

Agenda Report for Decision

Meeting Date: 15 February 2024

Item Name	Practice Guideline 1 – Natural Ground Level	
Presenters	Tyler Johns, Tom Victory	
Purpose of Report	Decision	
Item Number	4.1	
Strategic Plan Reference	3. Leading on Planning Policy	
Work Plan Reference	3.2 Undertake targeted policy improvements for the Code	
Confidentiality	Not Confidential (Release Delayed) – to be released following final decision by the Minister for Planning (the Minister) on adoption of <i>Practice Guideline 1 – Natural Ground Level</i> (Practice Guideline 1).	
Related Decisions	<p>Item 5.1 Approval to Consult – Miscellaneous Technical Enhancement Code Amendment (7 July 2022)</p> <p>Item 4.3 Practice Guideline 1 – Natural Ground Level (15 December 2022)</p>	
Conflicts Declared		
Is the Report author aware of any potential undeclared conflicts?		NO

Recommendation

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

1. Approve the designation of this item as Not Confidential (Release Delayed) – to be released following the final decision by the Minister for Planning (the Minister) on adoption of *Practice Guideline 1 – Natural Ground Level* (Practice Guideline 1).
2. Approve Practice Guideline 1 provided at **Attachment 1**, as amended following targeted engagement with planning practitioners.
3. Authorise the Chair to approve any minor or editorial amendments to Practice Guideline 1.
4. Authorise the Chair to sign the Minute in **Attachment 2** to furnish a copy of Practice Guideline 1 to the Minister for Planning (the Minister) for approval in accordance with section 43(1) of the *Planning, Development and Infrastructure Act 2016* (the Act).
5. Authorise the Department for Trade and Investment (the Department) to arrange for Government Gazettal and publication of the final Practice Guideline 1 on the PlanSA website, following approval by the Minister, in accordance with section 43(4) of the Act.

Background

Section 43 of the Act provides that the Commission may, with the approval of the Minister, make practice guidelines with respect to the interpretation, use or application of the Planning Rules.

A practice guideline may make a declaration as to the effect of a provision of the Planning Rules in a particular set of circumstances.

In 2022, the Commission took an interest in the interpretation of 'natural ground level' following the outcomes of an outbuilding development at Seacliff. The question in that case turned on whether 'natural ground level' should be the 'new' ground level created by a large retaining wall which was granted retrospective planning consent, or the 'original' ground level that existed prior to the retaining wall being built.

The practical difficulty with relying on the use of 'existing ground level' is that this level can be artificially distorted by way of the introduction of fill or the removal of soil prior to an application for built form. Essentially, it can be used to achieve a greater overall building height than that envisaged by the Planning and Design Code (the Code).

In cases considered by the Environment, Resources and Development (ERD) Court, it has been held that where a site's pre-development ground level (i.e. before modification by any cutting or filling, whether recent or longstanding) is ascertainable, it is that level which is to be taken as its 'natural ground level'.

At its meeting held on 7 July 2022, Planning and Land Use Services (PLUS) advised the Commission that a practice guideline to illustrate the difference between 'natural ground level' and a modified site would be of practical benefit to relevant authorities in the interpretation of this concept.

A draft Practice Guideline 1 was prepared and presented to the Commission for consideration on 15 December 2022. At that time, the Commission provided in-principle support for the draft Practice Guideline 1 to facilitate targeted engagement with planning practitioners.

PLUS undertook targeted engagement with planning practitioners, through the Local Government Assessment Managers Forum (LGAMF), to ensure that the Practice Guideline provides appropriate guidance on the determination of 'natural ground level' in relation to the various circumstances to which this term applies within the policy provisions of the Code.

The feedback provided by the LGAMF is provided at **Appendix 1** and is discussed in the following section.

Discussion

Practice Guideline 1 provides:

- guidance on the interpretation of 'natural ground level' as it relates to policy provisions contained within the Code;
- reference to relevant case law which provides guidance as to how the term 'natural ground level' is to be understood and applied;
- a description of the circumstances where the 'finished' or 'existing' ground level may be taken as the point of measurement in cases where it may be difficult or irrelevant to ascertain what the 'natural' ground level may be; and
- illustrations to outline different circumstances that a relevant authority may encounter.

Practice Guideline 1 has been prepared based on feedback and advice and is included at **Attachment 1** for approval.

LGAMF Feedback

Following targeted engagement with the LGAMF, their feedback was considered by Planning and Land Use Services (PLUS) and incorporated into the revised version of the Practice Guideline now presented to the Commission.

The following summarises the key points of feedback received from the LGAMF on the draft practice guideline, together with how PLUS has responded to it.

LGAMF FEEDBACK	PLUS RESPONSE
General support for the proposal to define and provide detailed guidance on identifying natural ground level. The use of illustrative examples and discussing relevant case law is also supported to provide sound understanding of the matter.	Noted and acknowledged. Additional diagrams have also been included in the revised version to further improve understanding in certain scenarios.
A preference for the definition of terms to be incorporated into the Code for simplicity, rather than the proposed Practice Guideline.	Whilst the creation of additional definitions within the Code for 'natural ground level' or 'existing ground level' had previously been identified as a possible solution, it was considered this approach would require a more comprehensive review of height controls within the Code. By comparison, the creation of a practice guideline would preserve a level of flexibility in the assessment of natural ground level in relation to a particular site or set of circumstances. This approach will be monitored by PLUS and can be addressed as a future Code Amendment if the issues warrants it.
Example 2 is confusing as written, in relation to the discussion around timing of modification.	Agreed. The relevant text accompanying the figure has now been reworded to provide more clarity.
If a site is already filled/retained along a boundary, and a structure is proposed within the site, particularly away from the boundary with no neighbouring impacts, the height should be the finished level. This is not clear in the images but may be relevant if close to the boundary and there will be an impact.	Agree in part that, in certain situations where potential impacts to neighbouring land is negligible, the existing ground level can be accepted as natural ground level. New figures 6 and 7 have been included in the revised draft, together with accompanying explanations, to provide clarity where a relevant authority may consider adopting this approach.
Better clarification should be provided between existing ground level versus finished ground level.	Agreed. The relevant sections have been updated to provide more clarity between these two terms.
The proposed wording of a relevant authority 'determining' natural ground level should be replaced with 'identifying'.	Agreed. The relevant sections have been reworded as suggested.

