PRACTICE GUIDELINE 1

Natural Ground Level

STATE PLANNING COMMISSION

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'*:

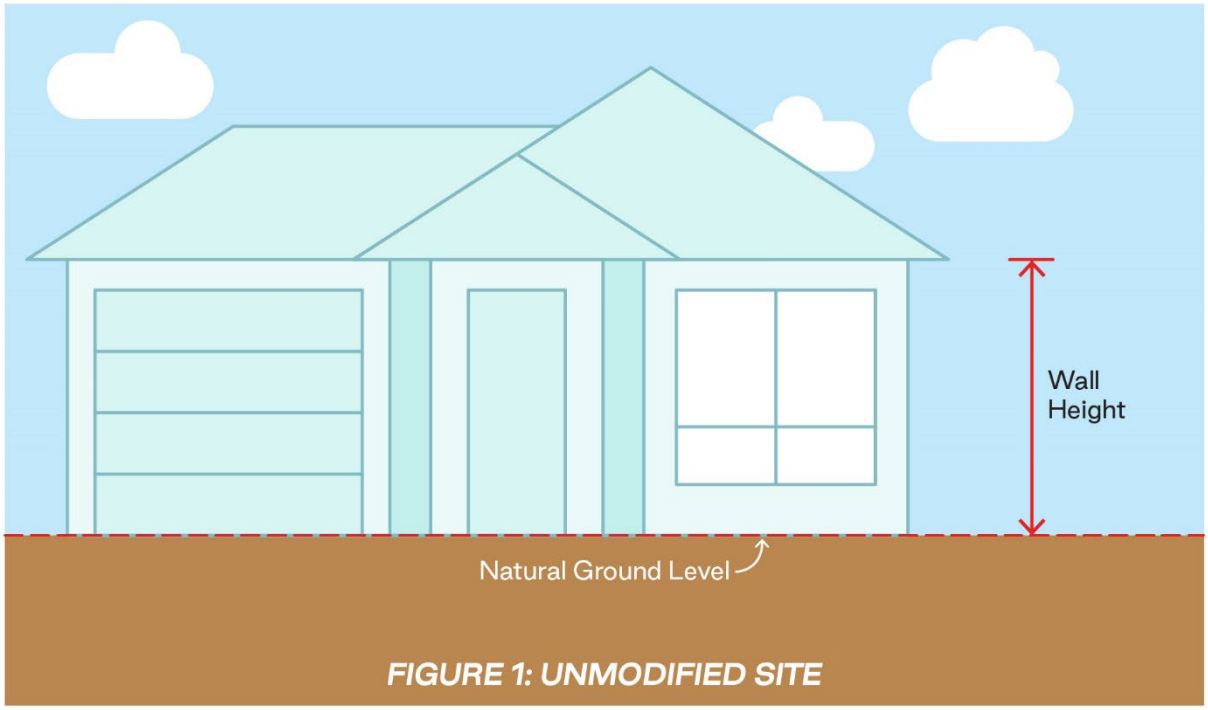

FIGURE 1: UNMODIFIED SITE

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:

