

University of Southern Queensland
Faculty of Engineering and Surveying

**THE IDENTIFICATION OF ALL RIGHTS,
OBLIGATIONS, AND RESTRICTIONS ON
FREEHOLD LAND IN SOUTH AUSTRALIA.**

A dissertation submitted by

Bradley Ian Mattsson

in fulfilment of the requirements of

Bachelor of Spatial Science: Surveying

October 2015

Abstract

An effective land administration system (LAS) is a system encompassing institutional frameworks which services the needs of all forms of government, utilises the latest relevant technologies, delivers a variety of information and helps to serve the rights, obligations, and restrictions (RORs) associated with land.

Finding out where RORs apply, who they apply to, the reasoning behind their creation and if and how they can be changed is of great importance to land owners and the general public. This project aims to identify inefficiencies in the South Australian system for the searching of existing RORs on freehold parcels of land.

A comprehensive typology was adapted from previous research and applied to multiple case studies over freehold parcels of land in South Australia. All relevant information and data associated with existing RORs over the subject properties was collated to test the quality and relevance of the typology. During the collection of the ROR related details any difficulties encountered were noted for further discussion and clarification.

From the completed case studies several inefficiencies were identified including that extensive research and knowledge is required prior to completing a search, that a detailed typology is required to assist in completing a search, that there are numerous administrative bodies who act independently of each other, that administrative bodies often limit the details made readily available for searching on public registers and that both LASs and RORs are continuously evolving.

The typology was found to be efficient and practical for use throughout the completed case studies. The current land administration system in South Australia was found to have some inefficiencies and flaws; however, large scale reform does not appear to be required.

Disclaimers

Limitations of Use

The Council of the University of Southern Queensland, its Faculty of Health, Engineering & Sciences, and the staff of the University of Southern Queensland, do not accept any responsibility for the truth, accuracy or completeness of material contained within or associated with this dissertation.

Persons using all or any part of this material do so at their own risk, and not at the risk of the Council of the University of Southern Queensland, its Faculty of Health, Engineering & Sciences or the staff of the University of Southern Queensland.

This dissertation reports an educational exercise and has no purpose or validity beyond this exercise. The sole purpose of the course pair entitled “Research Project” is to contribute to the overall education within the student’s chosen degree program. This document, the associated hardware, software, drawings, and other material set out in the associated appendices should not be used for any other purpose: if they are so used, it is entirely at the risk of the user.

Certification Page

I certify that the ideas, designs and experimental work, results, analysis and conclusions set out in this dissertation are entirely my own effort, except where otherwise indicated and acknowledged.

I further certify that the work is original and has not been previously submitted for assessment in any other course or institution, except where specifically stated.

Bradley Ian Mattsson

Student Number: 0050101149



Signature

27/10/15

Date

Acknowledgements

My sincere appreciation goes out to my parents for their continuing support of my professional career and chosen education path. Without their support and flexibility with work commitments this project could not have been completed.

Special acknowledgement is due to Ash for her continuing support and understanding offered to me throughout the completion of this project and my time at USQ.

The help and guidance offered by my supervisor Dr Glenn Campbell throughout this project is also acknowledged.

Table of Contents

Abstract	i
Disclaimers	ii
Certification Page	iii
Acknowledgements	iv
List of Figures	xii
List of Appendices	xii
Nomenclature and Acronyms	xiii
Chapter 1 - Introduction	1
1.1 Project Background	1
1.2 Property Rights.....	2
1.3 Rights Definition	3
1.4 Obligations Definition.....	5
1.5 Restrictions Definition	6
1.6 Inefficiencies Description.....	7
1.7 History of the Humankind – Land Relationship	7
1.8 The Land Administration Problem.....	9
1.9 Project Aim.....	10
1.10 Research Objectives	11
1.11 Conclusions: Chapter 1	11
Chapter 2 – Literature Review	12
2.1 Introduction	12
2.2 Current Land Administration Trends and Needs	13
2.3 Drivers for Change	15
2.4 Impediments to Change.....	16

2.5 Recommendations for Land Information	16
2.6 Further Development of Land Administration Systems.....	17
2.7 Temple’s Typology	18
2.8 Questions for Further Debate	19
2.9 Conclusions: Chapter 2	19
Chapter 3 - Methodology	20
3.1 Background Research.....	20
3.2 Overview of Property Law	20
3.3 Overview of Property Rights.....	21
3.4 Adaptation of Temple’s Typology for Investigation of RORs.....	21
3.5 Case Studies	23
3.6 Documentation of Results	24
3.7 Conclusions: Chapter 3	24
Chapter 4 – Overview of South Australian Property Law	25
4.1 Classification of RORs using Temple’s Typology.....	25
4.2 Characteristics of RORs	25
4.2.1 Estates.....	26
4.2.1.1 Freehold Estates	26
4.2.1.2 Ownership	27
4.2.1.3 Leasehold Estates	28
4.2.1.4 Limitations of Land Use.....	29
4.2.1.5 Development Rights	30
4.2.2 Possession.....	32
4.2.2.1 Possession Acquired by Consent.....	32
4.2.2.2 Possession Acquired Without Consent.....	33

4.2.3	Equitable Rights	34
4.2.4	Security Rights	35
4.2.5	Shared Rights	35
4.2.6	Non-Possessory Rights	36
4.2.6.1	Easements	37
4.2.6.2	Profit a` Prendre	38
4.2.6.3	Covenants	38
4.2.6.4	Environmental Rights	39
4.2.6.5	Forestry Rights	39
4.2.6.6	Mineral Rights	40
4.2.6.7	Riparian Rights to Water	41
4.2.6.8	Drainage Rights	41
4.2.6.9	Contaminated Land	42
4.2.6.10	Heritage Rights	43
4.2.7	Licences	44
4.2.7.1	Water Access Licence	45
4.2.7.2	Environment Protection Licence	45
4.2.7.3	Crown Land Licence	45
4.2.8	Native Title	46
4.2.9	Pastoral Leases	47
4.3	Identification of RORs	48
4.3.1	Lands Services Group	48
4.3.1.1	Land Grant	49
4.3.1.2	Old System	49
4.3.1.3	Torrens System	50

4.3.1.4 Freehold Estate	51
4.3.1.5 Leasehold Estate	51
4.3.1.6 Possessory Title	51
4.3.1.7 Equitable Interests	52
4.3.1.8 Security Rights	52
4.3.1.9 Shared Rights	52
4.3.1.10 Non-Possessory Rights	53
4.3.1.11 Searching of Data	53
4.3.1.12 Bulk Data Extracts	53
4.3.1.13 Property Sales Data	53
4.3.1.14 Spatial Definition of Land Parcel	54
4.3.1.15 Taxes, Rates, and Charges	54
4.3.2 Local Council	55
4.3.3 National Native Title Tribunal (NNTT)	56
4.3.4 Environmental Protection Agency	56
4.3.5 Water Licence and Permit Register	57
4.3.6 Items of Heritage Significance	57
4.3.7 Department of Primary Industries (PIRSA)	59
4.3.8 Department of State Development	59
4.3.9 Consultation with Landowner	59
4.4 Conclusions: Chapter 4	60
Chapter 5 – Case Studies	61
5.1 Case Study 1	61
5.1.1 Estates	62
5.1.2 Development Rights	64

5.1.3 Environmental Rights	64
5.1.4 Forestry Rights	65
5.1.5 Mineral Rights	65
5.1.6 Riparian Rights to Water	66
5.1.7 Contaminated Land	66
5.1.8 Heritage Rights	67
5.1.9 Conservation Agreements	67
5.1.10 Native Title	68
5.1.11 Access Agreements	68
5.1.12 Taxes, Rates, and Charges	68
5.2 Case Study 2	69
5.2.1 Estates	70
5.2.2 Development Rights	71
5.2.3 Environmental Rights	71
5.2.4 Forestry Rights	72
5.2.5 Mineral Rights	72
5.2.6 Riparian Rights to Water	73
5.2.7 Contaminated Land	73
5.2.8 Heritage Rights	74
5.2.9 Conservation Agreements	74
5.2.10 Native Title	75
5.2.11 Access Agreements	75
5.2.12 Taxes, Rates, and Charges	75
5.3 Case Study 3	76
5.3.1 Estates	77

5.3.2 Development Rights	78
5.3.3 Environmental Rights	79
5.3.4 Forestry Rights	81
5.3.5 Mineral Rights	81
5.3.6 Riparian Rights to Water	82
5.3.7 Contaminated Land	82
5.3.8 Heritage Rights	83
5.3.9 Conservation Agreements	83
5.3.10 Native Title	85
5.3.11 Access Agreements	85
5.3.12 Taxes, Rates, and Charges	85
Chapter 6 - Conclusions	86
6.1 Introduction	86
6.2 Discussions	86
6.2.1 Research Required	86
6.2.2 Landowner Knowledge	87
6.2.3 Limitations of the Typology	87
6.2.4 Exclusions from the Typology	88
6.2.5 Classification System of the Typology	89
6.2.6 Administrative Bodies	89
6.2.7 Inefficiencies Relating to Particular Administrative Bodies ...	90
6.2.8 Inefficiencies Relating to Water RORs	91
6.2.9 Items of Heritage Significance	92
6.2.10 Future Heritage Interests	92
6.2.11 User Interface	93

6.2.12 Continuous Evolutions of LASs and RORs	94
6.2.13 Application of Typology	94
6.3 Limitations of Results	95
6.4 Further Research and Recommendations	95
6.5 Conclusions: Chapter 6	96
List of References	98
List of Legislation	103
List of Legal Authorities	111

List of Figures

Number	Title	Page
1.1	The five attributes of a property object	2
2.1	A global land administration perspective	14
2.2	Framework for assessing the quality of a LAS	17
5.1	Site locality map A26 D7618	62
5.2	Site locality map A201 D6397	69
5.3	Site locality map A22 F32951	76

List of Appendices

Name	Title	Page
A	Project specification	113
B	Relevant acts relating to easements	115
C	Relevant acts relating to covenants	116
D	Relevant acts relating to specific water bodies	117
E	Land Services Group pricing structure	119
F	PIRSA legislation	121
G	CT 5596/310	122
H	City of Marion development guidelines	126
I	CT 5638/768	129
J	DC of Yankalilla development guidelines	133
K	CT 5151/844	147
L	Mount Barker DC development guidelines	151

Nomenclature and Acronyms

The following abbreviations have been used throughout the text –

AHD	Australian Height Datum
CT	Certificate of Title
Cwlth	Commonwealth
DAC	Development Assessment Commission
DC	District Council
DEWNR	Department of Environment, Water and Natural Resources
DP	Deposited Plan
EPA	Environmental Protection Agency
LAS	Land Administration System
NNTT	National Native Title Tribunal
NSW	New South Wales
PIRSA	Primary Industries and Regions SA
SA	South Australia

SAILIS	South Australian Integrated Land Information System
RORs	Rights, Obligations, and Restrictions
UI	User Interface
UN-ECE	United Nations Economic Commission for Europe
WP (MLR)	Watershed Protection (Mount Lofty Ranges)

Chapter 1

Introduction

1.1 Project Background

An effective land administration system (LAS) as defined by Enemark (2005) is a system encompassing institutional frameworks which services the needs of all forms of government, utilises the latest relevant technologies, delivers a variety of information about sustainable development, and helps to serve the rights, obligations, restrictions, and risks associated with land.