Next steps

Should the Commission resolve to endorse the Practice Guideline (as amended in response to feedback received during targeted engagement), the following will occur:

- As a Practice Guideline cannot be operational in the absence of the Minister's agreement, the Chair, on behalf of the Commission, will furnish a copy to the Minister for approval in accordance with section 43(1) of the Act. A copy of the draft Minute to be furnished to the Minister seeking his approval of Practice Guideline 1 is **Attachment 2**.
- If approved by the Minister, a *Gazette* Notice will be forwarded to the Department of the Premier and Cabinet for publication in the next available *Gazette* Notice, as required by section 43(4) of the Act. A draft copy of *Gazette* Notice is **Appendix 2**.
- A minute will be forwarded by PLUS to the delegate of the Chief Executive of the Department for Trade and Investment to certify that Practice Guideline 1 is suitable for publication to the SA Planning Portal, as required by section 52 of the Act.
- Once the above steps have been completed, Practice Guideline 1 will be published on the SA Planning Portal and will commence operation on the date that the *Gazette* Notice is published.

Following the publication and commencement of Practice Guideline 1, PLUS will coordinate communications to ensure that planning practitioners, agencies, industry members and the public are made aware of the Practice Guideline.

These communications may include, but will not be limited to:

- presenting to practitioners via the PLUS Monthly Policy Forums;
- social media posts from the Commission; and
- a targeted awareness campaign with key stakeholder groups.

Future Practice Guidelines

Following the publication and commencement of Practice Guideline 1, it is anticipated there will be an appetite for further practice guidelines to be prepared by the Commission.

Whilst there are no other practice guidelines currently planned, PLUS is receptive to, and will keep apprised of, any feedback which may indicate what topics future practice guidelines should canvass and will present those options to the Commission as they arise.

In addition, noting Practice Guideline 1 was borne of a contentious development in Seacliff, PLUS will continue to monitor planning case law to determine whether any matters identified merit the preparation of a new practice guideline.

The preparation and implementation of future practice guidelines will need to be considered and factored into the Commission's work plan.

Attachments:

1. *Practice Guideline 1 – Natural Ground Level* (#18896898)
2. State Planning Commission Minute to the Minister for Planning (#19184183)

Appendices:

- A. Feedback received from Local Government Assessment Managers Forum (#21121894)
- B. *Government Gazette* Notice (#19184063)

Prepared by: Tyler Johns and Tom Victory

Endorsed by: Chelsea Lucas / Jane Trotter

Date: 29 January 2024

This Practice Guideline is issued by the State Planning Commission under section 43 of the *Planning, Development and Infrastructure Act 2016*.

Introduction

Section 43(1) of the Act allows the Commission, with the approval of the Minister responsible for administering the Act, to make practice guidelines with respect to the interpretation, use or application of the Planning Rules or the Building Rules (as those terms are defined under the Act).

Practice Guideline

Part 1 – Preliminary

1 – Citation

This Practice Guideline may be cited as Practice Guideline 1 - Natural Ground Level.

2 – Commencement of operation

This Practice Guideline will come into operation on the day on which it is published on the SA Planning Portal.

3 – Object of Practice Guideline

The object of this Practice Guideline is to assist with the interpretation of the term ‘natural ground level’ where it appears in policy provisions within the Planning and Design Code.

4 – Interpretation

Act means the *Planning, Development and Infrastructure Act 2016*.

Code means the Planning and Design Code.

Commission means State Planning Commission.

Regulations means the Planning, Development and Infrastructure (General) Regulations 2017.

Note: Section 12 of the Legislation Interpretation Act 2021 provides that an expression used in an instrument made under an Act has, unless the contrary intention appears, the same meaning as in the Act under which the instrument was made.

Regulation 3(4) in the Regulations (‘Interpretation’) sets out the following:

(4) “For the purposes of these regulations, a reference to the natural surface of the ground, in relation to proposed development, is a reference to the existing ground level before the development is undertaken (disregarding any preparatory work or related work that has been (or is to be) undertaken for the purposes of the development).”

This interpretation is only applicable for the purpose of interpreting the relevant parts of the Regulations in which the term ‘natural surface of the ground’ is used (in relation to Schedules 3 and 4 which set out a specific and limited acts or activities that do or do not constitute development).

This interpretation should not be used in relation to the term ‘natural ground level’ as outlined within this Practice Guideline and where it appears within the Planning and Design Code.

Part 2 – Natural Ground Level

5 – Background

‘*Natural ground level*’ is used within the Code as a measuring point to control the height or depth of buildings and structures, or parts thereof.

The common meaning of ‘*natural ground level*’ is understood to be the “*natural surface level of the ground*”, with ‘natural’ referring to that which has been formed or constituted by nature rather than by artificial means.

‘*Natural ground level*’ is not defined within the Act or the Code, nor was it defined under the former *Development Act 1993*. Accordingly, except where relevant case law would require an alternative approach, the common meaning should generally be relied upon.

6 – Case Law

This Practice Guideline reinforces South Australian planning case law which has considered the determination and application of ‘*natural ground level*’ in detail. Three key cases (and relevant paragraphs in those cases) are:

- [Paior v The Corporation of The City of Marion \[2017\] SAERDC 4 at \[99\]](#)
- [Evans v City of Victor Harbor \[2010\] SAERDC 64 at \[15\] and \[16\]](#)
- [Mila Enterprises Pty Ltd v City of Holdfast Bay \[2005\] SAERDC 34 at \[29\] and \[30\]](#)

Relevant parts of these determinations are as follows:

[...] in a situation where the existing landform has been modified in the distant past, in circumstances where it is no longer possible to ascertain what the natural ground level may have been, a direct application of the height above natural ground level may be impractical: see Paior, above, at [99].

