will be managed, it is only for the purpose of dividing land. The EPA is currently responding to these referrals by outlining that it cannot assess potential impacts or provide any direction to a relevant authority.

After land division, a new development application for a specific intended use must be lodged with a relevant planning authority for assessment. This includes detailed plans and designs, including how wastewater is going to be appropriately managed and as such is the appropriate process for the EPA to undertake an expert assessment of potential impacts.

Mount Lofty Ranges Water Supply Catchment Overlays (Areas 1 and 2) – Wastewater Generation

With regards to referrals that relate to wastewater generation in the Mount Lofty Ranges Water Supply Catchment Overlays, the EPA has identified that the wording of the triggers should be aligned with current terminology in the South Australian Health On-site Wastewater Systems Code 2013.

The EPA recommends that this be achieved by adding the word 'equivalent' before the existing word 'persons' in Part (h) in the referrals for both Overlays, as follows:

> *(h) any other development that generates human wastewater from a peak loading capacity of more than 40 equivalent persons (or more than 6,000 litres/day).*

River Murray Flood Plain Protection Area Overlay) – Wastewater Generation

A similar referral to the above also exists in the River Murray Flood Plan Protection Area Overlay. The EPA recommends that the same amendment be made to this Overlay:

> *Development that generates human wastewater from a peak loading capacity of more than 40 equivalent persons or more than 6000 litres/day and is not connected to a community wastewater management system or sewerage infrastructure.*

Water Protection Overlays – Purpose of Referral and Duplication Between Overlays and Part 9

An opportunity has been identified to reduce unnecessary duplication involving EPA Part 9.1 referrals (including EPA licensed activities) and the following four water protection area overlays:

- Mount Lofty Ranges Water Supply Catchment (Area 1) Overlay
- Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay
- River Murray Flood Plain Protection Area Overlay
- Water Protection Area Overlay

Removal of duplicated referrals would remove any confusion caused by having the same referral within different parts of the Code.

The Part 9.1 referrals will remain and be the primary referral to the EPA noting that the purpose of the referral, as stated in Part 9.1, would still enable the EPA to assess potential water quality impacts as described in the purpose of referral in each overlay.

The activities to be deleted in each of the four Overlays relate to the following classes of development:

- composting works
- wastewater treatment works
- feedlots
- piggeries
- dairies

Since the referrals in Part 9.1 do not show automatically in a property enquiry search in the line of enquiry Portal tool for the Code, it is recommended that a note be inserted into each of these water protection area overlays in the Code to remind users that additional agency referrals are found in Part 9.1. For consistency reasons, this notation should also be applied to all other overlays in the Code.

Note: The proposal to remove referrals from the overlays that are duplicated in Part 9.1 will result in there being no referrals in the Water Protection Area Overlay. The EPA would be removed from the 'Procedural Matters' part of the Water Protection Area Overlay in the Code but would still have oversite of these types of applications via Part 9.1.

In addition, it has been identified that each of these four overlays contain inconsistent expression for the 'Purpose of Referral' to the EPA as shown below:

Water Protection Overlays – Purpose of Referral

Water Protection Area Overlay	River Murray Flood Plain Protection Area Overlay	Mount Lofty Ranges Water Supply Catchment Area 1 & 2 Overlays
To provide expert technical assessment and direction to the relevant authority on the assessment of the potential harm from pollution and waste aspects arising from activities of environmental significance and other activities that have the potential to cause serious environmental harm.	To provide expert assessment and direction to the relevant authority on potential impacts to water quality in the River Murray system from pollutants discharged into any waters or onto land in a place that is reasonably likely to impact the quality of drinking water.	To provide expert technical assessment and direction to the relevant authority on whether a proposed development will have a neutral or beneficial impact on water quality.

The EPA has advised that the terms 'neutral' or 'beneficial' do not appear in the *Environment Protection Act 1993.* Rather, the objects of that Act are as follows:

(a) to promote the following principles (principles of ecologically sustainable development):

(i) that the use, development and protection of the environment should be managed in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being and for their health and safety while—

C. avoiding, remedying or mitigating any adverse effects of activities on the environment;

The EPA therefore proposes to amend the purpose of the referral for all four water protection overlays to remove reference to 'neutral' or 'beneficial' and replace it with 'adverse impact', as follows:

Purpose of Referral

To provide expert technical assessment and direction to the relevant authority on whether a proposed development would have an adverse impact on water quality.

Recommendation

AMEND the referral trigger in the following Overlays by deleting to words '(a) land division creating one or more additional allotments, either partly or wholly within the area of the overlay':

- Mount Lofty Ranges Water Supply Catchment (Area 1) Overlay
- Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay

AMEND the referral trigger relating to wastewater generation in the following Overlays by inserting the word 'equivalent' before the word 'persons':

- Mount Lofty Ranges Water Supply Catchment (Area 1) Overlay
- Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay
- River Murray Flood Plain Protection Area Overlay

INSERT a new note into all Overlays to remind readers of the Code that additional referrals are found in Part 9.

AMEND the referral triggers in the following Overlays by deleting the referrals relating to composting works, wastewater treatment works, feedlots, and piggeries which are all duplicated in Part 9.1 of the Code:

- Mount Lofty Ranges Water Supply Catchment (Area 1) Overlay
- Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay
- River Murray Flood Plain Protection Area Overlay
- Water Protection Area Overlay

AMEND the ‘Purpose of Referral’ text in the following overlays to provide consistency between the four overlays regarding adverse impact on water quality:

- Mount Lofty Ranges Water Supply Catchment (Area 1) Overlay
- Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay
- River Murray Flood Plain Protection Area Overlay
- Water Protection Area Overlay.

4.3.3. Department for Environment and Water Referrals

Issue

The Department for Environment and Water (DEW) has identified several areas that will remove unnecessary referrals, referral duplication and better reflect the items of development that it has an interest in providing advice and direction on.

Investigations

Referral Duplication with the Murray Darling Basin Overlay

DEW has identified areas of referral duplication between the Murray Darling Basin Overlay and the following Overlays:

- River Murray Flood Plain Protection Area Overlay
- River Murray Tributaries Protection Area Overlay
- Prescribed Surface Water Areas Overlay
- Prescribed Watercourses Overlay
- Prescribed Water Resources Area Overlay
- Prescribed Wells Area Overlay

The referral applies to all seven Overlays and reads as:

Example from Prescribed Watercourses Overlay

Any of the following classes of development that require or may require water to be taken in addition to any allocation that has already been granted under the *Landscape South Australia Act 2019*:

(a) horticulture
(b) activities requiring irrigation
(c) aquaculture
(d) industry
(e) intensive animal husbandry
(f) commercial forestry.

For the prescribed water overlays, the referral is to the Chief Executive of the Department of the Minister responsible for the administration of the *Landscape South Australia Act 2019* (LSA Act) for the purpose of providing expert technical assessment and direction to the relevant authority on the taking of water to ensure development is undertaken sustainably and maintains the health and natural flow paths of water resources.

For the two River Murray overlays the referral is to the Minister responsible for administration of the *River Murray Act 2003* for the purpose of providing provide expert assessment and direction to the relevant authority on potential impacts from development on the health of the

River Murray system, its natural flow regime (including floodwaters), water quality, and cultural heritage. This includes assessment of development which seeks to take water.

The Murray Darling Basin Overlay covers a large area of the south-east of the state and takes in the whole of the River Murray Flood Plain Protection Area Overlay and River Murray Tributaries Protection Area Overlay. To avoid referral duplication DEW is recommending that the above referral only apply to the Murray Darling Basin Overlay.

Parts of the Prescribed Surface Water Areas, Prescribed Watercourses, Prescribed Water Resources Area and Prescribed Wells Area Overlays exist outside of the Murray Darling Basin Overlay. It will be necessary to still capture a referral in these circumstances.

The above amendments will assist to streamline and better manage referrals to which DEW manage and avoids the need for duplicated referrals where the same matters are considered and commented on.

River Murray Flood Plain Protection Area Overlay – Refinement

Some minor refinement of the referral triggers in the River Murray Flood Plain Protection Area Overlay has been suggested by DEW to clarify matters which it has an interest in. Part (d) of the referral trigger in this overlay contains several exclusions from development needing referral.