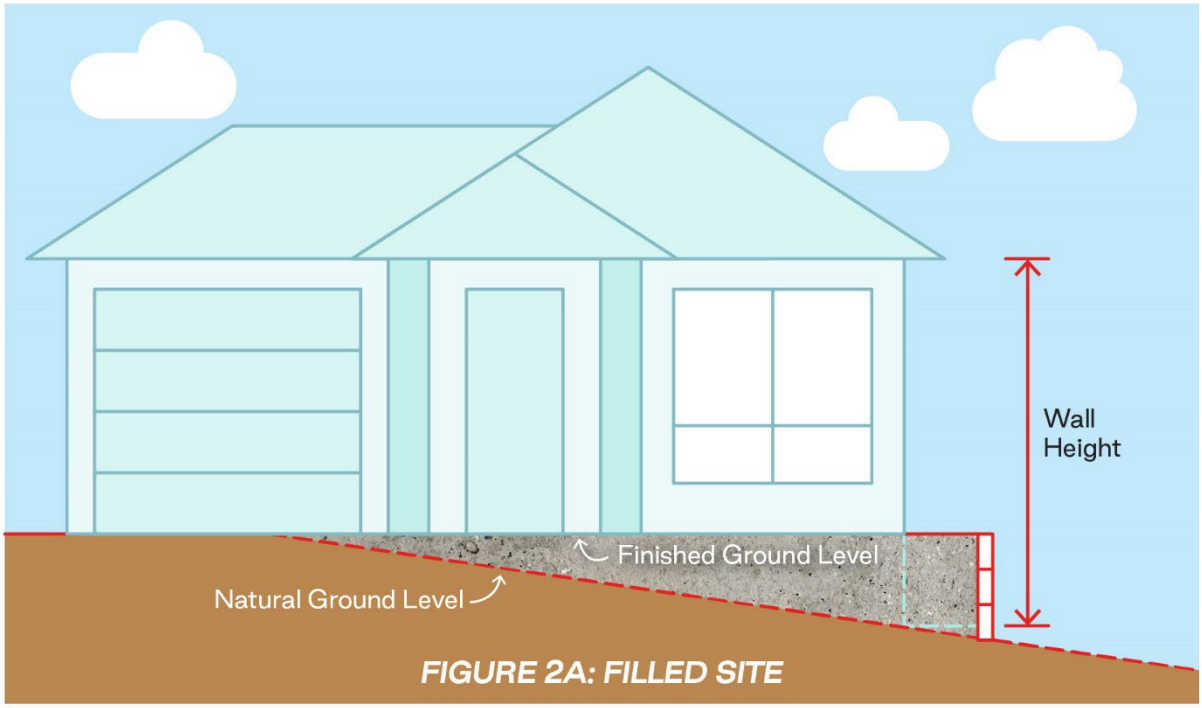

FIGURE 2A: FILLED SITE

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.