[...] the bench which was cut into the natural ground level some decades ago. In the circumstances of this particular site, it is abundantly clear that that “floor” for the two areas of fill is not natural ground level. In fact, the fill will bring the areas in question up to, or near to, what would have been natural ground level before the site was benched.

[...] This is not a case where it is difficult to ascertain, approximately, what the level of natural ground level would have been: see Evans, above at [15] and [16].

From my observation of the locality, there would be little, if any, land that would have a form or could be genuinely regarded as representing ‘natural ground level’. The topography has been shaped and reshaped over decades. In this context the term ‘natural ground level’ is a term that is imprecise [...]

The term ‘natural ground level’ in Principle 12 for all intents and purposes refers to existing ground level: see Mila Enterprises, above at [29] and [30].

Case law has therefore held that where a site’s pre-modified ground level (i.e. before modification by any cutting or filling, whether recent or longstanding) is ascertainable, it is that level which is to be taken as the ‘*natural ground level*’.

Where it is accepted that this is not ascertainable, then the existing ground level of the site may be used for the purposes of determining ‘*natural ground level*’.

7 – Finished Ground (Site) Level

‘*Finished ground level*’ (also interchangeably referred to as ‘finished site level’) is often used within the Code to provide a measurement point for the purposes of controlling the impact of building height on neighbouring properties, as well as flood risk minimisation.

‘*Finished ground level*’ is generally understood to be the future finished surface level of the ground, with ‘finished’ referring to that being formed or constituted by artificial means in a proposed development or alteration of the site. ‘*Finished ground level*’ is inclusive of the height of any proposed earthworks or retaining walls.

8 – Relevant Policy Provisions

The guidance within this Practice Guideline is applicable to any policy provision within the Code which includes the terms ‘*natural ground level*’ or ‘*finished ground level*’.

9 – Identification of Natural Ground Level and Code Policy Example

Schedule 8 of the Regulations requires that plans accompanying an application for planning consent show existing ground and floor levels (if relevant), as well as the finished site and floor levels, including the height and location of any earthworks or retaining walls.

However, if the ‘*natural ground level*’ is not apparent from the application plans or through other means, the Relevant Authority may seek to identify the ‘*natural ground level*’ to enable an accurate assessment against a relevant policy in the Code.

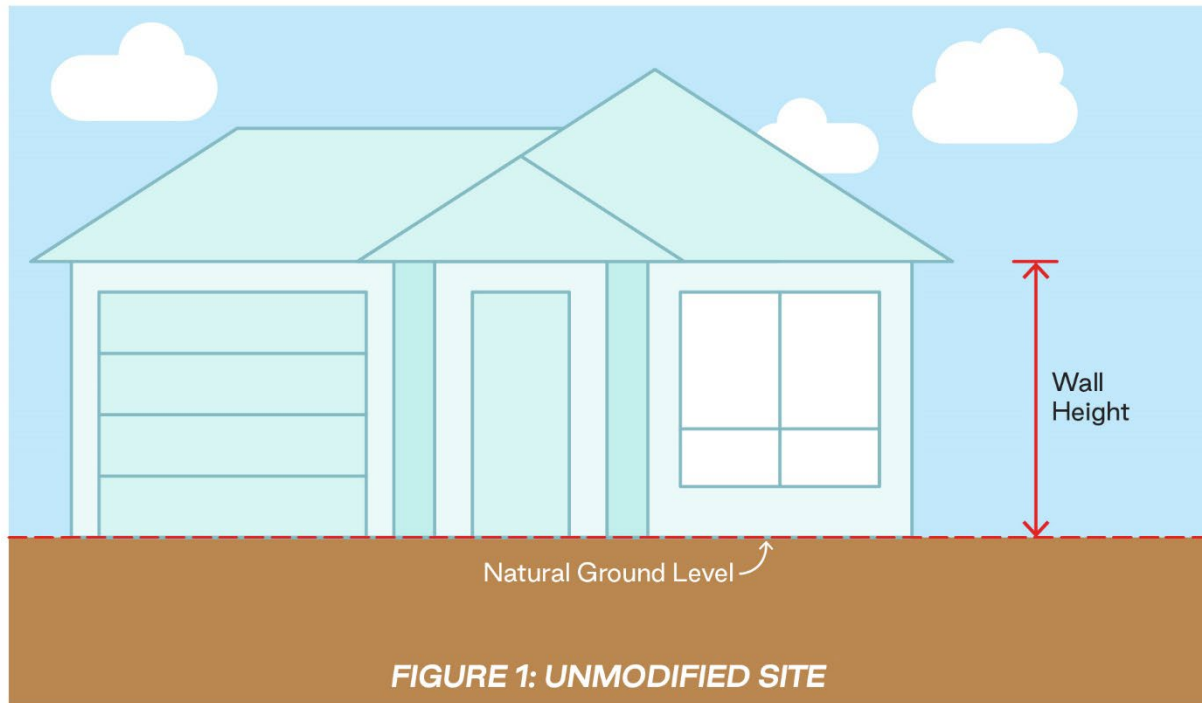
EXAMPLE:

In the Established Neighbourhood Zone – Ancillary buildings and structures - DTS/DPF 11.1(h) states “*have a wall height or post height not exceeding 3m above **natural ground level**, and where located to the side of the associated dwelling, have a wall height or post height no higher than the wall height of the associated dwelling*”.

This DTS/DPF is applied in varying scenarios as follows, to identify how ‘*natural ground level*’ is ascertained by the Relevant Authority. The principles provided in these scenarios can generally be applied wherever the term natural ground level is used throughout the Code.