Outbuildings

Part (d)(iii) exempts referral for the construction of enclosed sheds and outbuildings subject to meeting certain criteria. One of the requirements is that it not be located closer to the River Murray than the building to which it is ancillary:

> *D. that will not be located closer to the River Murray than the building to which it is ancillary*

DEW has received several unnecessary referrals where the site of the development has no river frontage, however, due to the orientation of street layout, places the proposed outbuilding between the dwelling and the river. This is despite the outbuilding being in the rear yard. DEW has suggested that the referral trigger be amended to exclude examples of this nature where the outbuilding is located greater than 100m from the River Murray. This would be consistent with the exemptions applying to alterations and extensions of dwellings.

In-ground swimming pools

Referral exemption Part (d)(vi) is being misinterpreted such that DEW are unnecessarily receiving referrals for above ground pools and spas.

> *(vi) is the construction of an aboveground or inflatable swimming pool, or a spa pool, or an in-ground swimming pool located outside the 1956 River Murray Flood Plain*

DEW advises that referrals are only required for in-ground pools that are located within the 1956 flood plain. It is proposed to correct this.

Dwelling alterations and additions

DEW has also suggested a refinement (see below) to the referral exception applying to minor alterations and extensions to dwellings by combining Part (d)(v) with Part (d)(vii) the latter of which relates to referral exemptions for new dwellings.

> *Comprises:*
>
> *A. ~~is~~ the construction of a dwelling (or the alteration or extension of an existing dwelling) that is located outside the 1956 River Murray Flood Plain and not closer than 100m to the River Murray*
>
> *or*
>
> *B. an alteration or extension of an existing dwelling that in the opinion of the relevant authority is minor and where any extension of the dwelling will not result in a part of the dwelling being closer to the River Murray.*

Excavation, filling and retaining walls

DEW advises that it is receiving referrals for elevated dwellings in the Rural Shack Settlement Zone (Part (d)(viii)) due to the referral trigger not explicitly excluding incidental excavation or filling or retaining walls.

Current referral exclusion

(viii) is the construction of an elevated dwelling that is located within the Rural Shack Settlement Zone and has an open undercroft area or an undercroft area:

A. that when enclosed, is enclosed on two opposite ends or sides using roller doors, or other material (that is not glass) that can be easily opened or removed during times of flood

B. that is not a habitable room

C. that will have enclosed areas for a toilet, shower or laundry facilities not exceeding a combined maximum floor area of 15m² (excluding any stairwell and/or lift shaft area)

or

DEW has requested that it be clarified that a referral is not needed in relation to incidental excavation or filling or retaining walls that retain a difference in ground levels not exceeding 1m in the exemption contained in Part (d)(viii).

Recommendation

AMEND the water taking activities referral in the following Overlays to avoid multiple referrals for the same development activity. Make the Murray Darling Basin Overlay the primary source of the referral:

- River Murray Flood Plain Protection Area Overlay
- River Murray Tributaries Protection Area Overlay
- Prescribed Surface Water Areas Overlay
- Prescribed Watercourses Overlay
- Prescribed Water Resources Area Overlay
- Prescribed Wells Area Overlay

AMEND Part (d)(iii)(D) of the River Murray Flood Plain Protection Area Overlay referrals to exempt from referral any sheds or outbuildings that are greater than 100m from the River Murray.

AMEND Part (d)(vi) of the River Murray Flood Plain Protection Area Overlay referrals so that the referral only applies to in-ground swimming pools that located within the 1956 River Murray Flood Plain.

AMEND Part (d) of the River Murray Flood Plain Protection Area Overlay to combine Part (d)(v) with Part (d)(vii) as follows:

Comprises:

A. ~~is~~ *the construction of a dwelling (or the alteration or extension of an existing dwelling) that is located outside the 1956 River Murray Flood Plain and not closer than 100m to the River Murray*

or

B. *an alteration or extension of an existing dwelling that in the opinion of the relevant authority is minor and where any extension of the dwelling will not result in a part of the dwelling being closer to the River Murray.*

AMEND Part (d)(viii) of the River Murray Flood Plain Protection Area Overlay referrals so that the referral also excludes incidental excavation or filling or retaining walls that retain a difference in ground levels not exceeding 1m.

4.3.4. Gas Pipelines – Referral Duplication

Issue

Gas and Liquid Petroleum Pipelines (Facilities) Overlay DTS/DPF 1.1(d) provides that development involving a dwelling or ancillary building/structure on an allotment approved for residential purposes is suitable within the Overlay. However, there may be instances where a

dwelling is proposed on an allotment within the Overlay where no risk assessment in relation to the land division has previously taken place.

Investigation

Feedback has indicated that the current wording of Gas and Liquid Petroleum Pipelines (Facilities) Overlay DTS/DPF 1.1(d) does not consider the fact that an allotment for residential purposes may have been created prior to the establishment of the Overlay and associated Referral to the Chief Executive of the Department of the Minister responsible for administering the *Petroleum and Geothermal Energy Act 2000*.

Recommendation

AMEND Gas and Liquid Petroleum Pipelines (Facilities) Overlay DTS/DPF 1.1(d) to clarify that a dwelling within the Overlay may be appropriate where the creation of the allotment where the dwelling is being proposed was subject to an assessment by the Department for Energy and Mining through a referral process established under the PDI Act.

4.3.5. Referral Duplication and Minor Development within Overlays

Issue

Referral duplication within overlays and unnecessary referral of insignificant development has been identified as an issue that requires review.

Investigation

Within many of the existing overlay referral triggers, exemption clauses are incorporated to avoid referrals being duplicated for the same development or to allow the relevant authority to determine that it is of a minor nature when considering the purpose of the referral.

An example of the 'duplication' clause is written in the referral table of the Affordable Housing Overlay:

Class of Development / Activity
Except where the applicant for the development is the South Australian Housing Authority (or an agent acting on behalf of the South Australian Housing Authority), residential development or land division (other than an excluded land division): (a) that comprises 20 or more dwellings or residential allotments and is described in the application documentation as intending to provide affordable housing or (b) that is described in the application documentation as intending to provide affordable housing and the applicant is seeking to access one or more of the planning concessions outlined in the Affordable Housing Overlay DTS/DPF 3.1, 3.2 or 4.1 or (c) that is described in the application documentation as intending to include affordable housing of any number of dwellings or residential allotments

Term (Column A)	Definition (Column B)	Illustrations (Column C)
Excluded land division	Means, for the purposes of Affordable Housing Overlay – Procedural Matters (PM) – Referrals, land division that reflects the site boundaries illustrated and approved in an operative or existing development authorisation for residential development under the *Development Act 1993* or *Planning, Development and Instructure Act 2016*.	

This provides the flexibility to avoid unnecessary referral for minor trivial applications and for applications that have already been referred as part of a previous authorisation such as in the case of a land division that reflects an approved residential development. Adopting a similar approach to other Overlays will require amendment to the 'excluded land division' definition to allow broad application than just to the Affordable Housing Overlay.

An example of the 'minor development' clause is incorporated into the State Heritage Place Overlay:

Class of Development / Activity
Except where: (a) the development is to be undertaken in accordance with a Heritage Agreement under the *Heritage Places Act 1993* or (b) the development is, in the opinion of the relevant authority, minor in nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral

A review of referral triggers in the Overlay section of the Code has been undertaken to identify any that would benefit from a referral duplication or minor development exclusion. Identified Overlays are:

- Airport Building Heights (Regulated) Overlay – Add minor development clause.
- Future Road Widening Overlay – Add minor development clause.
- Historic Shipwrecks Overlay – Add minor development clause.
- Key Outback and Rural Routes Overlay – Add duplication clause.
- Major Urban Transport Routes Overlay – Add duplication clause.
- Non-Stop Corridors Overlay – Add duplication clause.
- Urban Transport Routes Overlay – Add duplication clause.

Note: Bushfire Overlays have not been considered in this review as they are subject to a separate Code Amendment.

Recommendation

AMEND the definition for 'excluded land division' so that it can be applied more broadly than just the Affordable Housing Overlay.

AMEND the referral trigger in the following Overlays to include a clause that avoids the need to re-refer an application that has already been considered at an earlier stage of the development:

- Key Outback and Rural Routes Overlay
- Major Urban Transport Routes Overlay
- Non-Stop Corridors Overlay
- Urban Transport Routes Overlay.

AMEND the referral trigger in the following Overlays to include a clause that avoids the need to refer an application that, in the opinion of the relevant authority, is of a minor nature when considering the purpose of the referral:

- Airport Building Heights (Regulated) Overlay
- Future Road Widening Overlay
- Historic Shipwrecks Overlay.