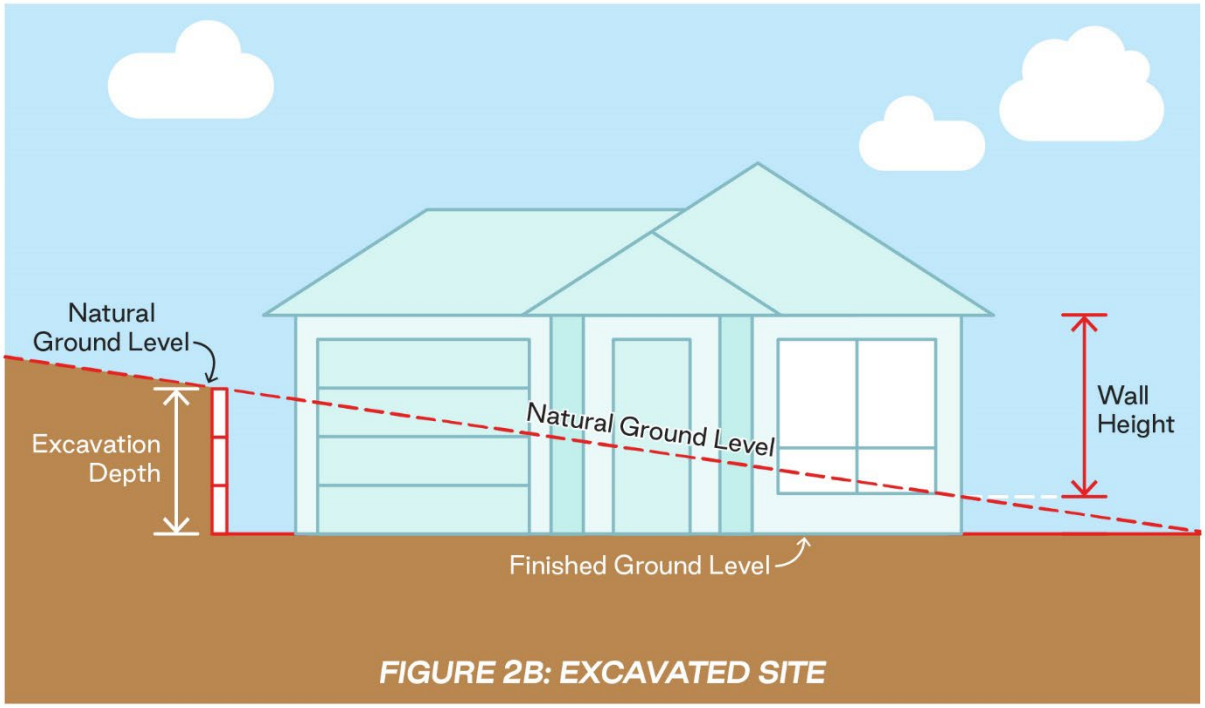

FIGURE 2B: EXCAVATED SITE

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.