The rights, obligations, and restrictions (RORs) on a parcel of land are of critical importance. They can vary in nature depending on classification, perspective and benefits or hindrances (both to the land, the owner and the surrounding community). Finding out where RORs apply, who they apply to, the reasoning behind their creation, and if and how they can be changed are of critical interest to both land owners and the general public.

A five attribute system was defined by Wallace et al. (2006) for sorting rights, restrictions and responsibilities from a land administration and management perspective. The system was implemented to help determine the administrative approach most appropriate for each case.

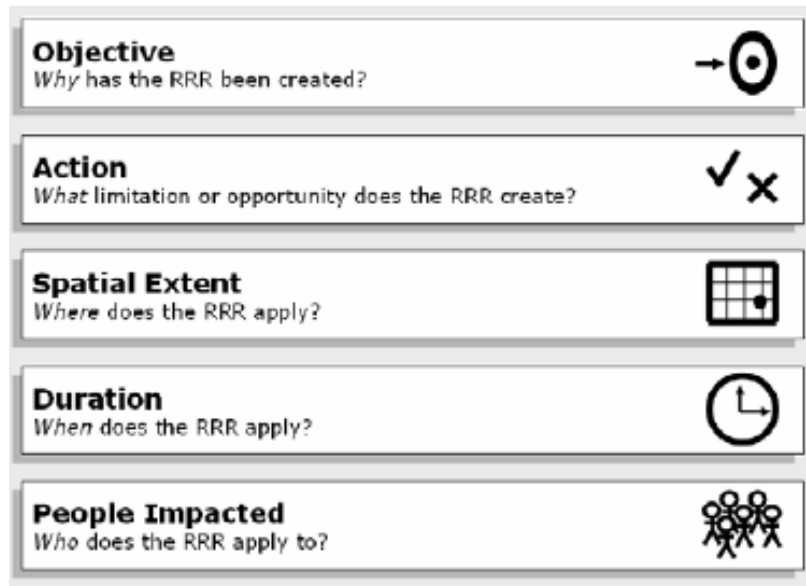


Figure 1.1 – The five attributes of a property object (Wallace et al, 2006).

1.2 Property Rights

The historical view of property rights is that they are implicit and bundled within the title as conferred to the landowner Lyons et al. (2002). This system includes the certainty of title and any *registered* property rights within the registration body. However, this view does not incorporate the wider community with respect to their rights over the sustainable management of the environment and land.

McDougall (2003) notes that the traditional land administration and tenure management system is still isolated from the associated environmental management and resource systems. McDougall also calls for reform of the land administration system to better integrate the competing private rights of land owners and the surrounding community interests.

There is an increasing complexity of public and private interests in land which is creating the need to re-examine and re-define the methods for identifying all RORs pertaining to a parcel of land (Lyons et al, 2002).

1.3 Rights Definition

The definition of property rights is dynamic and constantly evolving with society. In general, the right to land in the Torrens Title system is conveyed by the issuing of a certificate of title (CT) by the registration body which is then lodged with the registered body as proof of ownership. However, this system does not provide the right to simply do with the land as the owner sees fit, the needs of the community and best use of the land resource must be taken into account.

There are two essential characteristics for the definition of property rights as defined by Chambers (2001). Firstly, that the property right is related to, and is dependent on the existence of a thing, and secondly that property rights are capable of being enforced against a variety of people.

Reeve (1999) states that the right to land ownership only has meaning when the owner is part of a society. In Reeve's view land ownership rights have transitioned from the concept of social obligation to more of an absolutist possession. This makes land administration and the associated legislation to restrict the rights of owners a difficult debate.

As modern society has evolved so has the dynamic nature of property rights. Land ownership is no longer viewed as exclusive rights or possession; the individual rights to land ownership must not outweigh the greater public interest in the use of the land. Hugh Robertson (cited in McDougall 2003, p. 3), surmised this issue succinctly in 1945 by stating that '*we are the custodians of the land, the land is not for sale, it belongs to posterity.*' In other words we purchase the right to use the land – not the right to do whatever we like with it.

An 11 point list was introduced by Becker (cited in Reeve 1999, p. 3) for rights associated with ownership of land or other forms of property. This list includes:

- The right to possess, i.e. exclusive physical control of the object that is owned.
- The right to use the object for personal enjoyment.
- The right to manage, i.e. to decide how and by whom the object shall be used.
- The right to income derived from the use of the object by the owner or by others granted permission to use it.
- The right to the capital, i.e. the right to consume, waste, modify or destroy the object.
- The right to immunity from expropriation of the object.
- The right to decide how the object will be sold, gifted or bequeathed.
- The absence of term, i.e. indefinite length in time of ownership.
- The prohibition of harmful use, i.e. the owner's duty to forbear from uses of the object that are harmful to others.
- The liability to execution, i.e. the liability to having the object taken away in repayment for debt.
- Residuary character, i.e. the rules governing the reversion of lapsed ownership rights.

The above definition and detail is appropriate for developed countries. However, in many developing countries there is no legal documentation systems for the land occupied or used by people. This creates a decision making system which is outside a formal land management system. The limited or non-existent land records and information can impact on the quality of life for millions of people in under developed countries (Un-habitat and GLTN, 2012).

1.4 Obligations Definition

Property rights have obligations which can be associated with different given rights. Members of society are under obligation not to interfere with these rights. Land obligations and responsibilities are a mix of legally imposed provisions and social/ethical rules for behaviour. The legal provisions are for the most part straight forward and clearly defined in legally binding text. However, social, ethical, attitude and environmental sustainability obligations are much harder to define (Enemark 2014).

Obligations relating to land are often the result of the surrounding community and culture. As a result of this, land obligations can vary greatly depending on the land location. For example a rural block in Australia would have vastly different social obligations to that of a city block surrounded by high rise buildings in New York. Furthermore, both sites would vary greatly from the social obligations of temporary housing in a developing country.

An example of a land obligation currently in place exists in New South Wales (NSW) where there is a legal obligation for any person looking to develop land that is in a dedicated fire zone. This obligation involves meeting all criteria as set out in the *Planning for Bush Fire Protection* (2006) publication and also the *Australian Standard: 3959 Construction of buildings in bushfire-prone areas 1999* (AS3959). Until all criteria has been met the development will be deemed as non-complying and no development approval will be granted.

Another example exists in Queensland where the Queensland government (2014) provides a statutory obligation for landowners to care for their land. This encompasses '*all reasonable and practical steps to prevent harm to the natural environment and areas of cultural heritage.*' This extends to include using natural resources sustainably and can even include preparing or implementing a land and water management plan.

1.5 Restrictions Definition

Rights to land inherently include the rights of use of the land. This right can be limited through public land-use regulations, restrictions, and also through private land-use regulations such as easements. For this reason many land-use rights are actually restrictions placed on the land. These restrictions can control the possible uses and future of the land (Enemark, 2014).

Restrictions as they relate to land as defined by Temple (2007) are '*limitations on the use of land that can be enforced upon the landowner.*' This includes the relevant obligations associated with property rights and also any number of relevant personal rights.

An example of a land restriction is the creation of a free and unrestricted right of way appurtenant to a neighbouring allotment – this would restrict the land owner from being able to develop or block off that portion of land. Another example is the creation of an infrastructure or service easement which prevents the development of that portion of land by the owner to allow free access for the creation and maintenance of a service (such as sewer, power or water servicing).

The NSW Government (2014) notes that there is no material difference between a covenant and a restriction on the use of land. A registered restriction must identify the land affected, specify the full terms of the restriction and specify the prescribed authority imposing the restriction.

1.6 Inefficiencies Description

Webster's dictionary defines inefficiency as *'the lack of ability to do something or produce something without wasting materials, time, or energy. The quality or state of being inefficient.'*

A land administration system can be thought of as inefficient or outdated if it is not utilizing current widespread technologies. For example, an LAS that is still largely paper based would be highly inefficient with regards to current day trends. Another example of an LAS inefficiency would be an unincorporated system where the user is required to search through multiple agencies or websites to find the relevant data to locating and administering RORs.

A recent article in *The Philippine Star* has highlighted the outdated and inefficient system currently used in the Philippines. The current system has led to fraudulent, overlapping and in some instances duplicate or triplicate land titles being created. The article highlights the Philippines outdated and inefficient system of old laws and regulations as a key factor in creating the potential for significant conflict relating to property rights and their administration.

1.7 History of the Humankind – Land Relationship

The way humankind relates to land is constantly changing and evolving. Ting & Williamson (1999) highlights sustainable development, globalisation, economic reform, technology, and urbanisation as key drivers behind the continued evolution and ever-changing relationship between humankind and land.

Ting & Williamson (2001) further expands on the humankind – land relationship by stating that existing land administration and cadastral systems need to be re-designed and re-engineered to suit the evolving and changing nature of the system.

The humankind-land relationship in the western world can be classified into four broad periods of change as shown by Ting & Williamson (1999):

- During the agricultural revolution through to the feudal system land was the primary indicator and source of wealth. The cadastral system was primarily used to record ownership and for some fiscal uses.
- Throughout the industrial revolution land became more of a commodity and was the primary source of capital for land owners. This period saw the introduction of land markets and thus the cadastre became more of a supporting tool for land markets, records and land transfers.
- Post-World War II there was an emphasis on reconstruction and when coupled with the population boom there was the realisation that land was becoming a scarce resource. From this, urban and regional planning took on greater importance and was inducted as another application of the cadastre.
- Finally, from the 1980s onwards there has been a shift towards sustainable development and also a greater focus on environmental degradation and social equity. Urban planning has shifted to a more community based interest. This has created a deeper issue surrounding land use and what is deemed suitable not only for the owner, but also the wider community and surrounding regions.