4.4. Land Use Definitions

Between December 2021 to June 2023, the Commission undertook its first review of land use definitions introduced as part of the inaugural Code though its Miscellaneous Technical Enhancements Code Amendment. Several adjustments were made to definitions to provide greater clarity in interpretation and relationship with policy. New land use definitions were included for heavy vehicle parking and function venue and amendments made to:

- Ancillary accommodation
- Caravan and tourist park

- Commercial forestry
- Educational establishment
- Indoor recreation facility
- Office
- Pre-school
- Tourist accommodation
- Workers accommodation.

In its broader recommendation relating to minor and operational amendments to the Code (Recommendation 72) the Expert Panel suggested that there would be benefit in continued review of the definitions, and consideration be given to including additional definitions. The Expert Panel heard there are several terms that are currently undefined and which there would be benefit in defining. The terms identified by the Expert Panel include, but are not limited to:

- Multiple dwelling
- Trade training facility
- Emergency services facility.

Definitions are provided in the Code to assist with interpretation. They provide finer grain detail when common meaning is insufficient and does not work with the policy intent. New definitions must also have purpose in the Code. For example, if a land use term is not referenced in the Code, then there would be little purpose in adding it to the table of land use definitions.

In terms of the issues identified from submissions about applying new definitions to undefined uses, the Commission takes a cautious approach here and considers that additional definitions and administrative terms should only be included in the Code where they clearly support policy intent.

The following definitions have been identified for amendment or inclusion:

- Personal or domestic services establishment
- Workers' accommodation
- Commercial forestry
- Trade training facility
- Emergency services facility

Multiple dwelling, which relates to shared house type accommodation, is being addressed separately by the Commission in its Accommodation Diversity Code Amendment.

4.4.1. Personal or Domestic Services Establishment

Issue

The Environment, Resources and Development Court (the Court) recently found that a car wash fit within the Code's land use definition of personal or domestic services establishment. A review of the Court judgement has been undertaken to determine if amendments to the definition are needed considering the activities that are typically expected at a personal or domestic services establishment.

Investigation

In the Code, personal or domestic services establishment is defined as follows:

Personal or domestic services establishment	Means premises used for the provision of services catering to the personal or domestic needs of customers. Examples- The following are examples of services that may be available at personal and domestic services establishments: (a) clothing repair and alterations; (b) cutting, trimming and styling hair; (c) domestic pet grooming; (d) manicures and pedicures; (e) non-surgical cosmetic procedures; (f) personal care procedures; (g) self-service clothes laundering; (h) shoe repair; (i) watch repair.		Adult entertainment premises; Adult products and services premises; Consulting room; Office; Financial institute.

The term personal or domestic services establishment also falls under the umbrella definition of shop. For context, shops are envisaged uses in many of the Code's zones from activity centres to urban neighbourhoods and corridors. In neighbourhood-type zones small-scale shops are contemplated where they complement the residential character of the neighbourhood and would contribute to liveability and convenience.

In Jahk Enterprises Pty Ltd ATF Jahk Trust v Assessment Panel of the Corporation of the City of Campbelltown (2003) SAERDC 6 (9 May 2003), the Court made judgement on an application for a car wash within the General Neighbourhood Zone. In its deliberations, the Court looked at whether car wash fit within the definition of personal or domestic services establishment. In doing so, it considered the question – does a car wash cater to the domestic needs of customers? It concluded that it did and therefore was a personal or domestic services establishment:

> *'I accept the appellant's submission that a vehicle can be considered a domestic item and the act of washing it a domestic need. Although the washing of a car bears little resemblance to the specific examples listed at (a) – (i), it is not at odds with common elements evident in those examples. I note that no size or intensity limitation applies. Scale therefore is not a factor. The services provided are not limited only to matters of care or adornment of a person, they extend to a pet. The service need not be provided by another person, it may be undertaken by the individual. Finally, the transaction involves the purchase of a service, not the purchase of any goods or items. I can find no distinction, within the definition, between someone taking clothing, a pet, or a car to a premises to be washed'*

With this determination now providing guidance for future development applications, it is timely to consider if it aligns with the original intent of the Code and whether amendments are necessary to improve clarity around what constitutes a personal or domestic services establishment.

Whilst not stated specifically in the personal or domestic services establishment definition, the activities listed as 'examples' are of a scale and intensity that would, under regular circumstances, typically have minimal or low impact on amenity. They could reasonably be expected to establish where a 'shop' is envisaged and most of the examples would generally be conducted within a building. On the other hand, a commercial car wash would generally be open-air and generate potential nuisance activities that would require planning assessment, including noise and spray drift from wash bays.

In Serpeyn Pty Ltd v City of West Torrens [2000] SAERDC 16, under the former planning legislation, the Court considered whether a car wash was 'industry' for the purposes of the development plan. The Court held that it was not, and observed:

> *'On balance, I tend to the view put by Mr Henry, that the subject proposal does not constitute 'industry', not only for the reasons he advanced, but also because to so characterise it would be completely at odds with what would ordinarily be regarded as 'industry'. I am reinforced in this view by the likelihood that, were a literal approach taken to the definition of 'industry', businesses such as laundromats, watch and shoe repairs, garment alterations or repairs, perhaps even picture framers, would be encompassed by that definition. Such an outcome would be plainly ridiculous. It seems to me that the role of definitions is to define, with greater precision, terms which are commonly understood. In my view, few people would regard a carwash as an industry, and, accordingly, the Council's, original decision to classify the proposal as an undefined use was correct.'*

Whilst the Serpeyn decision was made at a time when no definition existed for personal or domestic services establishment, the Commission is of the view that the public generally wouldn't regard a car wash to be a personal or domestic service or a form of shop.

The wording of the personal or domestic services establishment definition is therefore considered too broad ranging. Greater precision is therefore deemed necessary so that it doesn't inadvertently capture uses or activities that wouldn't typically be expected at a shop.

Recommendation

AMEND the definition of personal or domestic services establishment so that is more specific about the nature of activities it includes. It should focus on the premise of personal services which typically relate to personal care and appearance and the cleaning and repair of personal effects. It should be extended to include pet grooming but exclude uses that incorporate activities that have the potential to impact on amenity external to the land use. Activities like commercial car washing or washing and /or repair of large items such as boats and caravans should be excluded.

4.4.2. Workers' Accommodation

Issue

Users of the Code have suggested that the definition of workers' accommodation be expanded to include seasonal hospitality and tourism workers.

Investigation

Workers' accommodation is currently defined as follows:

Workers' accommodation	Means premises used to accommodate workers on a temporary basis while they carry out employment: (a) on the same site as the workers' accommodation; or (b) in mining or petroleum extraction; or (c) in seasonally intensive rural activities including fruit picking, pruning, animal shearing, meat processing, bulk handling or freight handling; or (d) in the construction of essential infrastructure.	Mining camp; Road workers camp; Shearing quarters; Railway workers camp	Tourist accommodation.

The definition supports the provision of temporary accommodation to a range of activities that would typically require an influx of workers for short periods of time or on a seasonal basis. This would include road and infrastructure construction, mining projects or seasonally intensive rural uses, such as shearing and fruit picking.

Traditionally, such workers would rely on private rentals, share homes or caravan and tourist parks. Allowing on-site workers' accommodation makes it easier for seasonal workers to stay close to their place of work and frees up available accommodation / housing stock in nearby communities. It assists to ease pressure on regional areas experiencing housing shortages and benefits tourism by releasing tourist accommodation for holiday visitors.

South Australia includes many famous regional tourist and hospitality destinations. Like seasonally intensive rural activities, hospitality and tourist related development can also be seasonally intensive, particularly in Summer and during school holidays.

The Commission is keen to support regional tourism and hospitality in South Australia and help the industry meet its workforce accommodation needs during peak periods. Allowing the tourism and hospitality industry to provide on-site workers' accommodation aligns with the types of activities that currently sit within the definition and is considered a reasonable amendment to the Code.

Recommendation

AMEND the definition of workers' accommodation to expanded it to include seasonal hospitality and tourist development in the list of activities that it supports.

4.4.3. Commercial Forestry

Issue

In 2023, the Miscellaneous Technical Enhancement Code Amendment made a refinement to the definition of commercial forestry to clarify its purpose.

The altered definition has however resulted in some ambiguity regarding commercial forests that are not harvested but are instead used purely for commercial carbon-absorption benefits (carbon plantings).