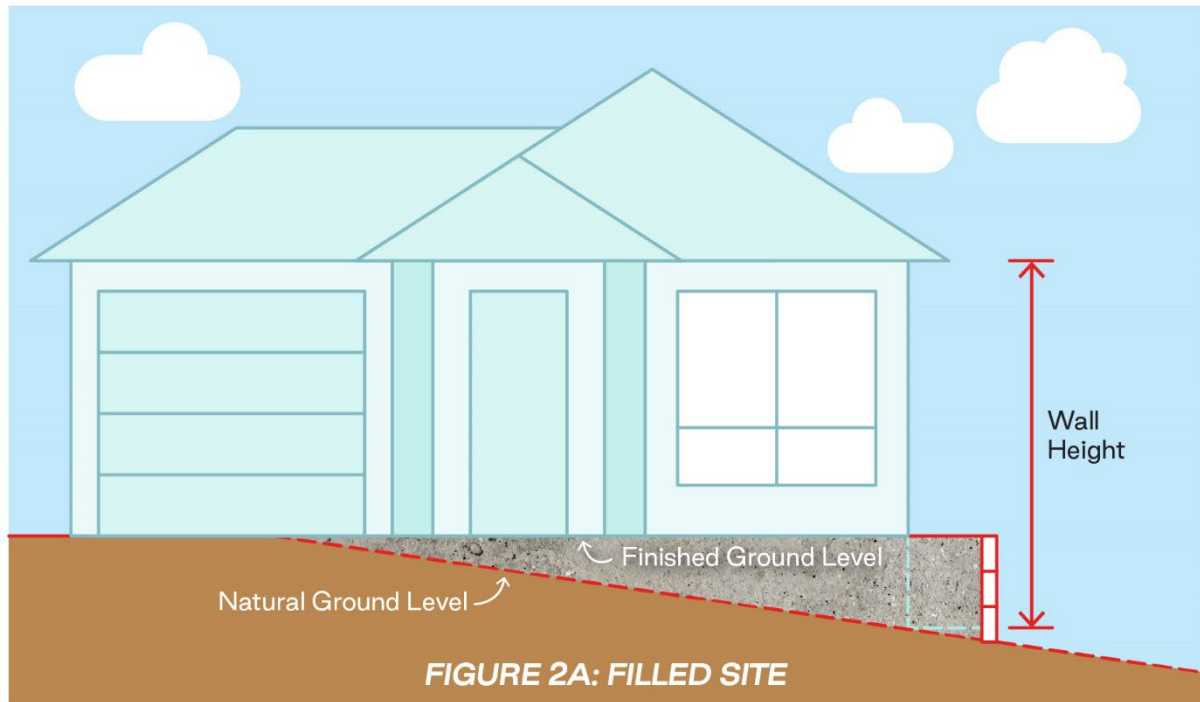
Example 1:

Pre-development '*natural ground level*' is easily ascertainable due to the site being unmodified by earthworks. Wall height may be taken from the '*natural ground level*':

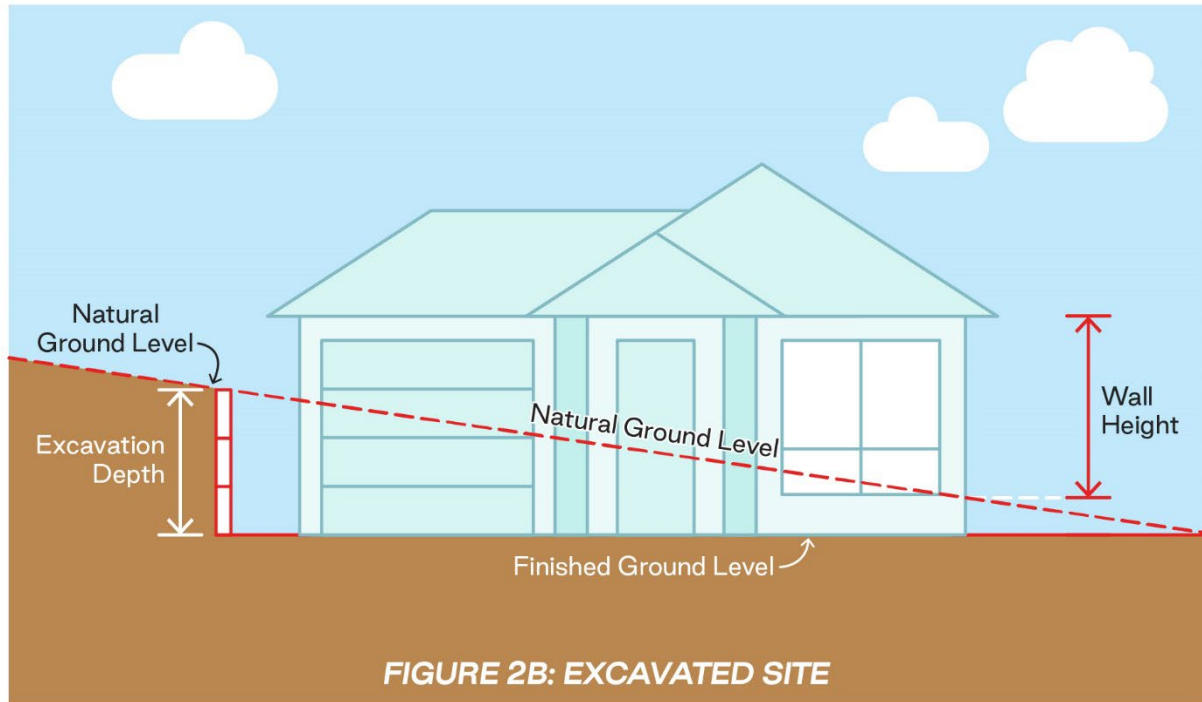


Example 2:

Pre-development '*natural ground level*' is easily ascertainable due to obvious earthworks. Wall height may be taken from the '*natural ground level*' at the lowest point relevant to the building, including the depth of fill being retained on site:



Note - The timing of the artificial ground modification should generally not be taken into account, even where it may have occurred many years earlier. In Figure 2A above, the 'Finished Ground Level' should be considered as part of the proposed development, even though it physically already exists. Accordingly, in assessing the proposal, the height of the retained fill would be added to the building wall height to then determine the overall height of that wall above natural ground level.