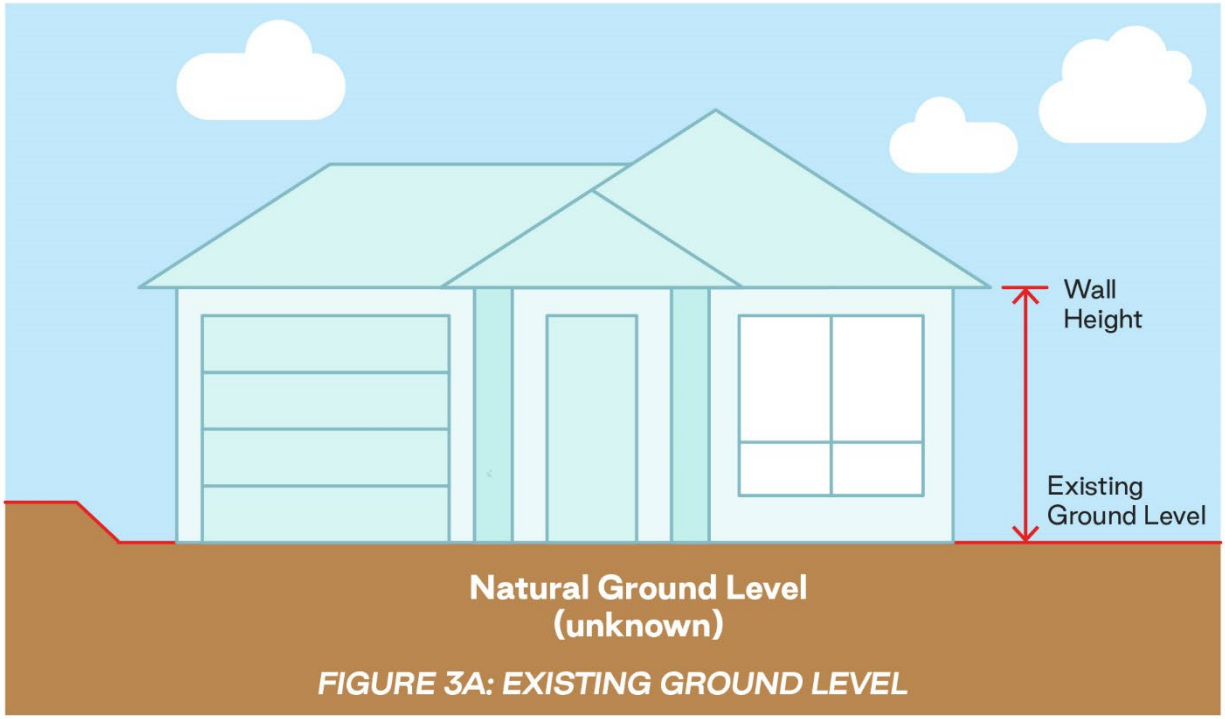

FIGURE 3A: EXISTING GROUND LEVEL

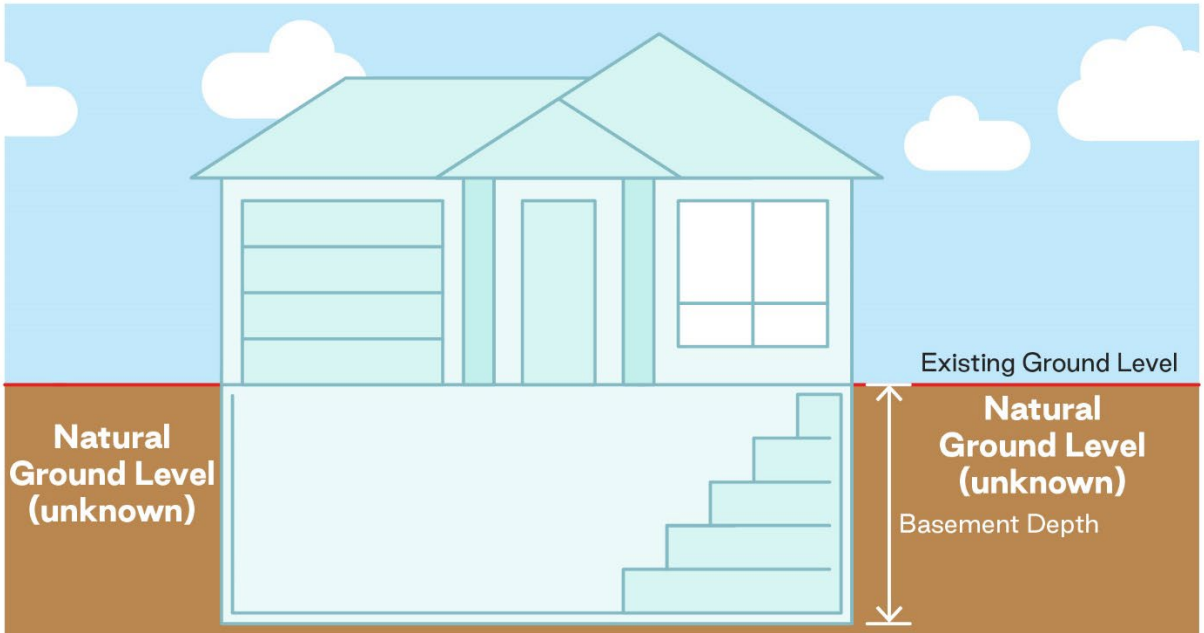

FIGURE 3B: EXISTING GROUND LEVEL – BASEMENT

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'*.