1.8 The Land Administration Problem

The land administration system must be a dynamic tool capable of managing the ever changing needs of society. The system must be capable of upholding the RORs as they relate to the competing rights of individuals and communities. As with any object or thing there will be disagreements from time to time. For this reason the LAS and society must have a set of guidelines, rules, and outcomes to avoid conflicts between members of society.

Rights over a property can be held as either private property (private ownership), common property (the right of every member of society or the prescribed community) or collective property (rights managed by public institutions). In many instances complex combinations of the aforementioned property types will exist over a land parcel simultaneously Temple (2007).

An example of conflicting land interests would be a freehold parcel of land with an established house on it that is subject to a heritage listing regulated through a public body. The owner is restricted from altering the façade of the building without approval from the public body and in some cases may even be prohibited from renovating, demolishing, or altering the building at all. The land administration system must therefore make it as simple and efficient as possible for both the public body and the land owner to understand the limitations and expectations on the land use.

Another example of conflicting land interests arises from easements created for the servicing and maintenance of infrastructure. For example, an electricity easement created for the use of underground cables to service a neighbouring allotment. The land owner is now subject to the public authority (electrical company) and their maintenance of the infrastructure as a result of the neighbouring owners need for public access to services. This example entails all three property rights over the portion of private land which is subject to the electricity easement.

Property rights and existing RORs can have a massive impact on both land value and land usage. Lyons et al. (2002) reasons that a clear and concise method for accessing relevant details pertaining to pre-existing RORs is an important factor in being able to participate in the modern land market.

Land administration systems are complex and reform can be a difficult and expensive task. However, the need for an up to date and effective land administration system for the benefit of the general population, environmental factors and economic stability makes this a vastly important sector.

In South Australia the need for reform is of high importance. The introduction of SAILIS (South Australian Integrated Land Information System) in April 2015 is a large step in the right direction. The SAILIS is an integrated system which replaces approximately 28 different government websites with a central source for plan lodgement, searching and other land and cadastre related services.

While the introduction of SAILIS has made it easier for professionals to search and lodge plans it is still to be determined if this change will make it easier for landowners to easily identify RORs affecting their parcel of land. It is the aim of this project to investigate the inefficiencies in the current South Australian system for identifying existing RORs over a parcel of freehold land.

1.9 Project Aim

To identify inefficiencies in the South Australian system for the searching of existing rights, obligations, and restrictions (RORs) on freehold parcels of land.

1.10 Research Objectives

The primary objective is to provide a framework for which reform of the South Australian system can be applied. Reform has already begun on the outdated South Australian land administration system but there are still many areas which are lacking – one of which is the ability for the general public to accurately research and ascertain information for all RORs affecting their parcel of land.

1.11 Conclusions: Chapter 1

This project aims to identify inefficiencies in the South Australian system for the searching of existing rights, obligations, and restrictions (RORs) on freehold parcels of land.

This research provides an analysis of the impediments facing the South Australian system to the effective identification of existing RORs and an overview of the land management system in its current state.

The literature review for this research provides an updated outlook on the current trends in both the land administration and management systems, and also the viability of applying Temple's typology to different land administration systems.

The outcomes from this research will highlight any shortcomings in the land administration system and associated processes. It will also contribute to the further development of land administration and management areas.

Chapter 2

Literature Review

2.1 Introduction

The literature review conducted as part of this dissertation focused around the current status of land administration systems and the need for change to remain up to date with shifting trends.

The literature review conducted also helped to identify current restraints and changing trends in the South Australian system as they relate to identifying RORs on a freehold parcel of land in South Australia.

This project is focused on developing appropriate land administration recommendations. As land administration systems can vary greatly between states and nations the methodology used is adapted and applied for the current South Australian system.

It will draw on successful implementation of other systems that can be adapted or modified to suit the changing landscape of land administration systems in South Australia – namely the recently introduced SAILIS.

It is anticipated that the outcomes of this dissertation will create discussion for further reform of land administration systems in South Australia with appropriate methods for further research, ideas and outcomes.

Relevant literature was compiled from across Australia and some information also sourced from international systems. While these land administration systems differ from the South Australian system there are still relevant details that can be applied to the system for efficiency and clarity of ROR identification.

2.2 Current Land Administration Trends and Needs

Recent research conducted by Bennett et al. (2012) has found that, in general land administration systems are not recognized as infrastructure. This is despite consistent efforts by land administrators to suggest otherwise. The core literature and discussion when dealing with infrastructure design, construction, management and finance also regularly fails to include land administration systems and associated trends.

There are two significant problems with this failure to recognize land administration systems as infrastructure. Firstly, the policy focus given to land administration structures is disproportionately low compared to the physical infrastructures which are in fact designed and managed by the LAS itself. Secondly, there is no adaptive management approaches to land administration systems that are currently recognized. Adaptive management would help to ensure regeneration, learning and a dynamic approach to the lifecycle of the LAS.

The outcome of this is that many of the benefits associated with effective land administration are put at risk, such as:

- Gains in public capital through fees and taxation.
- Growth of private wealth.
- The stability and order of secured land tenures can become compromised.
- The ability to make informed and sustainable decisions regarding the environment is affected.

Additionally, and critically for this report, the benefits of readily accessible and affordable land information within society is weakened and put at risk. (Bennett et al, 2012).

The United Nations Economic Commission for Europe (UN-ECE) in 1996 defined land administration systems as *‘the processes of determining, recording, and disseminating information about ownership, value, and use of land when implementing land management policies’*. The emphasis was mainly on land information management; however, within recent years the quality and type of information required has changed. Furthermore, the need for land administration systems to adapt to an enabling infrastructure for sustainable development and the successful implementation of land policies is growing (Enemark et al, 2014).

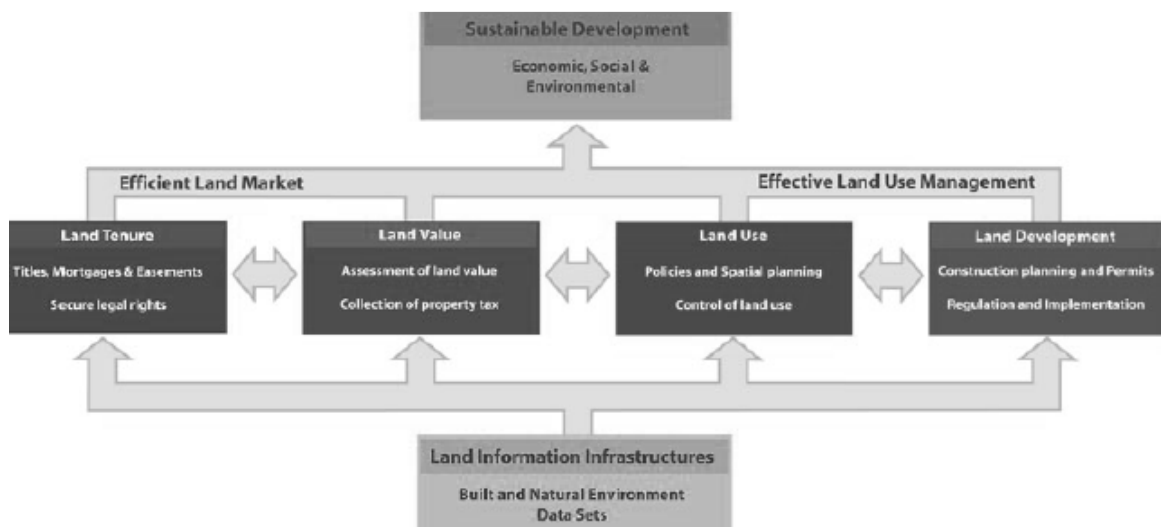


Figure 2.1 – A global land administration perspective (Enemark et al, 2005).

The above figure shows how the four main components of an effective land administration system work together to provide a sustainable development and management system.

The four main components of an effective LAS as defined by Enemark are:

- Land tenure - includes securing and transferring of land rights and natural resources.
- Land value - includes taxation of land and valuation of land and properties.
- Land development - includes infrastructure planning and maintenance, implementing utilities and construction planning.
- Land use - includes planning and control systems for the effective use of land and its natural resources.

These four core functions, if maintained effectively, will help to ensure the proper management of RORs in relation to property, land, and their associated natural resources.

2.3 Drivers for Change

As land and property rights develop over time the number and range of RORs associated with land parcels is predicted to continually increase. For the future sustainability and efficiency of land markets property rights must be '*clear, searchable and definable in location*' (Lyons et al, 2002).

The major drivers for change in the land administration realm as outlined by Lyons et al. (2002) are:

- The continued evolution of land administration.
- Increased pressure to improve and maintain the quality of environment and land sustainability.
- Financial pressure to reduce expenditure whilst also improving services and accountability.

2.4 Impediments to Change

Australia has previously tackled jurisdictional and institutional separation when addressing the significant problems of water quality, salinity, soil acidity and erosion. These problems required detailed national solutions and in its role as the principle taxing agency the national government was viewed as having the resources capable of addressing these major issues. (Enemark et al, 2005).

Enemark et al. (2005) describes jurisdictional separation as a significant impediment to producing sufficient information and analytical discussion for sound policy making relating to LASs. The national government has the power to make the required changes but needs accurate and up to date information to be able to make positive land policy changes.

2.5 Recommendations for Land Information

The report into inter-governmental land information asymmetries in Australia completed by Tambuwala et al. (2012) found that there is a mismatch between the current land information processes at state-level compared to the land information requirements of federal policy-makers in Australia.

The type, quality, and timeliness of information being collected, stored, maintained, and updated is not up to the standard of national requirements. Essentially, there is an information irregularity in operation between state and national level. This needs to be corrected or the LAS risks becoming ineffective and unsuitable for the best interests of the general population.

Williamson et al. (2005) states that a country like Australia requires a detailed spatial data infrastructure that includes *‘a hierarchy of layers, providing inter-jurisdictional and intra-jurisdictional links between people and data.’*

A functioning land administration system is of particular importance in the spatial data infrastructure as it helps to create efficient land markets and secure property rights. The information collected as part of the land administration system must be fit for purpose and also maintain a high quality of detail to be useful to policy makers and associated industry professionals.