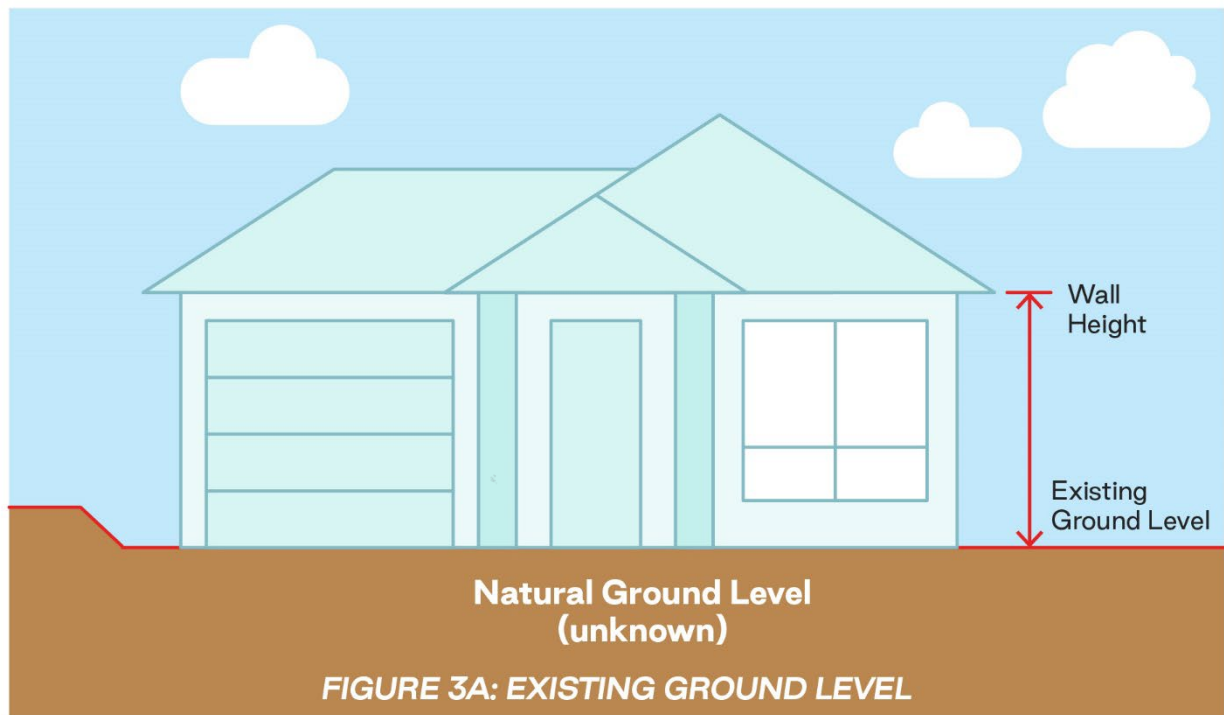


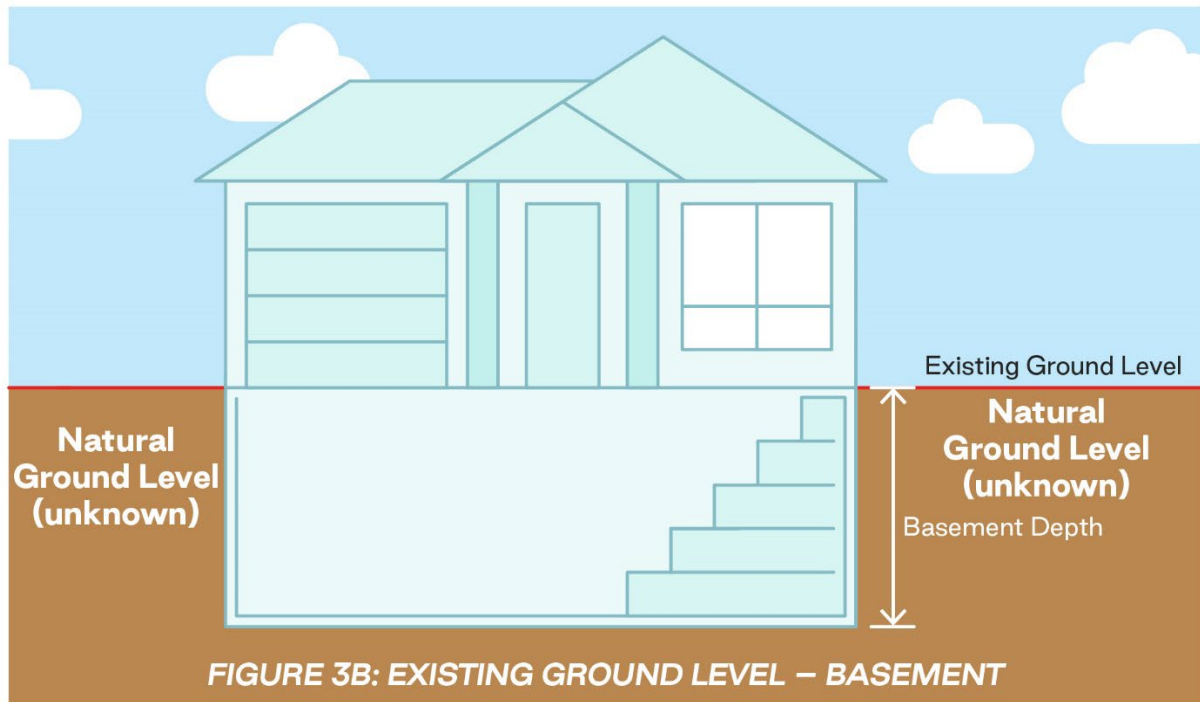
Example 3:

Pre-development '*natural ground level*' is not easily ascertained. This may occur if the site has been modified over time such that there is little evidence of what could be represented as 'natural' ground level. This could include but is not limited to circumstances where:

- there is no obvious cut and fill; and/or
- there is minimal (or no) historical survey data (or other relevant information) available to identify '*natural ground level*'.

In such situations, the Relevant Authority may be satisfied that the existing ground level can be used as an accepted point of measurement for the purposes of '*natural ground level*'. It follows that the assessment of the wall height shown in Figure 3A, or the basement depth shown in Figure 3B, may be taken from the existing ground level.