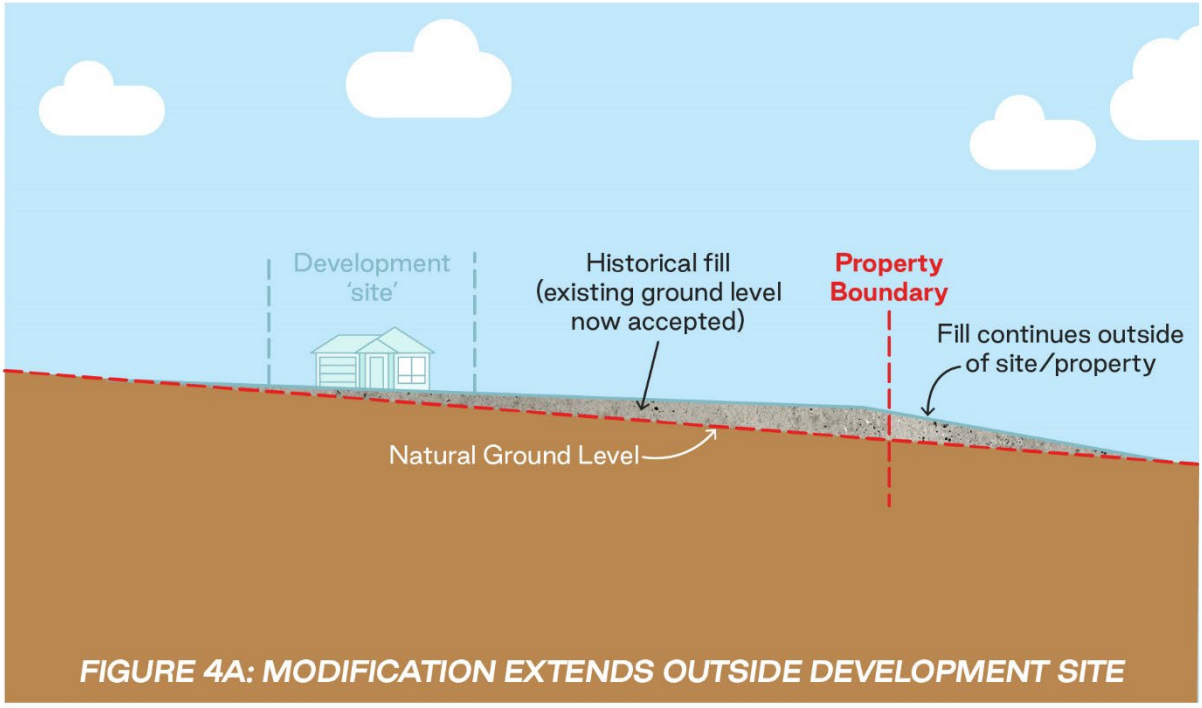

FIGURE 4A: MODIFICATION EXTENDS OUTSIDE DEVELOPMENT SITE

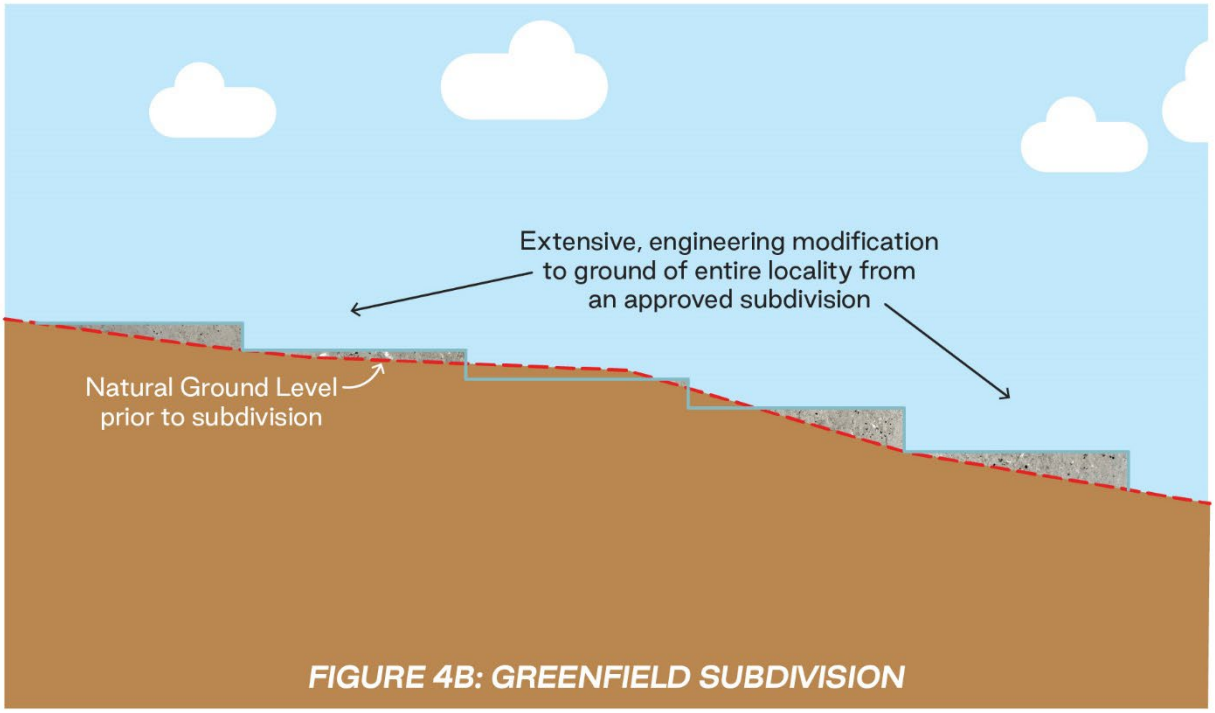

FIGURE 4B: GREENFIELD SUBDIVISION

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.