2.6 Further Development of Land Administration Systems

In recent years there have been some efforts made to create a standardized procedure for assessing a country's LAS at an international level. However, currently there is no standardized or internationally accepted method for assessing the quality and effectiveness of a standalone land administration system within a specific countries unique environment (Ali et al, 2013).

Ali et al. (2013) developed a conceptual and methodological framework to carry out an in-depth analysis of an existing land administration system which is based on country specific elements, indicators, and variables.

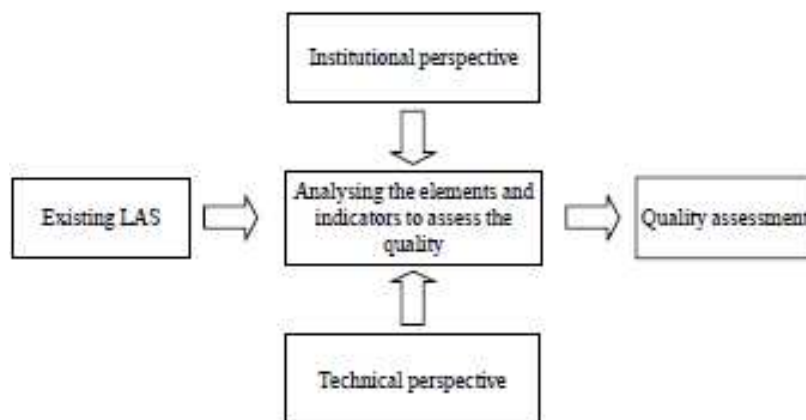


Figure 2.2 – Framework for assessing the quality of a LAS (Ali et al, 2013).

There are a multitude of proposed solutions to improving the efficiency of land administration systems. The majority of proposed solutions revolve around new technologies such as integrated land maps, digital databases and re-developed systems to suit the ever changing landscape of LASs.

2.7 Temple's Typology

The dissertation completed by Temple (2007) titled '*The impediments to identifying freehold land rights in NSW*' involved researching and creating an exhaustive typology for use in the NSW land system. This typology has been critiqued and adapted to suit the South Australian system and current land administration trends.

The conclusions drawn by Temple (2007) are that, after the construction and application of the typology, it was possible (to a limited extent) to identify the impediments to efficient land right searching. The impediments found included:

- Extensive research and knowledge required to gather sufficient ROR information for land properties.
- Exhaustive typology required – the lack of a complete typology being accessible to landowners is a major impediment.
- Split task of administration – conflicting rights can arise as a result of miscommunication between different organisations.
- Public interference – including land owners and public consultants.
- Insufficient infrastructure – including cumbersome and out of date software or searching techniques for both public and private use.
- Registrars limiting their liability – in some instances current registrars do not guarantee that all relevant information has been registered.
- Unforeseeable interests – such as the uncertainty or differences required for planning approval in different areas and councils.

- Continued evolution of RORs – RORs are continuously evolving and as such the information gathered can only be considered accurate and useful for a short period of time after being completed.

2.8 Questions for Further Debate

As land rights become increasingly complex, land administration systems must be able to effectively cope with the ever changing need for accurate and detailed information pertaining to existing RORs.

It is one of the aims of this project to help clarify the problems associated with the current land administration system in effect over South Australia. Analysing the limitations faced by the average land owner in finding and dealing with RORs over privately owned parcels of land will further the current body of work to call for reform and the development of land administration systems.

2.9 Conclusions: Chapter 2

The general consensus of literature surrounding the current status of land administration is that there are numerous inefficiencies and deficiencies. There is need for reform throughout the system as property RORs continue to evolve.

The current land policies in place throughout Australia need to be updated and maintained to reflect the ever changing nature of land use. This includes the associated environmental, social, and political issues surrounding land use and the availability of accurate and up to date ROR information.

Chapter 3

Methodology

3.1 Background Research

To accurately compile a complete list of rights, obligations, and restrictions that can exist over a freehold parcel of land in South Australia requires significant background knowledge and research into the current literature and trends surrounding LASs.

For this reason a large portion of this project consisted of research into current LAS trends and relevant literature to ascertain background knowledge on the system requirements and also specific RORs that may exist over a freehold parcel of land in South Australia.

3.2 Overview of Property Law

Land administration in South Australia is a complex system which involves many levels of government including federal, state and local parties. This project entailed significant research into the current status of property law in South Australia and associated legislation. The research also focused on recognizing existing ROR information and the relevant governing body for each particular ROR.

3.3 Overview of Property Rights

In South Australia there are numerous governing bodies which each manage their own land administration policies, uses, and directions independently of each other. For this reason separate land rights can be managed and administered very differently depending on the governing body and unique features of the parcel of land - such as size, location, environmental factors, and social factors.

To compile a comprehensive and complete list of land property rights in South Australia current and historical legal texts, literature, and legislation must be referenced, researched, and documented. From this initial research the different types of RORs can be classified into appropriate categories for documentation and further classification.

3.4 Adaptation of Temple's Typology for Investigation of RORs

Two possible methods for classifying RORs over any freehold parcel of land in NSW were defined by Temple (2007). These methods have been adapted to suit the South Australian system, governing bodies, and current legislation.

The first method entails the natural categorization of property rights through the evolution of property law in modern civilization. Each property right has an independent history founded through original cases, legislation, and social and economic structures.

Chambers (cited in Temple 2007) created a general categorization system for land rights from most to least important. Native title rights are discussed separately as they exist outside of traditional land rights legal categories. The system is as follows:

1. Ownership.
2. Possession.
3. Tenure.
4. Estates.
5. Equitable Rights.
6. Security Rights.
7. Shared Rights.
8. Non-Possessory Rights to Land.
9. Licences.

This system is useful for obtaining the scope of rights that *may possibly exist* over a freehold parcel of land. It is important to note that all RORs can only be upheld within the body of law that recognises that right.

The inherent issue with relying on the legal definition of all RORs is that many legal professionals do not regulate or administer these rights in practical terms. Different regulatory bodies have been given statutory authority to govern certain parts of land administration. This can result in varying degrees of overlap, inefficiencies, confusion, and mismanagement between different regulatory and governing bodies. Temple (2007) notes that it would be difficult to recognize individual RORs if the identification method was solely the general classification system as defined above.

The alternative method involves identifying the land right categories by the departments which are responsible for administering them. This method is based around Lyons et al. (2002) six categories for the major pieces of legislation affecting land rights in Queensland. The different categories are:

1. Possession / Ownership.
2. Minerals.
3. Water.
4. Development.
5. Vegetation.
6. Environment and Heritage.

This method is considered to be more practical as the system for identifying land rights is managed by the same authority and therefore easily definable. The inherent problem with this method is that any deficiencies in the identification of RORs could lead to an entire section of rights being missed rather than one right.

An amalgamated version of the two methods was chosen by Temple (2007) to capitalise on the best features of both, this same amalgamated method was adapted and utilised for the South Australian system. The characteristics of RORs are firstly discussed under the different legal types of land right. Secondly, the methods for identification of RORs are discussed in relation to the departments that administer them.

3.5 Case Studies

The subject properties of allotment 26 in deposited plan 7618, allotment 201 in deposited plan 6397 and allotment 22 in filed plan 32951 have been chosen to represent typical residential parcels of land in South Australia. All relevant information and data associated with existing RORs over the subject properties has been collated to test the quality and relevance of the adapted typology as created by Temple (2007).

During the collection of the ROR related details any difficulties encountered were noted for further discussion and clarification; therefore completing the main

project aim as outlined in the project specification. Further to this, general notes and information has been gathered with regards to the general costs and time involved in collating the relevant information over the subject parcels of land. The appropriateness of the costs and time associated with gathering the information pertaining to RORs is purely subjective. It is based on general assumptions on what is a reasonable time and cost burden for the general public to adequately inform themselves of RORs pertaining to a chosen parcel of land.

3.6 Documentation of Results

All information researched and documented has been presented as outlined in sections 3.1-3.5. The results are a compiled record of RORs affecting the parcels of land associated with the case studies that were identified using the adapted typology. This is followed by a discussion regarding any limitations or inefficiencies encountered during the searching and collating phase. Each impediment encountered has been discussed within the context of the current land administration system.

3.7 Conclusions: Chapter 3

This project has been broken down into three distinct stages as outlined below:

1. Compile a detailed review of relevant literature pertaining to RORs and current land administration trends.
2. Adapt Temple's typology to the current South Australian system and complete case studies to discover any RORs existing over the chosen parcels of land.
3. Analyse the results and detail the impediments to identifying the RORs found using the adapted typology.

Chapter 4

Overview of South Australian Property Law

4.1 Classification of RORs using Temple's typology

The general categorisation of property rights from greatest to least as outlined by Chambers (2001) and the categorised by departments system as outlined by Lyons et al. (2002) have been amalgamated to capitalise on the strengths of both systems.

Temple (2007) proposed a typology where the characteristics of RORs are firstly discussed under the various legal types of existing rights and secondly the identification methods of RORs are discussed within the different departments that administer them.

4.2 Characteristics of RORs

Details associated with identifying RORs over freehold parcels of land have been arranged according to Chambers categorisation system. The categories for ownership and tenure have been discussed under the heading of 'Estates' as all terms can be used interchangeably with regards to freehold estates.

4.2.1 Estates

In Australia landowners are not *absolute* owners of land – rather the Crown is. The Crown maintains ownership over the land and may grant this land to landowners who are then said to have an estate in the land (Edgeworth et al, 2008).

The Doctrine of tenure as it applies in Australia was altered after the native title case of *Mabo v. Queensland (No. 2) (1992) 175 CLR 1* to allow for native title claims. The High Court ruling was that when the Crown acquired sovereignty ‘*the Crown acquired a radical title to the land*’. This radical title did not grant the Crown a right to possession of the land until it exercised its sovereign power to acquire the land for its own use. Upon exercising this sovereign power the title would expand from radical title to full ownership. Further to this, the possibility of native title was deemed as a burden to the Crown’s radical title to the land (*SVY4304 Land and cadastral law study book*).

An estate is comprised of four separate dimensions namely - width, depth, height, and time. There are two major forms of estate, that being freehold and leasehold. Leasehold estate holders obtain the rights to temporary possession of the land whereas holders of freehold estate effectively obtain ownership rights to land as outlined above.

4.2.1.1 Freehold Estates

In South Australia a freehold estate is described as an estate of uncertain duration and can exist in three different types – fee simple, fee tail or life estate.

