



## Agenda Report for Noting

**Meeting Date: 2 March 2023**

<b>Item Name</b>	Report on Infill Development Applications
<b>Presenters</b>	Brett Steiner, Jason Bailey, Grant Croft and Tom Victory
<b>Purpose of Report</b>	Noting
<b>Item Number</b>	6.1
<b>Strategic Plan Reference</b>	N/A
<b>Work Plan Reference</b>	N/A
<b>Confidentiality</b>	Not Confidential (Release Immediately), with the exception of Attachments 1 to 3 which are classified as Confidential (Personal Information)
<b>Related Decisions</b>	N/A

### Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not confidential (Release Immediately), with the exception of **Attachments 1 to 3** which are classified as Confidential (Personal Information).
2. Note the contents of this Agenda Report and the *General Infill Investigations: Deemed-to-Satisfy (DTS) Dwelling Applications (Q2 2022)* Report (the Infill Report) (**Attachment 1**) prepared by Planning and Land Use Services (PLUS).
3. Note that PLUS will update the Commission on a quarterly basis on how the Code's infill Deemed-to-Satisfy (DTS) requirements and assessment pathways are being implemented.
4. Note that after another quarter of data collection, the Executive Director of PLUS will write the Chief Executives of Greater Adelaide councils and the Local Government Association (LGA) of South Australia about how infill development DTS requirements are being used in assessment.

## Background

The Planning and Design Code (the Code) contains a range of DTS requirements and assessment pathways for 'infill development' (being development involving the replacement of a single dwelling with two or more dwellings in established neighbourhoods).

With infill development being highly topical, these DTS requirements and assessment pathways were, and continue to be, a particular focus of many in the practitioner community and the public. Requirements regarding landscaping, garages and car parking are a particular focus given some of these are new requirements brought into operation with the implementation of the Code across the State in March 2021.

Accordingly, the Commission has requested that PLUS investigate and report on how these DTS requirements and assessment pathways are being taken up by applicants and applied and enforced by relevant authorities. The Commission has also requested that PLUS consider whether further educational and support materials be made available to assist with interpretation and understanding of these requirements and assessment pathways.

## Discussion

### Infill DTS development approvals

The attached General Infill Investigations Report (the Infill Report) outlines findings in relation to DTS approvals for housing infill development applications that have been issued by relevant authorities between the period of April 2021 to October 2022 is provided in **Attachment 1**.

The purpose of this Agenda Report (and future iterations) is to inform the Commission on how the Code's infill DTS requirements and assessment pathways are being implemented on a quarterly basis.

The review that fed into the Infill Report was undertaken in four steps as follows:

1. Identify all development approvals granted under the DTS assessment pathway within metropolitan Adelaide, for two or more dwellings.
2. Inspect sites where development approvals have been granted and construction has commenced.
3. Assess compliance of completed developments.
4. Report the findings to the Commission.

In summary, the review identified that:

1. Since the full implementation of the new planning system on 19 March 2021, a total of 79 development approvals have been granted for two or more dwellings under the DTS assessment pathway.
2. Site inspections were carried out on 36 of the identified sites where a development approval had been granted. On inspection, only six were visually confirmed as being completed, with a further two identified as being completed within the system.
3. These eight development approvals were then reviewed by the State Assessment Team within PLUS to ensure compliance with the relevant DTS provisions. It was identified that six of the eight approvals did not appear to satisfy all DTS criteria.
4. The most common non-compliances with the DTS provisions were in relation to the following matters:
  - o Front landscaping and provision of suitable small tree (four approvals).
  - o Boundary to boundary development (two approvals).
  - o Dual vehicle access and driveway widths (one approval).

At this juncture, there is not sufficient evidence to establish any systemic issues with the new infill policies.

Accredited Professionals Scheme – Audit findings on DTS infill approvals

As part of the investigations for the Expert Panel and Commission, contact was made with the PLUS Audit and Investigations (A&I) Team who undertake auditing processes in relation to privately operating relevant authorities under the Accredited Professionals Scheme. The A&I Team identified the following information in relation to infill type applications that it has audited:

- 23 infill type development application audits have been identified out of approximately 150 total application audits over the last year.
- From the applications which were audited, only one individual appeared to have supplied a written assessment report which documented their decision-making in relation to relevant DTS criteria. Within this report, there were minor variations to certain DTS criteria which were supported by written justification in relation to the proposed buildings within the context of the site and locality. An example of this checklist report is provided in **Attachment 2** and is discussed in further detail below.
- Other individuals who were audited did not show evidence of such assessment reports to justify the decisions made to issue Planning Consent or any minor variations to DTS criteria. In more severe cases, there were apparent errors in relation to legislative requirements, such that the individual did not have the jurisdiction to be the relevant authority to assess such applications. The A&I Team is addressing these matters through their standard procedures.