Investigation

Prior to the Miscellaneous Technical Enhancement Code Amendment, commercial forestry was defined in the Code as follows:

> ***Commercial forestry***
>
> *Means the practice of planting, managing, and caring for forests that are to be harvested (or intended to be harvested) or used for commercial purposes (including through the commercial exploitation of the carbon absorption capacity of the forest).*

The Code definition generally aligned with that contained in the LSA Act:

> ***Commercial forest***
>
> *Means a forest plantation where the forest vegetation is grown or maintained so that it can be harvested or used for commercial purposes (including through the commercial exploitation of the carbon absorption capacity of the forest vegetation).*

Under the LSA Act, commercial forestry is a water affecting activity regulated by regional water allocation plans and water-affecting control policies. Commercial forestry may be permitted if a permit is granted under the LSA Act or if development authorisation is obtained under the PDI Act. In relation to the latter, referral arrangements are in place for a development application to be assessed by the relevant authority under the LSA Act prior to approval. This authority has power of direction to refuse the application or impose conditions. Licencing arrangements also exist under the LSA Act for the taking and allocation of water in relation to commercial forestry.

Licencing and permits under the LSA Act are thus inherently linked to the referrals set out in Part 9 of the Code and in several of the Code's water protection overlays. The definition for commercial forestry in the Code must therefore align with the commercial forestry activities that require an approval under the LSA Act.

The Miscellaneous Technical Enhancement Code Amendment made slight alterations to the definition of commercial forestry. This included the removal of the words 'used for' along with the introduction of land use exclusions in Column D, being horticulture, cropping and farming:

Commercial forestry	Means the practice of planting and managing plantation forests that are to be harvested for wood products or other commercial purposes, including through the commercial exploitation of the carbon absorption capacity of the forest.		Horticulture; Cropping; Farming.

The removal of the words 'used for' has created ambiguity and doubt whether the definition still captures carbon plantings that are not harvested. Whilst the definition does speak to the inclusion of commercial carbon plantings, it could be read that the plantation must be harvested to meet the definition. This is not always the intention of carbon plantings which are often established solely for carbon absorption benefits and never harvested. To maintain the relationship between the approvals required under the PDI Act and the LSA Act permit and licencing requirements, it is necessary to correct this anomaly in the Code.

Recommendation

AMEND the definition for commercial forestry so that it aligns with the nature of commercial forestry activities that require licencing and permit approvals under the LSA Act (as currently linked to the referrals set out in Part 9 and the various water protection related overlays of the Code.

4.4.4. New Definitions

Issue

Users of the Code have suggested that definitions for the following terms would benefit the Code:

- Trade training facility
- Emergency services facility.

Investigation

Trade training facility

Training facilities which involve hands-on learning activities to support construction, trade and industry are becoming more prominent. Widely known in the industry as trade training facilities or trade training centres, they typically involve a learning environment that involves the teaching of activities normally carried out at a work site, like:

- the operation of heavy machinery eg. excavators, backhoes, loaders and bobcats
- moving and lifting processes eg. forklifts, scissor lifts, crane operation
- cutting and finishing of materials.

These activities are similar in nature to industrial processes and have the potential generate external impacts from noise, fumes, vibration and smell and would generally be expected to locate within employment zones.

The Code currently does not have a definition for this type of land use, although it could be considered an educational facility if it were part of a technical institute:

Educational facility	Means a primary school, secondary school, reception to year 12 school, college, university or technical institute, and includes an associated child care facility or institution for the care and maintenance of children.		

A potential issue with this is that educational facilities are often envisaged in neighbourhood type and corridor zones where industrial processes (as described above) would potentially have a negative impact on amenity. A search of the Code identifies that educational facility appears as an envisaged use in over 15 zones or subzones where a higher level of neighbourhood amenity is generally sought.

An amendment to the definition of educational facility is therefore warranted to exclude the range of construction training activities that would typically occur at a trade training facility. To enable this, the term trade training facility should be defined in the Code to provide detail on what activities it is to encompass.

As mentioned, trade training facilities would be expected to occur in commercial and industrial environments. Currently in the Code, 'training facility' is anticipated as an envisaged use in the following zones and subzones:

- Employment Zone
- Strategic Employment
- Gillman Subzone
- Mixed Use Transition Subzone

Training facility is a broader term that would encompass trade training facility. Other, more specific land use terms covered by training facility that are used in the Code include flight simulation and training facility (in the Infrastructure (Airfield) Zone) and driver training (in the Motorsport Zone). As training facility is broad ranging, it is not considered necessary to update the envisaged land use policies of the above listed zones to include the more specific trade training facility.

Performance Outcome 1.2 of the Strategic Employment Zone however does address how development should occur next to a zone that is used principally for residential purposes. Accompanying DTS/DPF 1.2 envisages that training facility would be accepted. In this instance it is considered appropriate to amend the policy to exclude trade training facility from training facility.

PO 1.2	DTS/DPF 1.2
Development on land adjacent to another zone which is used for residential purposes incorporates a range of low-impact, non-residential uses to mitigate adverse amenity and safety impacts on the adjoining zone.	Development involving any of the following uses on a site adjacent land in another zone used for or expected to be primarily used for residential purposes: (a) Bulky goods outlet (b) Consulting room (c) Indoor recreation facility (d) Light industry (e) Motor repair station (f) Office (g) Place of worship (h) Research facility (i) Service trade premises (j) Store (k) Training facility (l) Warehouse.

Emergency services facility

The term emergency services facility is not currently defined in the Code. It does, however appear in several zone and subzone envisaged land use policies. These zones are either of a community or activity centre nature.

The term also appears in the Gas and Liquid Petroleum Pipelines Overlay, the policy of which discourages emergency service and major community health related facilities from areas within the overlay where a gas or liquid petroleum pipeline failure may disrupt ongoing operations or response capacity in the event of an emergency.

PO 1.2	DTS/DPF 1.2
Emergency service and major community health related facilities are located outside areas where a gas or liquid petroleum pipeline failure may disrupt ongoing operations to maintain the response capacity in the event of an emergency.	Development does not comprise any of the following: (a) emergency services facility (b) hospital.

Emergency service facility is not a class of development that is assigned to an accepted development or deemed-to-satisfy assessment pathway in the Code. It is not a restricted form of development in any zone nor is it linked to specified policies for performance development through zone Table 3 - Applicable Policies for Performance Assessed Development.

Even so, defining the term will assist to provide clarity around what is meant by emergency services facility, what it encompasses and will benefit the interpretation Gas and Liquid Petroleum Pipelines Overlay DTS/DPF 1.2. By comparison, the term hospital has a well understood dictionary meaning that does not require further detailing.

Interstate planning jurisdictions that have a defined term for emergency services facilities include Victoria and Queensland:

Victoria

Emergency services facility

Land used to provide facilities for emergency services, such as fire prevention and ambulance services. It may include administrative, operational or storage facilities associated with the provision of emergency services.

Queensland

Emergency services means the use of premises by a government entity or community organisation to provide—

(a) essential emergency services; or
(b) disaster management services; or
(c) management support facilities for the services.

Examples include — State emergency service facility, ambulance station, rural fire brigade, auxiliary fire and rescue station, urban fire and rescue station, police station, emergency management support facility, evacuation centres

Does not include — Community use, hospital, residential care facility

Both provide good examples of what an emergency services facility should cover from a planning perspective and serve as a basis for a new definition in the Code for emergency services facility.

Recommendation

Trade training facility

CREATE a new definition for trade training facility. Include within it the education, training and operation of heavy machinery, moving or lifting equipment and the cutting and or finishing of materials.

AMEND the definition of educational facility to exclude trade training facility.

AMEND DPF/DTS 1.2 of the Strategic Employment Zone to exclude trade training facility from training facility unless it is undertaken in an enclosed environment.

Emergency services facility

CREATE a new definition for emergency services facility using the Victorian and Queensland terms as examples.

4.5. Administrative Terms and Definitions

4.5.1. Building Height – Measurement Point Clarification

Issue

Feedback has identified a need for clarification on where building height should be measured from on stepped or sloping sites.