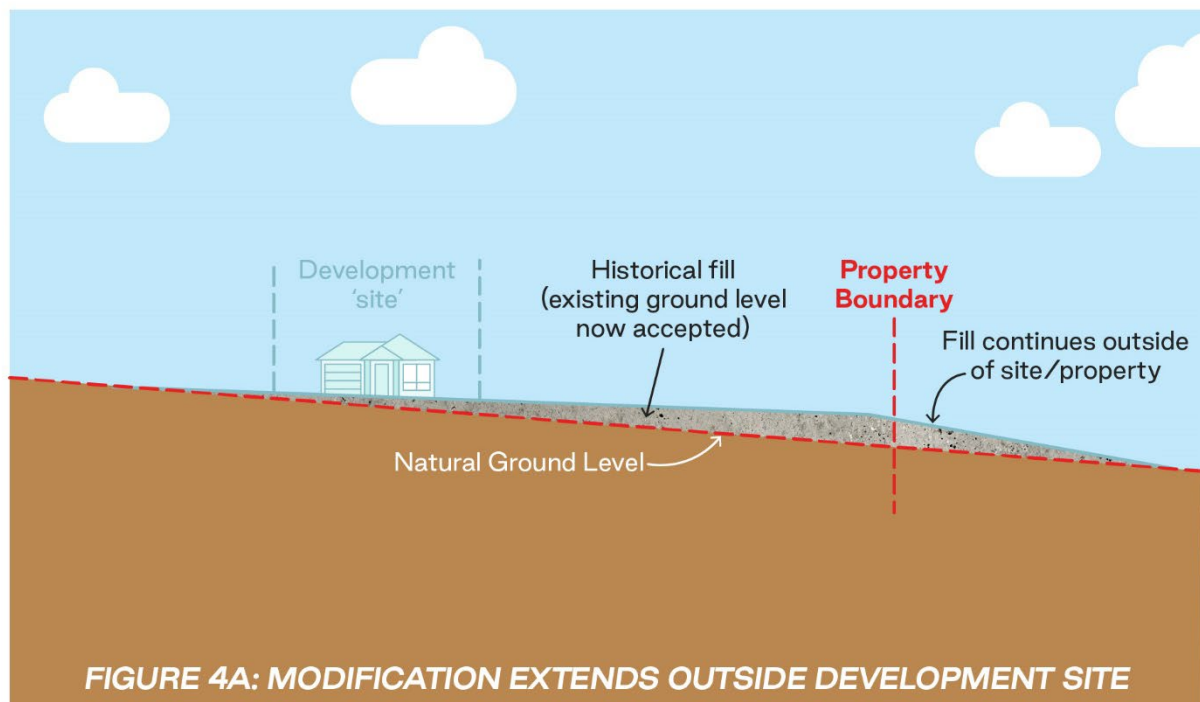
Example 4:

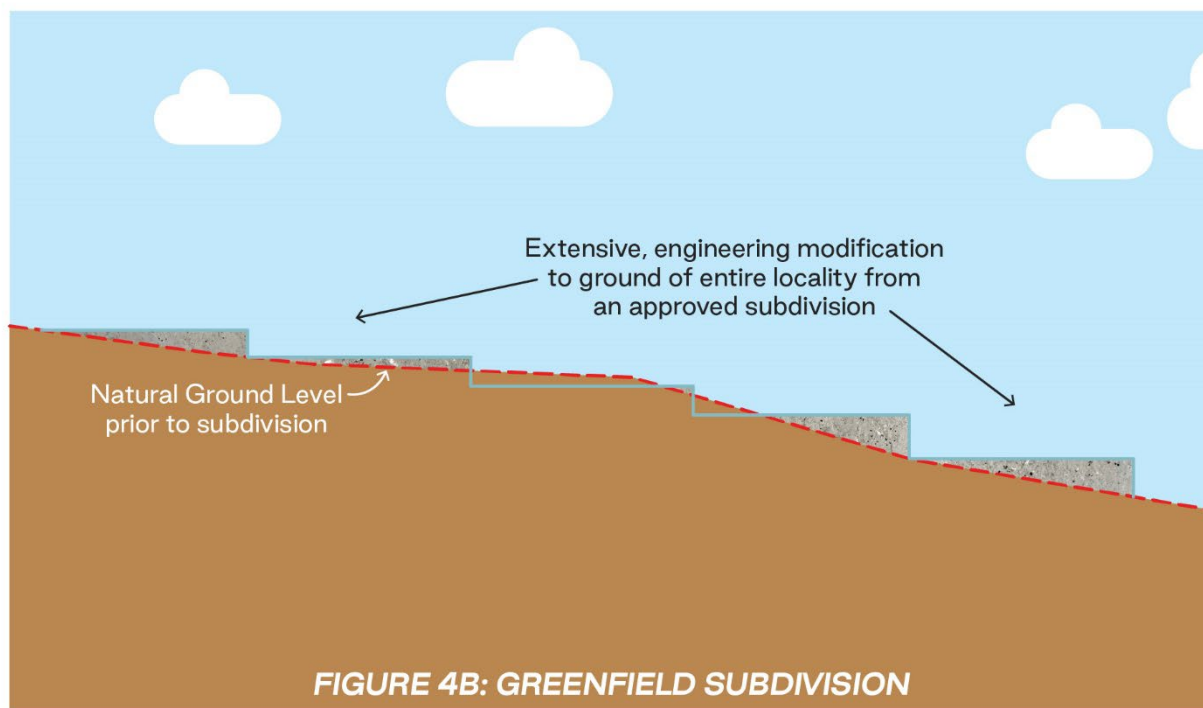
Pre-development natural ground level is not considered relevant in particular circumstances.

This may occur when the site has been modified over time such that it can be accepted the original '*natural ground level*' is now of little relevance. This may arise in circumstances including but not necessarily limited to where:

- both the relevant development site and an extensive area of land outside of that site has been modified such that any potential impacts are negligible (Figure 4A); and/or
- new allotments in a greenfield development have been benched extensively across a locality due to the undulating location (Figure 4B).

In circumstances such as, or similar to, the above, the Relevant Authority may be satisfied the existing ground level may be used as an accepted point of measurement for the purposes of '*natural ground level*'.





Issued by the State Planning Commission on 11 April 2024.

