The following comments are from The Barossa Council staff. These comments will be presented to Council for noting at its next meeting on 16 April 2019.

There is a disconnect between the terminology used for land uses and development activities in the Code from that which appeared in the schedules in the draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 (the draft regulations) which recently underwent consultation. A similar disconnect exists between criteria applying in the draft regulations and the requirements of the Code, with the draft regulations providing a less strict approach than the Code in respect to some developments or vice-versa. These comments are expanded on below.

Schedule 4 of the draft regulations provides for a large number of developments and activities which are exempt from development approval subject to satisfying various criteria. Where a development does not meet the exempt criteria it is, by default, development which requires approval. A person undertaking the development would then refer to the Code for guidance on any requirements to be met, but more importantly would look to the Code as to the relevant assessment pathway to follow. It is noted that while the Code identifies relevant assessment pathways and associated requirements for many of the draft Schedule 4 items, the Code does not specifically list other common forms of development as Accepted or Deemed-to-Satisfy meaning they default to Performance assessed development. Examples include:

- Retaining wall
- Fence
- Post and wire fence
- Deck
- Windmill
- Flagpole
- Detached incinerator
- Tree house (which we have previously suggested be expanded to include a ‘cubby’ house)

Pursuant to the Procedural Matters in each zone all of the above forms of development, as Performance assessed development, would require notification as they would fall under the ‘All other Code Assessed Development’ in the respective Relevant Provisions for Performance Assessed Development tables. Pursuant to the draft regulations these would then require determination by an assessment panel. It is presumed the planning reforms did not envisage for all these to be performance assessed requiring notification and assessment panel decisions. Accordingly it is recommended that appropriate assessment pathways and associated requirements be assigned for each of these in the Code.

For those forms of developments in the draft regulations that have associated assessment pathways and requirements in the Code there are a number of examples where the Code criteria are more restrictive than the draft regulations and vice-versa. An example is a ‘shade sail’ where under the draft regulations a sail is exempt even if located on an area required for a waste control system but as an Accepted development it cannot be in this location. Under the draft regulations an exempt sail also needs to be located behind the building line, but as an Accepted development there is no similar restriction which will have significant impacts on streetscape.
character. There is no limit on the length of a shade along a boundary for an exempt sail, but an 8 m limit applies for an Accepted development.

The Performance Assessed Development tables in each zone indicate that "All relevant provisions" apply where the subject land is subject to an Overlay. Who will determine what provisions are "relevant'? How will the relevant provisions be identified in the ePlanning portal?

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