Investigation

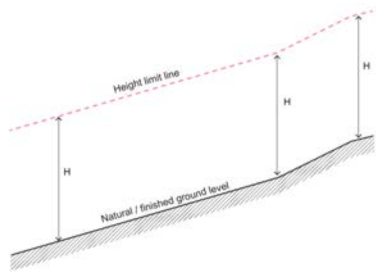
Part 8 – Administrative Terms and Definitions defines Building Height as follows:

Building height	Means the maximum vertical distance between the lower of the natural or finished ground level or a measurement point specified by the applicable policy of the Code (in which case the Code policy will prevail in the event of any inconsistency) at any point of any part of a building and the finished roof height at its highest point, ignoring any antenna, aerial, chimney, flagpole or the like. For the purposes of this definition, building does not include any of the following: (a) flues connected to a sewerage system (b) telecommunications facility tower or monopole (c) electricity pole or tower (d) or any similar structure.

Although the current definition states that building height can be measured "at any point of any part of a building", it has been suggested that this may be interpreted as being able to measured from the lowest point of a building on a sloping site to the highest point of the building at a different location on the site, as opposed to the highest point of the building immediately above the measurement point. It is considered appropriate to amend the building height definition provide clarification in relation to this matter.

Recommendation

AMEND the Code definition for Building Height to clarify measurement points for sloping sites, including through the use of the following diagram:



4.5.2. Primary Street

Issue

Users of the Code have identified that the definition for primary street doesn't cover all potential development scenarios. This includes:

- sites that have front and rear road frontages where the primary frontage is longer than the rear frontage
- corner sites which retain an existing building following land division and the 'secondary frontage' in relation to that building is now shorter than the frontage to which to which the building faces
- corner sites where the existing or proposed building faces the longer frontage.

There have also been examples where relevant authorities are measuring building setbacks from 'corner cut-offs', which is unnecessarily requiring greater building setbacks.

Investigation

When the Code was developed a definition for primary street was created to aid interpretation, particularly for accepted development and deemed-to-satisfy assessment pathways which require quantitative policy. The definition was based on the former complying (Rescode) standards of the Development Regulations 2008 – Schedule 4.

The definition currently in the Code is as follows:

Primary street	In relation to an existing or proposed building on a site is: (a) in the case of a site that has a frontage to only 1 road - that road; (b) in the case of a site that has a frontage to 2 roads: (i) if the frontages are identical in length - the road that forms part of the street address of the building, as determined by the council for the relevant area when it is allocating numbers to building and allotments under section 220 of the *Local Government Act 1999*; or (ii) in any other case, the road in relation to which the site has a shorter frontage; or (c) in any other case, the road that forms part of the street address of the building as determined by the council for the relevant area when it is allocated numbers to buildings and allotments under section 220 of the *Local Government Act 1999.*	Example of (a) Example of (b)(i) Example of (b)(ii) Example of (c)

A definition for secondary street is provided in the Code to compliment the term primary street:

Secondary street	In relation to a building is any road, other than the primary street, that shares a boundary with the allotment on which the building is situated (or to be situated).	

The purpose of the original Rescode was to streamline residential development in the form of detached and semi-detached dwellings. In the Code, the terms primary and secondary street have broader application to non-residential development and other forms of residential housing such as group dwellings and the like. The terms are used in policy for the following purposes:

- building setbacks from primary and secondary streets
- appearance land and buildings to the primary street, including design features, landscaping and garage location
- car parking for row dwellings
- street activation
- passive surveillance

The current definition of primary street could be updated to include the missing examples identified by users of the Code, however it is felt that this would lengthen the definition to a point where it becomes confusing to follow.

Interstate examples provides some alternative approaches to defining street frontages:

Victoria

Frontage

The road alignment at the front of a lot. If a lot abuts two or more roads, the one to which the building, or proposed building, faces.

Western Australia

Model Provisions Template

Frontage

in relation to a building –

if the building is used for residential purposes, has the meaning given in the R-Codes; or

if the building is used for purposes other than residential purposes, means the road alignment at the front of a lot and, if a lot abuts 2 or more roads, the one to which the building or proposed building faces.

R-Code (Residential Desing Code)

FRONTAGE - the width of a lot at the primary street setback line, provided that in the case of battleaxe or other irregularly shaped lots, it shall be as determined by the decision-maker.

PRIMARY STREET - unless otherwise designated by the local government, the sole or principal public road that provides access to the major entry (front door) to the dwelling or building.

SECONDARY STREET - in the case of a site that has access from more than one public road, a road that is not the primary street.

Both versions (Victoria in particular) have simplified meanings. For sites with two or more frontages, the focus is on the street to which the building faces or is proposed to face. Western Australia goes further to acknowledges the scenario of non-residential buildings and gives the decision-maker the ability to determine the frontage for battleaxe or other irregularly shaped allotments.

For sites that have more than one street frontage, the question likely to come up is ‘what defines the way the building faces?’ Is it more than just the front door? The Code provides some guidance through its design policies about the types of building elements which should face a primary street and will help to provide distinction between the front and side of a building.

Design in Urban Areas

All residential development	
Front elevations and passive surveillance	
PO 17.1 Dwellings incorporate windows facing primary street frontages to encourage passive surveillance and make a positive contribution to the streetscape.	DTS/DPF 17.1 Each dwelling with a frontage to a public street: (a) includes at least one window facing the primary street from a habitable room that has a minimum internal room dimension of 2.4m (b) has an aggregate window area of at least $2m^2$ facing the primary street.
PO 17.2 Dwellings incorporate entry doors within street frontages to address the street and provide a legible entry point for visitors.	DTS/DPF 17.2 Dwellings with a frontage to a public street have an entry door visible from the primary street boundary.

PO 20.2	DTS/DPF 20.2
Dwelling elevations facing public streets and common driveways make a positive contribution to the streetscape and the appearance of common driveway areas.	Each dwelling includes at least 3 of the following design features within the building elevation facing a primary street, and at least 2 of the following design features within the building elevation facing any other public road (other than a laneway) or a common driveway: (a) a minimum of 30% of the building wall is set back an additional 300mm from the building line (b) a porch or portico projects at least 1m from the building wall (c) a balcony projects from the building wall (d) a verandah projects at least 1m from the building wall (e) eaves of a minimum 400mm width extend along the width of the front elevation (f) a minimum 30% of the width of the upper level projects forward from the lower level primary building line by at least 300mm (g) a minimum of two different materials or finishes are incorporated on the walls of the front building elevation, with a maximum of 80% of the building elevation in a single material or finish.

Under the former planning system, primary street frontage (in the context of a corner allotment) was considered by the Environment, Resources and Development Court (the Court) in Tsarnas v City of Charles Sturt [2016] SAERDC 2 (20 January 2016). In this case the front door and portico faced a side street (Drake Avenue), however the Court took into consideration a range of elements to determine the primary street frontage. It disagreed that Drake Avenue was the primary frontage having regard to:

> *'the obvious streetscape elements evident along Raleigh Avenue (vis-a-vis the building form, siting and consistent setback of dwellings and the pattern of front yards and fencing) and the replication of these elements on the subject land. To that end, I conclude that Raleigh Avenue constitutes the primary frontage of the land and, therefore, the proposed carport is not sited forward of the dwelling. The location of the front door on the side of the dwelling does not dissuade me from this view'.*

Adopting this type of approach to sites that have multiple road frontages provides flexibility and logic to assessment and will help to simplify a wordy definition that currently does not cover all development scenarios.

It is therefore recommended that the terms primary street and secondary street be simplified but without altering the current intent. For sites that have multiple frontages, more weight should be given to the way in which the building faces or is intended to face for the purposes of determining the primary street.

Corner cut-offs

The Commission is aware of examples where relevant authorities are measuring building setbacks from the 'corner cut-off' boundary alignment where such an arrangement exists in relation to a corner allotment. This is resulting in buildings being pushed further into the allotment than is necessary.

The purpose of 'corner cut-off' policy is to maintain sightlines for vehicles entering road junctions. It requires that buildings and structures generally be kept clear of the corner cut-off area. The building setback policy at zone level serves a different purpose which is to reflect existing / emerging patterns of building setback in the streetscape. This should be clarified in the Code and can be achieved through amendments to the definitions for primary and secondary street.

Recommendation

AMEND and simplify the terms primary street and secondary street without altering the current intent. For sites that have multiple frontages, more weight should be given to the way in which the building faces (or is intended to face) for the purposes of determining the primary street. Include interpretation note to clarify the corner cut-off boundary alignment is to be ignored when measuring building setbacks from the road frontage of an allotment.

4.5.3. Excluded Building

Issue

The requirement to undertake public notification is defined in respect of particular activities in Table 5 of the Zones within Part 2 of the Code. Put simply, demolition as an activity does not require public notification except in relation to State or Local Heritage places or buildings within a Historic Area Overlay, subject to certain exclusions. In principle, the proposed demolition of buildings, including ancillary buildings, or parts of buildings, or other structures that are on the site of a State or Local Heritage Place but do not form part of the listing should not require public notification.