Fee simple defines that the estate belongs entirely to the tenant and is not qualified in any way. An owner of a fee simple estate is able to transfer their rights to another party and, upon death, to their beneficiaries. If a tenant dies without a

viable heir the estate ceases to exist and is passed back to the Crown.

A fee tail is an old form of estate where the land is passed on to direct heirs of the tenant. A life estate is just as it sounds – an estate in land lasting for the period of the tenant’s life or the life of another. This right can be transferred but is still bound by the original tenant’s life span. In South Australia (and Australia in general) the majority of freehold estates are fee simple.

4.2.1.2 Ownership

Land ownership in the Torrens Title system is conveyed by the issuing of a certificate of title by the registration body which is then lodged with the registered body as proof of ownership. In South Australia the Land Services Group allows the public to purchase a copy of a certificate of title either online, over the phone, or in person by visiting the register office.

Becker (cited in Reeve 1999, p. 3) introduced an 11 point list of RORs associated with ownership of land or other forms of property which includes:

- The right to possess, i.e. exclusive physical control of the object that is owned.
- The right to use the object for personal enjoyment.
- The right to manage, i.e. to decide how and by whom the object shall be used.
- The right to income derived from the use of the object by the owner or by others granted permission to use it.
- The right to the capital, i.e. the right to consume, waste, modify or destroy the object.
- The right to immunity from expropriation of the object.
- The right to decide how the object will be sold, gifted or bequeathed.

- The absence of term, i.e. indefinite length in time of ownership.
- The prohibition of harmful use, i.e. the owner's duty to forbear from uses of the object that are harmful to others.
- The liability to execution, i.e. the liability to having the object taken away in repayment for debt.
- Residuary character, i.e. the rules governing the reversion of lapsed ownership rights.

4.2.1.3 Leasehold Estates

A lease can be granted by a landowner who transfers their right of exclusive possession of land (or a portion of land) to another for a nominated period of time. It is beyond the scope of this project to identify or analyse the characteristics involved in leasehold estates; however, it is important to establish the ways in which a leasehold estate is created or extinguished in the South Australian system to ensure that a landowner in freehold estate is not subject to any obligations from an existing leaseholder.

The *Residential Tenancies Act 1995* (SA) is the legislation that regulates lease agreements. The South Australian government notes that the conditions normally covered in a lease agreement include:

- The amount of rent charged and when it is due.
- The length of tenancy.
- Who is responsible for property maintenance and water costs.
- Acceptable standards of behaviour for tenants and visitors.
- The notice required by the landlord before entering the property.

Further to this the landlord can include any additional conditions they choose as long as they are not in contradiction to the *Residential Tenancies Act 1995* (SA).

Upon the signing of a lease agreement the landlord is unable to change the conditions or add additional conditions without the agreeance of the tenant. Under the *Real Property Act 1886* (SA) leases for one year or under need not be registered. A lease is required to be registered in the 'appropriate form' as outlined in Part 11 – Leases and Surrenders of the *Real Property Act 1886* (SA).

4.2.1.4 Limitations of Land Use

Limitations to the use and maintenance of land can exist in a statutory manner without the use of an easement. For example, an owner of freehold estate is obliged to not do anything to the land that would prevent the neighbours right to the private enjoyment of their land. Obligations like this have been created through multiple laws and acts such as planning, taxation, and resource management.

These types of obligations and responsibilities are a mix of legally imposed provisions and social/ethical rules for behaviour. The legal provisions are for the most part straight forward and clearly defined in legally binding text. However, social, ethical, attitude, and environmental sustainability obligations are harder to define (Enemark, 2014).

Obligations relating to land are often the result of the surrounding community and culture and can vary greatly depending on the land location. For example, in Australia neighbours are liable to pay half the cost of erecting a reasonable dividing fence between properties.

A holder of freehold estate is liable to pay various costs and taxes to various public and government authorities for the use of public services and infrastructure. An example of this would be council rates paid annually to the local council for the maintenance and collection of waste.

4.2.1.5 Development Rights

The *Development Act 1993* (SA) was implemented in South Australia to ‘*provide for proper, orderly and efficient planning and development in the State.*’

The main objectives as outlined in the act are:

- To establish objectives and principles of planning and development.
- To establish a system of strategic planning governing development.
- To provide for the creation of Development Plans –
 - To enhance the proper conservation, use, development and management of land and buildings.
 - To facilitate sustainable development and the protection of the environment.
 - To encourage the management of the natural and constructed environment in an ecologically sustainable manner.
 - To advance the social and economic interests and goals of the community.
- To establish and enforce cost-effective technical requirements, compatible with the public interest, to which building development must conform.
- To provide for appropriate public participation in the planning process and the assessment of development proposals.
- To promote or support initiatives to improve housing choice and access to affordable housing within the community.
- To enhance the amenity of buildings and provide for the safety and health of the people who use buildings.
- To facilitate the adoption and efficient application of national uniform building standards.
- To facilitate national uniform accreditation of buildings products, construction methods, building designs, building components and building systems.

Under the development act the majority of all development applications are required to be lodged with the relevant council so that it can be assessed against the zoning regulations of that council. Some applications (such as applications over a difficult site) may be required to go directly to the State Government's Development Assessment Commission. Additionally, a small portion of development applications that are deemed as 'major projects' will go directly to the State Minister (Local Government Association, 2009).

The Development Assessment Commission (DAC) was also established under this act. The role of the DAC is to assess development proposals where appropriate. Another role of the DAC includes performing a multitude of tasks associated with assessing and making recommendations for development rights.

A land development application must be approved by the DAC prior to being undertaken. The matters against which the developed is to be assessed include, but are not limited to:

- The provisions of the appropriate development plan.
- The provisions of the building rules.
- The new allotments created can only be used for the purposes as proposed by the applicant.
- Open space will be provided, or a payment be made as required.
- Adequate provision is made for the creation of appropriate easements and reserves for the purposes of drainage, electricity supply, water supply, and sewerage services.

Section 51 of the *Development Act 1993* (SA) outlines the requirements to receiving a certificate of approval in respect to a land division. Once all requirements have been met a Section 51 clearance will be issued.

4.2.2 Possession

The Judicial Commission of New South Wales (2004) defines the concept of possession as:

‘At the relevant time, intentionally maintaining control over the object in question. This control can be wholly one person or jointly held with multiple people. Secondly, the person(s) in possession must have the right to exclude other people from it. If these conditions are fulfilled, then it is said that the person(s) maintain possession of that object.’

Possession can be obtained either through a one-sided or two-sided process. A one-sided process entails either a form of seizure (taking an object in someone’s possession) or apprehension (taking an object not in someone’s possession).

A two-sided process occurs when a party intends to hand over possession to another; this is the case for the standard sale of an object.

4.2.2.1 Possession Acquired by Consent

An owner in possession of a thing is able to transfer their right of possession to others. A common example of this is when a landowner rents out their house to a tenant, thus for the term of the lease forsaking their right to possession for the payment of rent.

Temple (2007) notes that the possessor holds a possessory right that is enforceable against everyone except for those with a greater right. The possessor also enjoys the right of ejectment against the owner for the term of the possession right.

A bailment is a temporary transfer of possession and can be seen as the separation between ownership and possession. For example, the local video store continues to own the DVD while you rent it (possession) and when your right comes to an end the video store obtains the right to possess it again.

4.2.2.2 Possession Acquired Without Consent

Possession acquired without the consent of those with immediate rights to possession is known as adverse possession. This can occur when possession of land is taken without the owner's knowledge or when a lease is broken by a tenant such as not paying rent.

Possession does not constitute ownership; however, there are provisions in law that allow possession to become ownership over a specified period of time. In South Australia the *Limitations of Actions Act 1936* (SA) defined the limitation period as 15 years as outlined below.

's4 - Limitation in actions for recovery of rent or land.

No person shall make an entry or distress or bring an action to recover any land or rent but within fifteen years next after the time when the right to make that entry or distress or to bring that action first accrued to him or to some person through whom he claims.'

A certificate of title by possession can be applied for under 'Part 7A - Title by possession to land under this Act' of the *Real Property Act 1886* (SA).

4.2.3 Equitable Rights

Equitable law has developed as a complex concept of rights which is separate to common law. It was created in the English Court for the purpose of resolving cases which have no solution at common law. In equitable law a judge is tasked with determining what is fair and just to make their decision, as opposed to defining what is legal or illegal.

The most common forms of equitable rights that exist today are:

- Trusts – In a trust the trustee maintains a legal interest which is held for the benefit of another. The beneficiaries to the trust maintain an equitable interest and the trustee maintains the power of attorney for legal rights over the trust. Equitable law recognises the interest of the beneficiaries and common law recognises the legal estate held by the trustee.
- Mortgage.
- Restrictive covenant.
- Doctrine of part performance.

Equitable property rights and personal rights do not require the same degree of formality as legal rights. When a legal right requires the registration of a right the unregistered version can create an equitable property right. Also, when an equitable interest conflicts with a legal interest the legal interest will be upheld if both are considered to be equal. A bona fide purchase of a legal interest in conflict with an equitable right will therefore extinguish any equitable rights.

For a person to have an equitable interest in a property that indicates that there must be another person that maintains a legal interest in the same property. If the same person maintains both the legal and equitable interest in a property then, as such, there exists no equitable interest.

Holding vs Commissioner of Stamp Duties (N.S.W) 1982 149 CLR 431

4.2.4 Security Rights

A mortgage is a financial agreement where the mortgagor borrows a pre-determined sum of money from the mortgagee (usually a bank) under a contract to pay the total sum borrowed plus interest back over a period of time (such as 30 years).

A mortgage exists as a combination of equity law, contractual law, and common law. The mortgagor receives title and possession of the land while the mortgagee receives an interest in the land as a form of security to recover any losses that may occur if the mortgagor were to default on loan repayments. Both a mortgagee and mortgagor are able to transfer their rights to others.

4.2.5 Shared Rights

An estate can exist under shared ownership in much the same manner as single ownership. The difference being that the bundle of rights associated with the land is distributed equally amongst the owners instead of just one party.

A parcel of land can be sub-divided into smaller strata lots with common property under the *Community Titles Act 1996* (SA) and previously under the *Strata Titles Act 1988* (SA). Further to these acts are the *Strata Titles Act 2003* (SA) and *Community Titles Regulations 2011* (SA).