Note: This Practice Guideline commences operation in accordance with 'Part 2 – Commencement of operation'.

Versions

Version 1: Commenced operation on 11 April 2024.



TO: MINISTER FOR PLANNING

**RE: SEEKING APPROVAL OF STATE PLANNING COMMISSION PRACTICE
GUIDELINE 1 – NATURAL GROUND LEVEL**

PURPOSE

To recommend that you approve the State Planning Commission (the Commission) *Practice Guideline 1 – Natural Ground Level* (Practice Guideline 1).

BACKGROUND

Section 43(2)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act) provides:

43 – Practice Guidelines

(1) *The Commission may, with the approval of the Minister, make practice guidelines with respect to the interpretation, use or application of—*

(a) The Planning Rules

On behalf of the Commission, Planning and Land Use Services (PLUS) has prepared Practice Guideline 1 to support the interpretation of policy provisions within the Planning and Design Code (the Code).

The Commission considered the draft Practice Guideline 1 at its meetings of 15 December 2022 and 15 February 2024 and resolved to seek your approval for the Practice Guideline (**Attachment 1**).

DISCUSSION

Background

The Commission has taken an interest in the interpretation of ‘natural ground level’ following the outcomes of an outbuilding development at Seacliff. The question in this case turned on whether ‘natural ground level’ should be the ‘new’ ground level created by a large retaining wall which had previously been given planning consent retrospectively, or the ‘original’ ground level that existed prior to the retaining wall being built.

In the Seacliff case, it was therefore open to the assessment officer at the City of Holdfast Bay to have determined that the ‘new’ ground level created by the retaining wall was not the ‘natural ground level’; had they made this determination, the application would have been a Performance Assessed development, rather than Deemed-to-Satisfy (DTS). In cases considered by the Environment, Resources and Development (ERD) Court, it has been held that where a site’s pre-development ground level (i.e. before modification by any cutting or filling, whether recent or longstanding) is ascertainable, it is that level which is to be taken as its ‘natural ground level’.

The practical difficulty with relying on the use of 'existing ground level' is that this level can be artificially distorted by way of the introduction of fill or the removal of soil prior to an application for built form. Essentially, it can be used to ascertain greater heights than are envisaged by the Code.

On 7 July 2022, PLUS advised the Commission that a practice guideline to illustrate the difference between 'natural ground level' and a modified site would be of practical benefit to relevant authorities in the interpretation of this concept. Whilst the creation of additional definitions within the Code for 'natural ground level' or 'existing ground level' had been discussed as one possible solution, it was considered that this approach to the matter would require a more comprehensive review of height controls within the Code and would also shift from current convention established by case law.

It was further considered that a Practice Guideline would enable a more comprehensive level of discussion and illustrative examples than would be appropriate for inclusion in the Code.

Practice Guideline 1 – Natural Ground Level

Practice Guideline 1 seeks to provide guidance on:

- The interpretation of the phrase 'natural ground level' as it relates to policy provisions contained within the Code.
- The basis for the interpretation of 'natural ground level' in accordance with established case law.
- Circumstances where the 'finished' or 'existing' ground level may be taken as the point of measurement in the case that may be impractical or irrelevant to ascertain what the 'natural' ground level may be.
- Illustrations to outline and provide guidance on the different circumstances that a relevant authority may encounter.

Engagement

PLUS undertook targeted engagement with planning practitioners, through the Local Government Assessment Managers Forum (LGAMF) on the draft guideline.

General support was provided for the proposal to define and provide detailed guidance on identifying natural ground level, as was the use of illustrative examples and discussing relevant case law to provide sound understanding of the matter. A number of suggested updates and changes to wording were also suggested.

The group however did express a preference for the definition of terms to be incorporated into the Code for simplicity, noting their existing views about the complexity of the planning system in accessing information.

In response PLUS addressed the majority of the group's suggestions in the final version of the Practice Guideline including incorporating additional illustrations to improve clarity. The suggestion to place the information into the Code instead of a guideline was considered, however ultimately not adopted due to the reasons discussed earlier in this minute.

Procedural considerations

In accordance with section 43 of the Act, a practice guideline must be notified in the *Government Gazette* and published on the SA Planning Portal. No other consultation or engagement on the matter is required under this section of the Act.

Implementation

Following your approval, the following matters will be finalised before Practice Guideline 1 is published on the SA Planning Portal:

- a) The Gazette Notice will be forwarded for publication in the next available *Government Gazette*, as required by section 42(4) of the Act (**Attachment 2**).
- b) A minute will be forwarded by PLUS to the delegate of the Chief Executive of the Department for Trade and Investment to certify that Practice Guideline 1 is a complete and accurate record of the Practice Guideline to be published on the SA Planning Portal, pursuant to section 52 of the Act (no action required by you).
- c) Once steps (a) and (b) above have been completed, Practice Guideline 1 will be published on the SA Planning Portal and will commence operation on the date that the *Government Gazette* Notice is published.

RECOMMENDATIONS

It is recommended that you:

1. Approve *Practice Guideline 1 – Natural Ground Level (Attachment 1)* under section 43(1)(a) of the *Planning, Development and Infrastructure Act 2016*.
2. Agree to sign the *Government Gazette* Notice (**Attachment 2**) as required under section 43(4)(a)(i) of the *Planning, Development and Infrastructure Act 2016*.

APPROVED / NOT APPROVED

AGREED / NOT AGREED

NICK CHAMPION MP

/ / 2024



CRAIG HOLDEN

Chair, State Planning Commission

18 / 03 / 2024

Attachments:

1. *Practice Guideline 1 – Natural Ground Level* (#18896898)
2. *Government Gazette Notice* (#19184063)

Contact: Tyler Johns
Tel No: 7133 2765

ATTACHMENT 1**FEEDBACK ON 1st VERSION OF DRAFT NATURAL GROUND LEVEL PRACTICE GUIDELINE
MEMBERS OF THE LOCAL GOVERNMENT ASSESSMENT MANAGERS FORUM**

“Thank you for the opportunity to review the draft practice guideline for natural ground level.

I have attached the comments that have been made by various managers/teams.