It is understood that some practitioners consider the definition of 'excluded building' to be unclear in its effect. This policy piece reviews the definition and seeks to make the intent clear.

Investigation

In the Code, demolition is exempt from public notification, except for:

- the demolition (or partial demolition) of a State or Local Heritage Place (other than an excluded building)
- the demolition (or partial demolition) of a building in a Historic Area Overlay (other than an excluded building).

It can be helpful to read this as 'only the kinds of demolition activity described above require public notification, so long as they do not relate to an excluded building'. The definition of an excluded building in the Code is reproduced below:

Excluded building	Means, for the purposes of Table 5 – Procedural Matters (PM) – Notification, a building, structure or landscape feature (or part thereof) that is: (a) in an area established as a State Heritage Area under the *Heritage Places Act 1993* and the relevant authority is of the opinion that the building, structure or landscape feature (or part thereof) does not contribute to the buildings or features of identified heritage value within the State Heritage Area; or (b) in a Historic Area Overlay and the building (or part thereof): (i) is an ancillary building; or (ii) in the opinion of the relevant authority, does not demonstrate the historic characteristics as expressed in the Historic Area Statement but does not include a building, structure or landscape feature (or part thereof) that is specifically listed in Part 11 of the Code as a Local Heritage Place or a State Heritage Place in the South Australian Heritage Register.

The definition of excluded building clarifies three matters in relation to public notification of applications involving demolition:

1. The relevant authority can determine that a building (including ancillary buildings) within a State Heritage Area does not contribute to the heritage values of the State Heritage Area and thus determine that public notification is not required.
2. In relation to Clause 2 of Table 5, which captures all buildings in the Historic Area Overlay, that ancillary buildings and buildings that do not demonstrate the historic characteristics expressed within the Historic Area Statement are exempt and do not require notification.
3. In relation to State or Local Heritage Places, the last paragraph of the definition makes it clear that the public notification requirements apply to the heritage elements that are listed in Part 11 of the Code or in the South Australian Heritage Register. By extension, although this could be made more explicit, buildings, including ancillary buildings, or parts of buildings, or other structures that do not form part of the listing do not require notification.

Recommendation

AMEND the definition of excluded building to make it clear that the requirement to undertake public notification only applies when demolition of the heritage elements that are listed in Part 11 of the Code or in the South Australian Heritage Register is proposed.

4.6. Targeted Policy Updates

4.6.1. Local Heritage Place Overlay – Demolition Policy

Issue

The Expert Panel heard that it is commonplace for local heritage places to be neglected and left to deteriorate to enable ease of their demolition taking into account the test in Performance Outcome 6.1 in the Local Heritage Place Overlay of the Code. The Panel recommended that a review of the policy be undertaken to ensure local heritage places are not being neglected and left dilapidated.

The Government supported this recommendation, noting that it would also be appropriate investigate whether performance outcomes of the relevant Overlays in the Code can be strengthened.

Investigation

PO 6.1 in the Local Heritage Place Overlay is as follows:

Demolition	
PO 6.1 Local Heritage Places are not demolished, destroyed or removed in total or in part unless: (a) the portion of the Local Heritage Place to be demolished, destroyed or removed is excluded from the extent of listing that is of heritage value or (b) the structural integrity or condition of the Local Heritage Place represents an unacceptable risk to public or private safety and is irredeemably beyond repair.	DTS/DPF 6.1 None are applicable.

The Expert Panel considered that it would be appropriate for wording analogous to that contained in the corresponding PO of the State Heritage Place Overlay to be inserted into the provisions of the Local Heritage Place Overlay. PO 6.1 in the State Heritage Place Overlay provides that:

> PO 6.1
>
> State Heritage Places are not demolished, destroyed or removed in total or in part unless either of the following apply:
>
> (a) the portion of the State Heritage Place to be demolished, destroyed or removed is excluded from the extent of listing that is of heritage value
> or
>
> (b) the structural condition of the State Heritage Place represents an unacceptable risk to public or private safety and results from actions and unforeseen events beyond the control of the owner and is irredeemably beyond repair.

The wording in part (b) makes it clear that structural dilapidation must be the result of something outside of the owner/developer's control (e.g. a natural disaster) in order for it to lend support to an application for demolition.

Recommendation

AMEND PO 6.1 of the Local Heritage Place Overlay to implement the Expert Panel's recommendation by applying similar policy to that contained in part (b) of PO 6.1 of the State Heritage Place Overlay.

4.6.2. Covered Car Parking Spaces

Issue

The Expert Panel recommended that:

> *'the requirement to provide undercover car parking should be removed from the Planning and Design Code (the Code), but provision of space for a covered car park should still be made available behind the face of the dwelling.'*

The Government supported the recommendation.

Accordingly, a review of the relevant provisions of the Code has been undertaken to determine any policy that needs to be removed and any new policy that needs to be added to implement the Expert Panel's recommendation.

Investigation

Removing the requirement for covered car parks

The Code contains car parking rates for residential land uses based on the number of bedrooms yielded in the proposed development within Table 1 and 2 of the General Development Policies – Transport, Access and Parking. In circumstances where two or more car parks would be required under the relevant formula, the Code specifies that at least one of the car parks must be covered. This is consistent with the policy position established by most development plans under the former planning system.

Table 1 - General Off-Street Car Parking Requirements

Class of Development	Car Parking Rate (unless varied by Table 2 onwards) Where a development comprises more than one development type, then the overall car parking rate will be taken to be the sum of the car parking rates for each development type.
Residential Development	
Detached Dwelling	Dwelling with 1 bedroom (including rooms capable of being used as a bedroom) - 1 space per dwelling. Dwelling with 2 or more bedrooms (including rooms capable of being used as a bedroom) - 2 spaces per dwelling, 1 of which is to be covered.
Group Dwelling	Dwelling with 1 or 2 bedrooms (including rooms capable of being used as a bedroom) - 1 space per dwelling. Dwelling with 3 or more bedrooms (including rooms capable of being used as a bedroom) - 2 spaces per dwelling, 1 of which is to be covered. 0.33 spaces per dwelling for visitor parking where development involves 3 or more dwellings.
Residential Flat Building	Dwelling with 1 or 2 bedrooms (including rooms capable of being used as a bedroom) - 1 space per dwelling. Dwelling with 3 or more bedrooms (including rooms capable of being used as a bedroom) - 2 spaces per dwelling, 1 of which is to be covered. 0.33 spaces per dwelling for visitor parking where development involves 3 or more dwellings.
Row Dwelling where vehicle access is from the primary street	Dwelling with 1 bedroom (including rooms capable of being used as a bedroom) - 1 space per dwelling. Dwelling with 2 or more bedrooms (including rooms capable of being used as a bedroom) - 2 spaces per dwelling, 1 of which is to be covered.
Row Dwelling where vehicle access is not from the primary street (i.e. rear-loaded)	Dwelling with 1 or 2 bedrooms (including rooms capable of being used as a bedroom) - 1 space per dwelling. Dwelling with 3 or more bedrooms (including rooms capable of being used as a bedroom) - 2 spaces per dwelling, 1 of which is to be covered.
Semi-Detached Dwelling	Dwelling with 1 bedroom (including rooms capable of being used as a bedroom) - 1 space per dwelling. Dwelling with 2 or more bedrooms (including rooms capable of being used as a bedroom) - 2 spaces per dwelling, 1 of which is to be covered.

Other residential development typologies do not carry a requirement for a covered car parking space. These include:

- Retirement facility
- Supported accommodation
- Ancillary accommodation
- Residential park
- Student accommodation
- Workers' accommodation

There are also no requirements for covered car parks in Table 2 - Off-Street Car Parking Requirements in Designated Areas. Accordingly, the first element of Recommendation 51 is readily addressed through the deletion of the highlighted wording within Table 1 (above).

Future provision of covered car parks

The second element of Recommendation 51 is that development should be guided towards providing space behind the main face of the dwelling so that a covered car park that accords with Code policy can feasibly be constructed in the future.