An owner or tenant of an estate in a strata or community lot has the same rights as discussed under 4.2.1. In regards to this project the main difference between an estate in a single unified parcel and an estate in a strata or community lot is that an estate in a strata or community lot has obligations to the body corporate as a part-owner in the common property portion of the estate.

The body corporate is a community corporation which has the functions of:

- Administering, managing and controlling the common property *'for the benefit of the owners of the community lots'*.
- Maintaining the common property and the property of the corporation in good condition.
- Where applicable and practical maintaining lawns/gardens on parts of the common property not required for another purpose.
- Enforcing the by-laws and development contracts (if any).
- Carrying out the other functions as assigned to it by relevant acts or conferred on it by the by-laws.

4.2.6 Non-Possessory Rights

The research conducted by Temple (2007) found that in general the courts are reluctant to accept additional categories of property rights beyond the manageable scope that currently exist. The list of non-possessory rights mentioned in most legal texts include profit a` prendre, easements, restrictive covenants, and other groupings including mineral rights and riparian rights to water. Additional rights such as heritage rights, environmental rights, forestry rights, drainage rights, and contaminated land have also been included in this section.

The non-possessory rights discussed are limited to those that are vested in the parcel of land itself, rather than rights that can affect land but are vested in a person or group.

4.2.6.1 Easements

An easement is a right granted over or appurtenant to a portion of land which allows another tenement to the landowner the right of use over the portion of land. An easement does not grant the party the right to take any of the natural produce but rather grants the right of use; such as a sewerage easement granting the right to run and maintain sewer lines.

In most cases an easement involves a dominant and servient tenement. In a positive easement the dominant tenement receives the right to do something on the servient tenements land; such as in the sewerage easement example mentioned above. In a negative easement the dominant tenement has the right to restrict the land use of the servient tenement. An example of a negative easement would be a building height restriction to the Australian Height Datum (AHD) on a neighbouring allotment to ensure adequate natural light is received.

There are numerous acts in South Australian legislation that relate to the creation, maintenance, and requirements of easements for different uses. The most relevant acts relating to easements are listed in Appendix B.

The enjoyment and maintenance of an easement often requires the right to enter or perform maintenance on the servient tenement land. For example the *Electricity Act 1996 (SA)* s48 allows for '*entry under easements for purposes related to infrastructure*' which allows for an electricity officer to enter land where electricity infrastructure is situated if reasonable written notice to the occupier has been given.

4.2.6.2 Profit a` Prendre

A profit a` prendre is created to allow the removal of a natural resource (such as timber or soil) without granting the right holder a possessory right to any portion of the land. The profit a` prendre only extends to the right to take from the land what is naturally occurring.

The *Forestry Property Act 2000* (SA) amended the *Real Property Act 1886* (SA) to allow for the registration of profit a` prendre and as such can be created, altered, and extinguished in the same manner as an easement. The notation of a profit will appear on the certificate of title under the heading of 'Easements'.

4.2.6.3 Covenants

A covenant is a valid agreement made between an owner and another party that obligates a landowner to complete an action. A positive covenant involves the obligation to do something and a negative covenant involves the obligation *not* to do something.

The creation of covenants binds all subsequent landowners to the terms of the covenant. Covenants are often created in favour of public authorities as a way to maintain control over the burdened land to suit their requirements. The ancillary rights necessary for access and maintenance that go along with easements are also applicable to covenants.

There are numerous acts in South Australian legislation that relate to the creation, maintenance, and requirements of covenants for different uses. The most relevant acts relating to covenants are listed in Appendix C.

4.2.6.4 Environmental Rights

Part 6 of the *Environment Protection Act 1993* (SA) sets out requirements for the approval of development or building alteration works. This includes any works or development authorisation as required under the *Development Act 1993* (SA).

The *Environment, Resources and Development Court Act 1993* (SA) establishes the ERD Court which deals with appeals in regards to works approval or licences as outlined in various acts relating to environmental rights.

The Parks and Wilderness Council was established under the *National Parks and Wildlife Act 1972* (SA) to, amongst other things, establish and manage reserves, wilderness protection areas, and wilderness protection zones. The council is authorised to provide advice to the minister on any matter relating to the *National Parks and Wildlife Act 1972* (SA), the *Adelaide Dolphin Sanctuary Act 2005* (SA), the *Marine Parks Act 2007* (SA), and the *Wilderness Protection Act 1992* (SA).

A prospective buyer of land is protected under the *Land and Business (Sale and Conveyancing) Act 1994* (SA) and the *Land and Business (Sale and Conveyancing) Regulations 2010* (SA).

4.2.6.5 Forestry Rights

The *Forestry Property Act 2000* (SA) allows the creation of a forest property (vegetation) agreement which separates ownership of forest vegetation from ownership of the land on which the vegetation is growing, or is to be grown. This is done by transferring the ownership of the forest vegetation from the owner of the land (the transferor) to another party (the transferee) without severance of the vegetation from the land. Further to this a forest property (carbon rights) agreement can also be created to separate ownership of carbon rights from

ownership of the vegetation to which the carbon rights relate by transferring ownership.

A forest property agreement can be registered. However, if it is unregistered the interest of the transferee forms an equitable interest. This means that it is liable to be defeated by a purchaser who acquires an interest in the land and subject vegetation in good faith, for value, and without notice of the forest property agreement. An application for registration must be made and approved by the Registrar-General. A registered forest property agreement will appear as an endorsement on the certificate of title.

4.2.6.6 Mineral Rights

The mineral rights associated with most estates are dependent upon the legal practices established at the time the land was alienated from the Crown. The rights are usually as stipulated upon the land grant; however, most estates do not include the rights to valuable minerals located underneath the surface.

A mining title-holder is not entitled to begin any works without the appropriate licence or lease as required. This includes any compensation arrangements with the landholder or tenants and also ensuring that the land is not registered under the *Native Title Act 1993* (Cwlth). If the land is registered under the *Native Title Act 1993* (Cwlth) then it must comply with the exploration requirements for Native title land as set out in Part 9B of the *Mining Act 1971* (SA).

Mining and exploration is performed in South Australia under the *Mining Act 1971* (SA), *Mining Regulations 2011* (SA), *Opal Mining Act 1995* (SA), and *Opal Mining Regulations 2012* (SA). The application for an exploration licence and mining lease are administered under the *Mining Act 1971* (SA) Part 5 and Part 6.

The *Atomic Energy Act 1953* (Cwlth) forces all prescribed substances (including uranium, thorium, any element with an atomic number above 92, or any other declared substances) which are recovered to be vested in the Commonwealth Government.

4.2.6.7 Riparian Rights to Water

A land owner has the right to make use of the natural flow of water for ‘*domestic and ordinary*’ purposes at common law level. However, a land owner is also compelled to not interfere with the natural flow of a stream or river.

The *Natural Resources Management Act 2004* (SA) which repeals the *Water Resources Act 1997* (SA) heavily regulates the rights and usage associated with riparian water rights. There are numerous Acts which are specific to different water bodies and they are listed in Appendix D.

A holder of native title is permitted to take and use water without an access licence or approval if it is for the use as approved in the native title rights.

4.2.6.8 Drainage Rights

Drainage rights are regarded differently to free-flowing or natural watercourses for which riparian rights to water exist as outlined above. Most of the rights and obligations with stormwater drainage exist at the common law level.

The higher landowner is not liable for the natural flow of surface stormwater onto lower properties, unless it is found that they have caused it to flow to a certain spot. A landowner is also allowed to construct flow barriers for protection of their land, but not to the detriment of neighbouring properties.

The *Development Act 1993* (SA) and *Development Regulations 2008* (SA) assess potential developments against a multitude of factors including adequate drainage. A detailed site-works and drainage plan may be required before a development will be accepted as complying.

4.2.6.9 Contaminated Land

The *Environment Protection Act 1993* (SA) section ‘Part 5B – Site contamination’ defines that for the purposes of the Act, site contamination exists at a site if:

‘(a) chemical substances are present on or below the surface of the site in concentrations above the background concentrations (if any); and

(b) the chemical substances have, at least in part, come to be present there as a result of an activity at the site or elsewhere; and

(c) the presence of the chemical substances in those concentrations has resulted in –

(i) actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; or

(ii) actual or potential harm to water that is not trivial; or

(iii) other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses.

(2) For the purposes of this Act, environmental harm is caused by the presence of chemical substances—

(a) whether the harm is a direct or indirect result of the presence of the chemical substances; and

(b) whether the harm results from the presence of the chemical substances alone or the combined effects of the presence of the chemical substances and other factors.

(3) For the purposes of this Act, site contamination does not exist at a site if circumstances of a kind prescribed by regulation apply to the site.'

The Environmental Protection Authority was established under the *Environment Protection Act 1993* (SA) and has the power to assess contaminated land, implement management schemes to minimise hazards, and make use of the land.

4.2.6.10 Heritage Rights

The *Heritage Places Act 1993* (SA) is an Act to -

'Make provision for the identification, recording and conservation of places and objects of non-Aboriginal heritage significance; to establish the South Australian Heritage Council; and for other purposes.'

The *South Australian Heritage Council* was created as part of the Act with some of the functions being to provide advice to the Minister for heritage protection and conservation programs, to identify places and related objects that are of State heritage significance and enter them into the Register, and to provide advice to the Minister in relation to the *Development Act 1993* (SA).

The *South Australian Heritage Register* is maintained by the Heritage Council as listed above. The Register must be available for public inspection during normal business hours. A registered place or object of heritage significance is usually applied for by the Council. Once provisionally entered in the Register the land owner must be provided written notice and given three months to respond. After a provisional entry has been made in the Register the Register-General must, upon application by the Council note the entry against the relevant title instrument. If the land is not under provisions of the *Real Property Act 1886* (SA) then the entry

must be made against the land. A landowner can appeal against a Heritage Listing and can have it removed from the Register if successful.

A Heritage agreement is attached to the land and is binding on the current owner (whether or not the owner was the person with whom the heritage agreement was made). A Heritage agreement can contain any provision to promote the conservation or State Heritage Places and public appreciation of their importance, such as:

- Restrict the use of land to which it applies.
- Require specific work to be carried out in accordance with specified standards on the land.
- Restrict the nature of work that may be carried out on the land.
- Provide for the management of the land, place, specimen or artefact.
- Provide for financial, technical or associated professional advice with respect to the maintenance or conservation of the land, place etc.
- Provide that specified regulations made under the *Development Act 1993* (SA) do not apply to the land.