There is value in defining terms in the Code, but the concern is that this is overly complex and adding to what is already an overly complex system with the various instruments. The following statement summarises the sentiment of most ... *With an Act twice the length of the old one, 5 sets of Regs, Practice Directions, Practice Guidelines, and now Design Standards - we wonder whether a simpler method might be placing the definition within the Code...*

Appreciate this feedback suggests a bit more of a rethink and we are happy to continue the discussion.”

- The PD is seen to be excessive to the definitions within the Planning and Design Code.
- A concern raised is the expectation that ‘fill’ was to be included in a wall height. However, as per Neighbourhood Zone - Ancillary Buildings and Structures –

Ancillary buildings and structures:

10.1 (h) have a wall height or post height not exceeding 3m above natural ground level (and not including a gable end)

- *The Practice Direction used another example under Established Neighbourhood – Ancillary buildings and Structures on page 3.*

This already ensures the applicant/assessment officer turn their mind to the overall height of a wall when deciding on DTS/DPF being achieved as part of the determination of assessment pathway.

The determination of what is ‘Natural Ground Level’ should be placed as a definition within the Administrative Terms and Definitions Table under the Code, where images/examples have been used as part of the terms.

We have attempted to provide an example of what a definition may look like, However this may be seen as going beyond the scope of discussion:

Natural Ground Level Means:

- (a) The surface level of any ground as it existed prior to any modification as a result of human activity (where this can be determined);*

or

(b) The existing surface level of the ground shall be taken to be natural ground level, where land has been modified in the past and it is no longer possible to determine what the surface level of the ground would have been prior to any modification as a result of human activity.

Within the Practice Direction - Figures 1 and 2 are examples that can be attached to definition (a), Figures 4 and 5 are examples that can be attached to definition (b).

...the system is now very complex and having to understand and refer to Practice Directions and Practice Guidelines in addition to the Act, Regs and the Code is quite a task.

While I agree that we should try and keep things simple, I think it is difficult to avoid the level of detail contained within the Practice Guideline. I find the content and diagrams helpful and overall I support what is proposed.

I wonder whether PLUS has some thoughts around how they are prioritising the future Practice Directions that we need and how they determine what should be in the Code and what is in a Practice Guideline.

Agree with the comments and that the diagrams are useful – perhaps they should be in the Code.

The feedback from our DA Team was that the Practice Direction essentially restates what has been determined through case law already (as I think a few other Assessment Manager's have said).

There was a general consensus that having a Practice Direction for this seems like overkill and adds some further complexity. We don't want it to sound like we're one of those teams that "longs for good old days" but we feel the system is becoming too complex. With an Act twice the length of the old one, 5 sets of Regs, Practice Directions, Practice Guidelines, and now Design Standards - we wonder whether a simpler method might be placing the definition within the Code (unless there's some technical reason you can't do that). After all, the Code is already several thousand pages long – what's another one or two?

If it is to be a Practice Direction, then the use of some illustrations helps with interpretation. The PD should be limited to providing clarification and make it clear and easy to understand.

We think there are perhaps some other more pressing matters for PLUS to attend to, including (for example) making sure the policies regarding adequate solar orientation are actually called up for dwellings? It seems bizarre to me that in some zones such policies are not in Table 3.

So overall, we're thankful PLUS are addressing an issue, and we think any clarity is useful, but let's keep it simple where we can and focus on the big issues.

No specific comments on the wording of the PD.

...this is one of several matters of minutiae we seem to get pulled into here – often around fence heights (I've had at least one email a week recently from an aggrieved neighbour alleging that the fence between two properties is 100mm lower than it should be, for example).

Given the exemptions that exist around the height of fill, and some of the experiences we had with the Residential Code adopting measurements above finished ground level, we've been very pleased that the Code adopted natural ground level as its starting point in the Established Neighbourhood Zone. It has though left this occasional awkward question about natural ground level vs existing ground level which the Practice Guideline seeks to clarify.

I quite like that the Guideline groups together relevant case law, talks through the issue and situations that can arise accompanied by simple, legible images, and the advice that it's offering seems to be very much in line with the relevant case law precedents. I have added a couple of comments into the Teams document around some language in Clauses 7 and 9 that I think would benefit from a little tightening.

Beyond these couple of comments I don't have much to add, other than to observe that there are a number of other undefined terms in the Code that would benefit from this sort of clarification.

...this is too complicated and if this is needed to understand where you are measuring building height from then change the measurement standard. Perhaps just say it's above the proposed finished ground level and if there is site fill and retaining then the off site impacts of that would be assessed as part of the merit assessment.

Way too confusing.

Natural Ground Level seems to mainly be a consideration for ancillary structures, where we rarely see a civil plan with the submission – a significant cost for most applicants (for a minor structure). Where we know there is a lot of slope, and an ancillary structure may have a greater impact – we typically visit the site.

Example 2 is confusing as written, when they expand on discussion around timing of modification. If a site is already filled/retained along a boundary, and a structure is proposed within the site, particularly away from the boundary with no neighbouring impacts, the height should be the finished level – not really clear in the images – but may be relevant if close to the boundary and there will be an impact.

More images, less and more succinct words.

Is this causing an assessment issue? Assume the main query is whether something is DTS or not?

Dwelling walls often have greater impacts, but the Code measures these from top of footings, not NGL.

PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016

NOTICE UNDER SECTION 43

*Practice Guidelines**Preamble*

The Commission may, with the approval of the Minister, make practice guidelines with respect to the interpretation, use or application of the Planning and Design Code.

A practice guideline may make a declaration as to the effect of a provision of the Planning and Design Code in a particular set of circumstances.

A practice guideline must be notified in the Gazette and published on the SA planning portal.

NOTICE

PURSUANT to section 43 (4) (a) of the *Planning, Development and Infrastructure Act 2016*, I, **Nick Champion MP**, Minister for Planning,

- a. issue State Planning Commission Practice Guideline 1 (Natural Ground Level)
- b. fix the day on which the practice guideline is published on the SA Planning Portal as the day on which the practice guideline will come into operation.

Dated: / / 2024

NICK CHAMPION
Minister for Planning