In amending the Code to provide flexibility on the matter of covered car parking spaces, but nonetheless require that covered car parking can be provided behind the main face of the dwelling in future, it is logical to require that uncovered car parks also be located behind the main face of a dwelling. In doing so, it is important to avoid unintended consequences for residential development on narrow allotments, particularly in the form of row dwellings which have carparking access from the primary street. Such development commonly achieves the prescribed car parking rate in the form of tandem car parking – that is, one of the two car parks required is accommodated on the driveway in front of a single width carport or garage.

The existing policies relevant to the provision of uncovered car parking for residential development are:

DTS/DPF 19.2 – General Development Policies – Design

PO 19.2	DTS/DPF 19.2
Uncovered parking spaces are of a size and dimensions to be functional, accessible and convenient.	Uncovered car parking spaces have: (a) a minimum length of 5.4m (b) a minimum width of 2.4m (c) a minimum width between the centre line of the space and any fence, wall or other obstruction of 1.5m

DTS/DPF 23.2 – General Development Policies – Design in Urban Areas

PO 23.2	DTS/DPF 23.2
Uncovered car parking space are of dimensions to be functional, accessible and convenient.	Uncovered car parking spaces have: (a) a minimum length of 5.4m (b) a minimum width of 2.4m (c) a minimum width between the centre line of the space and any fence, wall or other obstruction of 1.5m.

These policies ensure that uncovered car parks are of a size that is consistent with the relevant Australian Standards, practical and able to be utilised by most passenger vehicles. However, these policies do not require that uncovered car parks be located behind the main face of the dwelling. Accordingly, amended policies are required to implement Recommendation 51.

If necessary, an applicant could reference the following existing Code policies to satisfy a Relevant Authority that covered car parking spaces in accordance with the Code could feasibly be constructed in the future:

- DTS/DPF 13.1, General Development Policies – Design (siting of ancillary buildings)

- DTS/DPF 14.1, General Development Policies – Design (external appearance of garages and carports)
- DTS/DPF 19.1, General Development Policies – Design (dimension of covered car parking spaces)
- DTS/DPF 19.1, General Development Policies – Design in Urban Areas (siting of ancillary buildings)
- DTS/DPF 20.1, General Development Policies – Design in Urban Areas (external appearance of garages and carports)
- DTS/DPF 23.1, General Development Policies – Design in Urban Areas (dimension of covered car parking spaces).

No amendment is required to these policies to implement Recommendation 51.

Recommendation

AMEND Table 1 - General Off-Street Car Parking Requirements by removing the need to provide a covered car parking space in relation to dwellings.

AMEND General Development Policies – Design PO 19.2, DTS/DPF19.2 and General Development Policies – Design in Urban Areas PO 23.2, DTS/DPF 23.2 to require the provision of at least one space behind the main face of the building if no covered space is proposed.

4.6.3. Community Title Land Division

Issue

Community Title subdivisions were introduced around Australia partly to cater for a growing number of lifestyle property developments based on developments that have common areas devoted to shared facilities, such as playgrounds, swimming pools, gyms, tennis courts, lakes, gardens, roads, parks and golf courses.

Prior to the enactment of the *Community Titles Act 1996* (CT Act), land divisions would have needed to occur under the *Real Property Act 1886* as division of land into Torrens titled allotments (or under the *Strata Titles Act 1988*).

It is understood the cost to subdivide under the CT Act can be cheaper than a Torrens title land division. This means CT Act divisions can be preferred by developers, even where there are no extensive shared facilities, or staged development proposed. The comparatively lower cost of CT Act divisions stems from:

- the ability to install shared service connections and/or meters
- more efficient use of space, as regular setbacks to public roads prescribed in the Planning and Design Code do not apply to private roads
- design specifications for private roads within a community title development are to a lower (and therefore cheaper) standard than those required for a public road, which will be handed over to the local council.

The choice by developers to utilise a community title division may disadvantage purchasers who have no control over the quality and completion of the roads or other infrastructure that will become their shared responsibility after completion of the development.

Given the CT Act commenced operation in 1996 there is potentially going to be an increasing number of common driveways in community title divisions that are going to require maintenance. Unlike council roads which are, in most cases, subject to regular inspection and maintenance, the maintenance and repair of community title roads is the responsibility of the members of the community corporation.

Investigation

In order to ensure that matters related to the provision of common property can be addressed up front at the planning consent stage as opposed to the land division approval stage, it is considered that a provision which reflects section 102(1)(d)(vi) of the PDI Act (as set out below) could be inserted into the Land Division General Development Policy module and applied to Land Division where it appears in Table 3 of Zones:

> *the division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 is appropriate having regard to the nature and extent of the common property that would be established by the relevant scheme*

Recommendation

INSERT new provision(s) into the Land Division General Development Policies to ensure division of land under the CT Act is appropriate having regard to the nature of common property established by the relevant scheme.

4.6.4. Car Parking Rates for Major Open Spaces

Issue

The Expert Panel undertaking the Planning System Implementation Review made the following recommendation:

No.	Topic	Recommendation	Comment
Planning and Design Code			
18.	Car Parking	Investigate the application of specified car parking rates for major open spaces.	The Code does not currently specify car parking rates to apply to open space. This is logical in most scenarios; however, the Panel heard there may be circumstances where it would be helpful for car parking rates to be specified. For example, for major open space projects which include recreation facilities (playground, basketball court, walking tracks etc) and which may reasonably be expected to attract large numbers of people, there would be benefit in a car parking rate being associated with the same. The Panel understands a scenario of this nature arose in the Riverlea development, and the developers determined their own car parking rate to apply to the open space. This is a best practice approach. However, the Panel recognises this will not always be the approach taken and recommends investigations be undertaken to applying car parking rates to major open spaces.

The Government supported the recommendation. A review of relevant technical guides and recent development applications involving the establishment or upgrade of public open spaces has therefore been undertaken to inform any policy change to this effect.

Investigation

The Code currently contains car parking rates for a limited number of recreational and entertainment uses:

Class of Development	Car Parking Rate (unless varied by Table 2 onwards) Where a development comprises more than one development type, then the overall car parking rate will be taken to be the sum of the car parking rates for each development type.
Recreational and Entertainment Uses	
Cinema complex	0.2 spaces per seat.
Concert hall / theatre	0.2 spaces per seat.
Hotel	1 space for every 2m2 of total floor area in a public bar plus 1 space for every 6m2 of total floor area available to the public in a lounge, beer garden plus 1 space per 2 gaming machines, plus 1 space per 3 seats in a restaurant.
Indoor recreation facility	6.5 spaces per 100m2 of total floor area for a Fitness Centre 4.5 spaces per 100m2 of total floor area for all other Indoor recreation facilities.

These uses do not include activities that are typical of major open spaces such as:

- Playgrounds
- Tennis courts
- Sporting fields
- Walking trails
- Beaches
- Lakes (water sports/fishing)
- Skate / Bike parks
- Pop-up event spaces

Similarly, there was limited definition of parking rates for specified land uses that can form part of major public open spaces in Development Plans under the former planning system, albeit that there were a few instances where a car parking rate was specified for tennis courts.

Industry guides that are frequently relied upon in development assessment, such as the NSW RTA Guide to Traffic Generating Development (2002), do not define car parking rates for the majority of these uses either, the exception again being tennis courts (it is likely that the rate referenced in Development Plans was drawn from this Guide). The range of recreational land uses defined in the Guide is not proposed to be increased to any great extent in the draft updates released for public consultation this year.

Where the relevant industry guidelines do not provide a reference point, an accepted approach is to refer to contemporary surveys that consider the same land uses (or mix of land uses). The following recently established/upgraded major open spaces have been identified:

- Glenthorne National Park - Ityamaiitpinna Yarta
- the Reservoir Reserves across the Greater Adelaide area, Clare Valley and Port Lincoln

In the case of Glenthorne National Park, the car parking assessment submitted in support of the proposal identified approximately 150 car parking spaces clustered around the various focal points of activity across the park such as the adventure playground, visitor centre and trail heads. It was submitted that this rate of parking provision was acceptable based on comparison with similar parks, notably Morialta Conservation Park, with a similar range of activities located in proximity to the car parking areas.

A review has also been undertaken of analysis by Stantec submitted in support of the greenfield master planned housing development at Riverlea (Buckland Park), which involves the establishment of public open spaces at varying scales/intensity. The analysis proposes a methodology for defining the necessary level of car parking provision to service public open space at various scales and accommodating a diverse mix of activities. The methodology proposed is comprehensive and yields guidance as to the necessity of off-street parking provision (as opposed to relying entirely on the surrounding streets), whether disabled access spaces should be provided, whether electric vehicle charging facilities should be considered, and whether car parking on the surrounding streets should be indented. It does, not, however, assign car parking rates to the component activities that form part of the open spaces.