4.2.7 Licences

A licence in relation to land is usually a contractual agreement between a landowner and another party to grant permission for the use of land. A licence is non-transferable and is non-binding on successors of title (Chambers, 2001).

Licences are usually an agreement made between people rather than an actual right in the subject land. As such they operate under contractual law principles rather than property law. It is possible for a licence to be coupled with an interest which establishes a property right (Hallmann, 2007).

For the completion of this project only the major readily accessible and definable licences have been discussed.

4.2.7.1 Water Access Licence

A water access licence can be issued by the Minister under the *Natural Resources Management Act 2004* (SA). This includes granting a licence to a ‘*prescribed watercourse, lake or well or in respect of the surface water in a surface water prescribed area or part of a surface water prescribed area*’. At common law level a landowner does not own the water that is available on their estate.

4.2.7.2 Environment Protection Licence

An environment protection licence granted by an environmental authorisation is required under the *Environment Protection Act 1993* (SA) for any activity that is deemed of environmental significance.

Other associated acts which make reference of environmental related licences include the *Petroleum and Geothermal Energy Act 2000* (SA), the *Petroleum (Submerged Lands) Act 1982* (SA), the *Mining Act 1971* (SA), the *Petroleum Act 2000* (SA), and the *Roxby Downs (Indenture Ratification) Act 1982* (SA).

4.2.7.3 Crown Land Licence

The *Crown Land Management Act 2009* (SA) Division 6 allows the Minister to grant licences in relation to Crown land. In particular in relation to land that is subject to a pastoral lease as if it were Crown land. A licence may not be granted or renewed through the act for a term exceeding 10 years (unless the licence is

granted to a Crown agency). Under the act the Minister may also grant leases in relation to un-alienated Crown land.

The Department of Environment, Water and Natural Resources (DEWNR) is responsible for administering Crown land in South Australia under the *Crown Land Management Act 2009* (SA).

4.2.8 Native Title

The *Native Title Act 1993* (Cwlth) was introduced with the main objectives being:

- *'To provide for the recognition and protection of native title.*
- *To establish ways in which future dealings affecting native title may proceed and to set standards for those dealings.*
- *To establish a mechanism for determining claims to native title.*
- *To provide for, or permit, the validation of past acts, and intermediate period acts, invalidated because of the existence of native title.'*

The act is intended to be read in conjunction with the provisions of the *Racial Discrimination Act 1975* (Cwlth).

The *Native Title (South Australia) Act 1994* (SA) defines native title as:

'The communal, group or individual rights and interests of Aboriginal peoples in relation to land or waters where—

- *The rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples.*

- *The Aboriginal peoples, by those laws and customs, have a connection with the land or waters.*
- *The rights and interests are recognised by the common law.*
- *The rights and interests have not been extinguished or have revived.'*

The *Native Title (South Australia) Regulations 2001* (SA) sets out a fee structure of \$20 for an inspection of the State Native Title Register under section 17(3) of the act. The State Native Title Register must also contain the date which the application was made, the date the claim is entered on the register, a description of the land covered by the claim, a description of the persons who it is claimed hold the native title, and a description of the rights conferred by the native title claimed that the Registrar considers can, *prima facie*, be established for each claim to native title in land registered under the Act.

The National Native Title Tribunal (NNTT) is an independent agency established by the *Native Title Act 1993* (Cwlth). The tribunal is made up of a president and members who are appointed by the Governor General to '*make decisions, conduct inquiries, reviews and mediations, and assist various parties with native title applications, and Indigenous land use agreements.*' (National Native Title Tribunal, 2015).

4.2.9 Pastoral Leases

A pastoral lease can be granted over Crown Land through the *Pastoral Land Management and Conservation Act 1989* (SA). The Minister may grant pastoral leases over Crown land through an '*open and competitive process*' unless extenuating circumstances exist. An assessment must also be undertaken over the Crown land to ensure that it is suitable for pastoral purposes and that is not deemed more practical or beneficial for the land to be set aside for some other purpose.

A pastoral lease is usually granted subject to certain conditions, including:

- Payment of rent annually in arrears and all other rates, taxes etc. in a timely manner.
- Compliance with the *Natural Resources Management Act 2004* (SA), the *Dog Fence Act 1946* (SA), the *Mining Act 1971* (SA), the *Petroleum Act 2000* (SA), and any other prescribed Act deemed relevant.
- The obligation not to pasture any species of animal on the land other than the species specified in the lease, unless approved prior.
- The obligation not to use the land for any other purpose, except with the prior approval of the Pastoral Board as established in the *Pastoral Land Management and Conservation Act 1989* (SA).
- The obligation not to hinder or obstruct any person who is attempting to exercise their right of access to the land pursuant to the Act, or any other relevant Act.

4.3 Identification of RORs

Land rights can be grouped with reference to the public departments which are responsible for the administration and maintenance of them. Temple's typology has been adapted to suit the South Australian system as outlined below.

4.3.1 Lands Services Group

The Lands Services Group and Lands Titles Office are located on the ground floor at 101 Grenfell Street, Adelaide. The lands services group website notes a range of searching facilities that are available to the general public and account customers through the SAILIS website (www.sailis.sa.gov.au); the facilities include:

- *historical searches on computerised titles*
- *check searches*
- *location requests*
- *historical name index of ownership from 1858 to 1975*
- *land tenure maps*
- *survey plans*
- *road and rack plans*
- *survey information*
- *the hundred and township book*
- *power of attorney information*
- *building details search*

4.3.1.1 Land Grant

The *Crown Land Management Act 2009* (SA) is an act to ‘*make provision for the disposal, management and conservation of Crown land.*’ Importantly it is an act that repeals the *Crown Lands Act 1929* (SA).

Division 3 of the *Crown Land Management Act 2009* (SA) sets out the requirements for disposal of Crown land. This allows for the Minister to dispose of Crown land by transfer or grant of fee simple.

4.3.1.2 Old System

Prior to the *Real Property Act 1886* (SA) there were approximately 40,000 titles to land for the *colony* of South Australia. Of these around 30,000 of the original deeds were lost, 13,000 were owned by absentee landowners (many of which were unable to be traced), and a minimum of 5,000 were considered to be severely complicated or defective (Land Services Group, 2015).

Early titles did not show the size, location, or position of the land and in essence were little more than receipts for the land transaction. In most instances there would be a reference number created in the margin which would refer to the original maps; which were also often inaccurate (Land Services Group, 2015).

A private subdivision would cause great confusion as it was not a legal requirement to engage a licensed surveyor and landowners who sold land would often refuse to surrender the original deeds. In essence, the new landowner was committed to uncertain titles and vulnerable to fraud charges or forfeiture.

Further complicating things was a fire that took place in 1839 which destroyed many of the district maps. However, after 1841 the district divisions were gradually replaced by hundreds and counties and subsequently the land was resurveyed and renumbered (Land Services Group, 2015).

The General Registry Office, which is also referred to as the Old Systems Section holds alphabetical indices of records from 1842 to present day for land that does not fall under the *Real Property Act 1886* (SA). The General Registry Office also holds deeds and records of freehold land completed from 1837 to 1858.

The *Registration of Deeds Act 1935* (SA) creates a system of registering deeds, conveyance, contracts in writing (other than a lease not exceeding three years), wills, and every judgement where land may be affected in law or equity.

4.3.1.3 Torrens System

Under the Torrens title system a single certificate of title is issued for an allotment of land. All transactions are registered and the title certificate shows the details of the current registered owner, any registered easements or encumbrances, and the title's unique reference details (volume/folio). The Lands Services Group

maintains a record of all title properties and any member of the public can search for or purchase a copy of a title either over the phone or online through SAILIS (Land Services Group, 2015).

4.3.1.4 Freehold Estate

In South Australia a freehold estate is described as an estate of uncertain duration that can exist in three different types – fee simple, fee tail or life estate. Section 4.2.1.1 details each type of estate.

4.3.1.5 Leasehold Estate

A lease can be granted by a landowner who transfers their right of exclusive possession of land (or a portion of land) to another for a nominated period of time. Section 4.2.1.3 provides further details of leasehold estates.

4.3.1.6 Possessory Title

An adverse possession claim can be made under ‘Part 7A Title by possession to land under this Act’ of the *Real Property Act 1886* (SA). An application for certificate based on possession can be made by a person who ‘*would have obtained a title by possession to any land which is subject to this Act, if that land had not been subject to this Act.*’

In South Australia the *Limitations of Actions Act 1936* (SA) defines the limitation period as 15 years. It is therefore possible for a possessory right to exist prior to the limitations period lapsing even though no formal claim has been lodged.

To establish if there is any possible right to adverse possession it must be identified with the occupant of the land whether consent has been granted and all other possessory title requirements have been met.

4.3.1.7 Equitable Interests

Many equitable interests are not registrable in the Torrens system as outlined in 4.2.3. When an equitable interest conflicts with a legal interest the legal interest will be upheld if both are considered equal. A bona fide purchase of a legal interest in good faith without knowledge of an equitable right will therefore extinguish any equitable rights. Unregistered interests can be protected by caveats which are noted on the certificate of title under the heading of 'Encumbrances'.

4.3.1.8 Security Rights

Part 12 – Mortgages, encumbrances, and discharges of the *Real Property Act 1886* (SA) outlines how mortgages affect land in the South Australian Torrens title system. The act also sets out the power for the mortgagee '*to enter, take possession, distrain, let, or bring action for recovery of land.*' The mortgagee remains in possession of the Certificate of Title until the mortgage is settled.

4.3.1.9 Shared Rights

Co-ownership of a parcel of land is identified in the same manner as a single landholder. Each owner is individually noted on the certificate of title. Community and Strata title lots are issued individual certificates of title and the common property is also issued a unique certificate of title.

4.3.1.10 Non-Possessory Rights

Legally binding non-possessory rights such as easements, restrictive covenants, and profits à prendre are registrable with the Land Services Group. They will appear on the certificate of title under the appropriate heading (such as Easements or Encumbrances) depending on the type of right registered.

4.3.1.11 Searching of Data

The general public and industry professionals can search the records of the Land Services Group online through the SAILIS website (www.sailis.sa.gov.au). The pricing structure for available information as of 1 July 2015 is attached as Appendix E.

4.3.1.12 Bulk Data Extracts

A custom made bulk data extract can be compiled upon request from the Land Services Group information. A fee is payable for this request and is determined by the Land Services Group in accordance with Government policy. The fee is advised after the data request is made; in essence a quote is completed for the required work.