One of the better examples which the A&I Team reviewed was for an application for 2x2 storey dwellings. The assessment revealed three minor departures from the DTS criteria which were deemed to be ‘minor variations’ by the individual assessing the application. The following table summarises the assessment of these departures:

Assessment matter	Relevant DTS Criteria	Assessment of Minor Variation
Front setback	DTS/DPF 5.1 in the Zone  Average required setback calculated as 5.6 meters	<ul style="list-style-type: none"> <li>• The proposed dwelling front setback is 5.5 metres.</li> <li>• The 10cm shortfall was considered to be minor, given that standard default Code policies allow a setback one metre forward of the adjoining allotment.                             <ul style="list-style-type: none"> <li>• The proposed development was considered to be consistent with the character and amenity of the locality.</li> </ul> </li> </ul>
Upper-level side setback	DTS/DPF 8.1 in the Zone  Criteria requires a 1.8m side setback for a dwelling	<ul style="list-style-type: none"> <li>• The proposed dwelling upper-level internal side setback was 1.5m.</li> <li>• It was considered that the 30cm shortfall was minor, given that it related to an internal property boundary, and which did not unreasonably impact on the adjoining vacant allotment.</li> </ul>
Landscaping	DTS/DPF 22.1 in the Zone  The criteria required 69.37m <sup>2</sup> of landscaping for the particular development.	<ul style="list-style-type: none"> <li>• Development proposed a total landscaped area of 65.93m<sup>2</sup>.</li> <li>• It was considered that the 3.44 square meters or 4.9% shortfall to be minor, given that the landscaping would be barely perceivable when viewing the overall development.</li> </ul>

The above justification provided for considering the departures as being minor in nature seems reasonable and supportable in this instance. However, anecdotal advice from the A&I Team regarding certain complaints (typically provided by council officers to PLUS) reveals that sometimes private Accredited Professionals may be approving departures from DTS criteria which may not reasonably be considered 'minor'. This is not a new situation and was also apparent under the Residential Development Standards (ResCode) assessments under the repealed *Development Act 1993*.

Such information has, however, been difficult to quantify due to a combination of factors including lack of appropriate recordkeeping by the authority and no current technology solution in the PlanSA ePlanning system to record that minor variations to DTS criteria have occurred for a particular application. However, it is noted that these technological enhancements are being investigated for future inclusion in the PlanSA system. This should make future auditing of such matters far more practical.

### Performance Assessed infill approvals

In late 2022, PLUS undertook some investigations into a sample of 10 approved development applications for infill development (comprising two or more dwellings) which were processed through the Performance Assessed pathway. These investigations analysed:

- The zone and council area where the application was proposed.
- The nature of the application proposed (e.g. 2x2 storey dwellings).
- Whether or not the approved plans met the four key Code policy areas for infill, being:
  - landscaping provision
  - site coverage
  - design features
  - car parking.

In summary, the findings of these investigations revealed:

- **Five** applications were considered to fully meet the relevant infill policies.
- **Three** applications either were unclear or deemed to meet at least only partially one of the four relevant policies.
- **Two** applications displayed a failure to meet three out of the four relevant policies (yet were approved on balance regardless).

The more detailed findings can be viewed in **Attachment 3**.

### Online advisory materials

In relation to education and support, a review of current online information available on the PlanSA and Commission websites was undertaken.

The following documents are relevant to assisting with interpretation and understanding the infill policies in the Code. The most relevant and specific document is the Commission's [\*Raising the bar on Residential Infill: Policies in the Planning and Design Code\*](#) brochure which summarises the background and details of relevant infill policies in the Code.

Other less specific, but useful material is provided below.

*PlanSA Website:*

- PlanSA – [Guide to the Planning and Design Code \(June 2022\)](#).
- Green Adelaide and Commission – [Adelaide Garden Guide for New Homes](#).
- State Planning Commission Brochure – [Preserving our Green Infrastructure: Policies in the Planning and Design Code](#).
- State Planning Commission – [Practice Direction 16 – Urban Tree Canopy Off-set Scheme 2021](#).
- [Urban Tree Canopy Off-set Scheme](#).
- PlanSA Fact Sheet – [Urban Tree Canopy Off-set Scheme](#).
- BDO EconSearch Report – [Options Analysis: Costs and Benefits of Urban Tree Canopy Options for Minor Infill Development in the Planning and Design Code](#).

*State Planning Commission Website:*

- State Planning Commission – [Open Space and Trees Project](#).
- Green Adelaide and Commission – [Adelaide Garden Guide for New Homes](#).

A more detailed and practical assessment guide could be established which provides specific examples and tools for assessment authorities in relation to assessing developments against the infill policies in the Code.

Summary

The vast majority of infill development applications (approximately 85 per cent) are being processed through the Performance Assessed pathway. This perhaps suggests that refinement of Code policy could occur to increase the likelihood of a greater take-up of the DTS pathway – to improve efficiencies in the planning system.

It is apparent that some policies in the Code (either DTS/Designated Performance Features (DPFs) or Performance Outcomes (POs)) are sometimes being intentionally or accidentally overlooked in the assessment of infill applications, possibly leading to less than optimum development outcomes on the ground. This could perhaps be addressed through a number of means, such as:

- Reviewing the practicality and interpretation of existing Code policies.
- New guidance material to assist interpreting or applying the policies.
- Mandatory or optional training via the Accredited Professionals Scheme's ongoing professional development requirements.
- Corrective measures for relevant authorities via the auditing process under the Accredited Professionals Scheme for non-compliance with legislative requirements or appropriate recordkeeping practices in relation to decision making on DTS applications.

It is apparent that, sometimes, Accredited Professionals may be approving departures from DTS criteria which may not reasonably be considered 'minor'.

To improve understanding of what could reasonably be deemed 'minor', this could perhaps be further supported with updated Code policy and/or guidance material which quantifies reasonable departures (for example, specifying appropriate percentage shortfalls for minimum site areas for new dwellings or case studies on assessments).

**Attachments:**

1. *General Infill Investigations: Deemed-to-Satisfy (DTS) Dwelling Applications (Q2 2022) Report (#19397075).*
2. Example of an appropriate DTS assessment checklist from a private relevant authority for an infill development application (#19797507).
3. Performance Assessed Infill Applications Review (#19797272).

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Endorsed by: Jason Bailey

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Date: 23 February 2023

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