Established areas of major open space exist across the State, many of which offer a range of activities and the majority of which provide at least some level of on-site car parking. It may be possible to undertake a survey of selected public open spaces, time and cost permitting.

In the absence of specific resources of this nature, in determining appropriate car parking rates for the land use components that commonly make up major open spaces for the purposed of Table 1 of the Transport, Access and Car Parking General Development Policies module, it is necessary to consider whether a policy intervention via the performance outcome may be more appropriate. Existing policy guiding application of car parking rates is in the Transport, Access and Parking General Development Policies and is called up for assessment of a wide range of development:

Vehicle Parking Rates	
PO 5.1 Sufficient on-site vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-site rate such as: (a) availability of on-street car parking (b) shared use of other parking areas (c) in relation to a mixed-use development, where the hours of operation of commercial activities complement the residential use of the site, the provision of vehicle parking may be shared (d) the adaptive reuse of a State or Local Heritage Place.	DTS/DPF 5.1 Development provides a number of car parking spaces on-site at a rate no less than the amount calculated using one of the following, whichever is relevant: (a) Transport, Access and Parking Table 2 - Off-Street Vehicle Parking Requirements in Designated Areas if the development is a class of development listed in Table 2 and the site is in a Designated Area (b) Transport, Access and Parking Table 1 - General Off-Street Car Parking Requirements where (a) does not apply (c) if located in an area where a lawfully established carparking fund operates, the number of spaces calculated under (a) or (b) less the number of spaces offset by contribution to the fund.

PO 5.1 provides an opportunity to recognise that, where the Code does not specify an applicable land use rate, it is appropriate for the car parking provision serving a proposed development to be established by surveys of similar developments in comparable locations. This approach will provide clarity to relevant authorities and developers as to how situations where there is no prescribed car parking rate can be resolved. It also avoids the need for the Code to define car parking rates for rarely utilised development types and in respect to open space will provide a mechanism to establish appropriate car parking rates on an application-by-application basis.

Recommendation

AMEND PO 5.1 of the Transport, Access and Parking module to include a note that guides applicants and relevant authorities towards defining an appropriate rate of car parking by reference to surveys of similar developments in comparable locations.

5. STRATEGIC ANALYSIS

5.1. Strategic Planning Outcomes

5.1.1. Summary of Strategic Planning Outcomes

This Amendment is a technical enhancement to improve policy and pathways of the Code and undertake targeted policy adjustments in line with the objectives of the PDI Act.

To this end, the Code Amendment is consistent with the Objects of the PDI Act (section 12) which seek to:

- provide community participation in relation to the initiation and development of planning policies and strategies
- ensure that policies, processes and practices are designed to be simple and easily understood and provide consistency in interpretation and application
- promote greater certainty for people and bodies proposing to undertake development
- promote high standards for the built environment through an emphasis on design quality in policies
- promote safe and efficient construction through cost-effective technical requirements
- promote cooperation, collaboration and policy integration between and among State government agencies and local government bodies.

5.1.2. Consistency with the State Planning Policies

State Planning Policies define South Australia's planning priorities, goals and interests. They are the overarching umbrella policies that define the state's interests in land use. There are 16 State Planning Policies and six special legislative State Planning Policies.

These policies are given effect through the Code, with referral powers assigned to relevant Government Agencies (for example, the Environmental Protection Agency for contaminated

land). The Code (including any Code Amendments) must comply with any principle prescribed by a State Planning Policy.

The State Planning Policies also require that the Principles of Good Planning are considered in the preparation of any designated instrument, including a Code Amendment.

The Principles of Good Planning are set out under section 14 of the PDI Act and have been taken into consideration in preparation of this Code Amendment.

These principles, where relevant, will be fulfilled through the implementation of updated policy and assessment pathways that respond to emerging challenges as informed by users of the Code.

This Code Amendment is consistent with the State Planning Policies as shown in Attachment B.

5.1.3. Consistency with the Regional Plan

The directions set out in Regional Plans provide the long-term vision and set the spatial patterns for future development within a region. This can include land use integration, transport infrastructure and the public realm.

The Commission has identified that the existing volumes of the South Australian Planning Strategy, prepared under the *Development Act 1993*, will apply until such time as the new Regional Plans are prepared and adopted. Refer to the SA Planning Portal for more information on the Commission's program for implementing Regional Plans throughout South Australia.

Where there is conflict between a Regional Plan and the State Planning Policies, the State Planning Policies will prevail.

Given the scope of this Amendment it is not anticipated to substantially change or address specific policy positions or strategic outcomes within Regional Plans. However, there will be an overall improvement of the Code through better clarity, consistency and interpretation to policy.

This Code Amendment is consistent with the Regional Plans.

5.1.4. Consistency with other key strategic policy documents

This Code Amendment aligns with other key policy documents in the following manner:

Final Report and Recommendations 2023 Expert Panel for the Planning System Implementation Review (and State Government Response)

The Final Report of the Expert Panel Review contained 72 recommendations to improve and enhance the Planning System in South Australia and in March 2024, the South Australian Government issued its response. This Code Amendment will implement some of the Expert Panel recommendations supported by the State Government, including several of the minor or operational amendments.

State Planning Commission's Strategic Plan 2023-24

The Commission's Strategic Plan 2023-2024 identifies work plan priorities for enhancing our planning system and leading on planning policy for the next 12 to 18 months. Implementing the recommendations of the Expert Panel that have been supported by the Government, supporting referral Agencies to enhance Overlays and Deemed-to-Satisfy solutions and undertaking targeted policy improvements to the Code are amongst these priorities.

ATTACHMENT A – AMENDMENT INSTRUCTIONS

Refer to separate Attachment

A1. Use of ‘And’ and ‘Or’

Refer to separate Attachment

ATTACHMENT B – STRATEGIC PLANNING OUTCOMES

B1. State Planning Policies

The State Planning Policies (SPPs) require that the Principles of Good Planning are considered in the preparation of any designated instrument, including a Code Amendment.

The Principles of Good Planning are set out under section 14 of the PDI Act and have been taken into consideration in preparation of this Code Amendment, with the key relevant principles noted below.

Principles of Good Planning	Relevance to Code Amendment
Long-term focus principles Policy frameworks should be based around long- term priorities, be ecologically sound, and seek to promote equity between present and future generations. Policy frameworks should be able to respond to emerging challenges and cumulative impacts identified by monitoring, benchmarking and evaluation.	*This Code Amendment responds to emerging issues identified by the Expert Panel and is informed by submissions received though that review process as well as feedback received from practitioners and other users in relation to the performance of the Code.*

This Code Amendment is principally one of a technical and operational nature. The broader Principles of Good Design relating to urban renewal, high-quality design, activation and liveability, sustainability, investment facilitation, and integrated delivery are of less relevance than they are to a land rezoning or the implementation of a new policy framework. The intentions of the Principles of Good Design are noted and have been considered within the amendments and adjustments proposed as part of this Code Amendment.

SPP Key Principles

There are 16 SPPs that include Objectives, Policies and Principles for Statutory Instruments (including the Planning and Design Code). The most critical SPPs in the context of this Code Amendment are:

State Planning Policy	Code Amendment Outcome
SPP 1: Integrated Planning **Objective:** To apply the principles of integrated planning to shape cities and regions in a way that enhances our liveability, economic prosperity and sustainable future. In particular, the principle for: Balanced decision-making – Decision-making that considers multiple perspectives. **SPP 2: Design Quality** **Objective** *To elevate the design quality of South Australia's built environment and public realm.*	*The Code Amendment will continue to build upon the goals and requirements of the SPPs already established within the Code.* *Like the previous Miscellaneous Technical Enhancement Code Amendment by the Commission, the scope of this Code Amendment is to not substantially change policy positions. Instead, policy improvements are made though technical and operation improvements that will result in better clarity, consistency and ease of interpretation. SPP objectives and policies have been taken into account through the*

Policy 2.1 *Promote best practice in the design of buildings, places and the public realm by applying the Principles of Good Design.* ***Policy 2.6*** *Maximise opportunities for the Principles of Good Design and community engagement to inform future policy creation and improve design outcomes.* **Policy 2.7** *Promote a culture of good design to foster creative thinking, innovation and effective design processes within the planning industry, built environment professions and general public.*	*preparation of this Code Amendment.*