4.3.1.13 Property Sales Data

Property sales data is collected by the government and licensed out to commercial organisations. Resellers are listed on the Land Services Group website with the intention being to *'facilitate the development of information products for industry and the general public'* (Land Services Group, 2015).

4.3.1.14 Spatial Definition of Land Parcel

The spatial definition of a freehold parcel of land is defined in the registered plan as part of the CT; or as referenced on the CT to a deposited plan of sub-division. These plans are prepared and lodged by a Surveyor authorised and registered under the *Survey Act 1992 (SA)* and *Survey Regulations 2007 (SA)*.

4.3.1.15 Taxes, Rates, and Charges

Property valuations are conducted every year in South Australia to determine the site value and capital value. These values are used to calculate the rates and taxes charged for each property. It is possible for a landowner to obtain a copy of the property's valuation by contacting the Land Services Group, a nominal fee may apply.

A database of all properties in South Australia is maintained from a range of sources such as development approvals granted by local councils and property inspection programs. All sold properties throughout the state are also analysed to determine any movement in the property market.

These property valuations are used by statutory authorities to compile the amount of rates and taxes to be charged. The authorities utilizing this information include:

- SA Water for water and sewerage rates.
 - Revenue SA for the emergency services levy and land tax (where applicable).
 - Local councils for council rates.
- (Land Services Group, 2015).

4.3.2 Local Council

There are 68 councils in South Australia as created under the *Local Government Act 1999* (SA). Furthermore there are five Aboriginal outback communities and the Outback Areas Community Development Trust. Each local council is responsible for a variety of public rights and land uses over the land in their area.

Under the *Local Government Act 1999* (SA) a council is required to create and maintain Strategic Management Plans for the management of its area. These plans should include or address:

- The extent to which the council has participated and given consideration to other councils, regional, state and national objectives and strategies.
- Provide assessments to the sustainability of the council's finances, extent of services required and extent of infrastructure maintenance or replacement.
- Addressing the strategic planning issues within the council area, with particular reference to the Planning Strategy.
- Remain consistent with the Development Plan or any relevant statutory policy or plan.

The *Development Act 1993* (SA) outlines the creation of Development Plans which are utilised to promote the provisions of the planning strategy and may include sustainable development, social issues, urban and regional planning, conservation of land or buildings, and economic issues.

All council strategic management plans and development plans are available through the council upon request. In most cases they can be found relatively easily through the local council's website.

4.3.3 National Native Title Tribunal (NNTT)

The *Native Title Act 1993* (Cwlth) established The Native Title Tribunal as an independent agency to ‘*make decisions, conduct inquiries, reviews and mediations, and assist various parties with native title applications, and Indigenous land use agreements.*’

The NNTT website (www.nntt.gov.au) has an online search facility which allows the public to search the National Native Title Register for native title claims and also determinations of native title made by the High Court of Australia, Federal Court of Australia or a recognised body such as South Australia’s Supreme Court.

4.3.4 Environmental Protection Agency

The Environmental Protection Agency (EPA) in South Australia is an independent environmental protection regulator. The EPA operates under the *Environment Protection Act 1993* (SA) and the *Radiation Protection and Control Act 1982* (SA).

The EPA is required by legislation to maintain a public register and also to make information available for public inspection. The register includes, but is not limited to, environmental licences, applications for licences, site contamination, environmental protection orders, development authorisation referrals, penalties, and prosecutions.

The EPA provides an online public register which can be searched free of charge. However, it is not an exhaustive list of all information that is held on the public register. A manual inspection of the register can be requested for a prescribed fee based on the length of time and amount of pages required.

4.3.5 Water Licence and Permit Register

An application for a water licence or permit can be made through the Department of Environment, Water and Natural Resources (DEWNR). All current water licences and permits can be searched through the online NRM Register which is managed by the Government of South Australia. Searching can either be done by the licence number or the certificate of title reference for the property.

4.3.6 Items of Heritage Significance

In South Australia there are multiple heritage organisations that manage and maintain different areas, they are:

- Aboriginal Affairs and Reconciliation Division
- Conservation Council of South Australia
- Department for Environment and Heritage
- History Trust of South Australia
- National Parks and Wildlife South Australia
- National Trust of South Australia
- South Australia Heritage Branch
- South Australia Heritage Council

The Department of Environment, Water and Natural Resources in conjunction with the South Australian Heritage Council are responsible for the protection, conservation, and maintenance of non-Aboriginal cultural heritage significance to South Australia under the *Heritage Places Act 1993 (SA)*, *Historic Shipwrecks Act 1981 (SA)* and the *Historic Shipwrecks Act 1976 (Cwlth)*.

The Aboriginal Affairs and Reconciliation Division of the Department of State Development manages Aboriginal heritage under the *Aboriginal Heritage Act 1988* (SA). (DEWNR, 2015)

The State Heritage Unit working within DEWNR is responsible for:

- Administering the *Heritage Places Act 1993* (SA), the *Historic Shipwrecks Act 1981* (SA) and the *Historic Shipwrecks Act 1976* (Cwlth).
- Providing strategic and policy advice to the South Australian Heritage Council and the State government.
- Providing policy advice on priorities, current and emerging issues to the Minister for Sustainability, Environment and Conservation.
- Advising on planning matters.
- Providing policy advice to, and supporting the South Australian Heritage Council in administering the South Australian Heritage Register.
- Providing advice on the conservation of state heritage and management of the South Australian Heritage Fund.

The South Australian Heritage places database is an online search tool that allows the public to search online to see which properties have a heritage listing.

As of June 12 2015 in South Australia there are approximately 2,283 State Heritage Places, 17 State Heritage Areas, over 7,000 local heritage places and areas, ten Commonwealth heritage places in the Commonwealth Heritage List, six National heritage places in the National Heritage List and one World heritage place (South Australian Government, 2015).

4.3.7 Department of Primary Industries (PIRSA)

Primary Industries and Regions SA (PIRSA) has administrative responsibility for multiple pieces of legislation in South Australia. Appendix F details all relevant acts as of January 6 2015 as outlined on the PIRSA website.

4.3.8 Department of State Development

The Department of State Development is responsible for the regulation, case management, collection of data, and management of mining activity for the industry. Under the *Freedom of Information Act 1991 (SA)* the general public has a legal right to access documents (subject to certain restrictions) which are held by South Australian government agencies, local government, and other statutory and regulatory bodies (Department of State Development, 2015).

The *Freedom of Information (Fees and Charges) Regulations 2003 (SA)* sets out prescribed fees and charges for accessing available documents from government agencies. The Department of State Development also has a variety of online tools for public use including a mineral deposit database for South Australian mines, digital maps and data, online publications, reports, and core inspections.

4.3.9 Consultation with Landowner

A landowner is likely to hold an array of important and relevant information as it pertains to various RORs over their land. While the quality of information and knowledge will vary depending on time owned, the owners background, and upkeep of records it is safe to assume that the landowner is likely to know far more than the general population as it relates to *their* specific property.

It is assumed that a landowner will have significant knowledge of the currently existing taxes, obligations, rates, charges, and fees that are associated with their freehold parcel of land. However, it must be noted that this information can be regarded as confidential and private information by the landowner.

As personal rights are only binding to the original parties that have entered into a contractual agreement it is also assumed that personal licences are of minimal interest to any third party that is outside of the agreement for the sake of this project.

4.4 Conclusions: Chapter 4

After completing detailed research into the administration of property rights in South Australia, the created typology by Temple was adapted to suit the South Australian system.

Two classification systems for categorising RORs were recognised with the supporting literature; that being by the legal classification of the ROR and by the administering body for the ROR.

All known ROR types over a freehold parcel of land in South Australia were identified and then a detailed analysis over each type was completed. Furthermore the ROR types were described within the administrative body that manages them.

From this the adapted typology could be actively applied to any parcel of freehold land in South Australia.

Chapter 5

Case Studies

Portions of the certificates of title and searched information that is non-essential data such as owners name, mortgagee details, and any specific dealing numbers have been blacked out as a matter of privacy to the owners.

5.1 Case Study 1

The following results apply the typology as outlined in Chapter 4 to the subject parcel of land at Allotment 26 in Deposited Plan 7618. Refer to appendix G for a copy of the certificate of title 5596/310 as purchased for this case study.



Scale \approx 1:500 (on A4 page)

20 metres \approx

Figure 5.1 - Site locality map A26 D7618

5.1.1 Estates

Land Services Group utilizing SAILIS

Certificate of Title:	5596/310
Dealing(s) Creating Title:	Converted Title
Title Issued:	16/11/1998
Edition:	2
Edition Issued:	21/01/2000

Estate Type:	Fee Simple
Shared Rights:	Joint Tenancy (both owners noted on title)
Security Rights:	Mortgage to nominated bank.
Easements:	Nil
Dealings affecting title:	Nil
Notations on Plan	Nil
Registrar-General's Notes:	Nil
Administrative Interests:	Nil
Current Land Use:	House – Site & Capital Value
Street Address:	10 Braeside Avenue
Suburb:	Seacombe Heights
Postcode:	5047
Hundred:	Noarlunga
Council:	City of Marion
Ward:	Warriparinga Ward
Plan/Parcel:	DP 7618 A 26
Consultation with landowner:	No knowledge of any short term or unregistered leases or interests that are not recorded on the register.
Site visit:	Confirmation that the landowners are in full possession of the land. There is no evidence of unregistered leases or possible adverse possession claims.
Site improvements:	Two storey house with extensions completed approximately 20 years ago. Two large sheds and carport with undercover parking for three cars. Paved driveway and landscaped front and rear yards.

From this research it can be safely assumed that the registered owners/occupants of the property maintain full possession over the land and that there are no unregistered interests as outlined in Chapters 1-4.

The process of searching for and purchasing the current certificate of title is quick and easy and with the recent integration of an online system is a very efficient manner of researching registered RORs that may exist on a parcel of land.

The consultation with land owner and subsequent site visit whilst not possible in all situations is also of benefit to clarify any potential issues associated with RORs.

5.1.2 Development Rights

City of Marion

Overlay Map:	Mar/11
Zone:	Residential
Policy Area:	11 - Hills
Airport Building Heights:	Zone D – All structures exceeding 45m above existing ground level
Hills Policy Area 11:	Refer to appendix H for the council objectives relating to Hills Policy Area 11.

5.1.3 Environmental Rights

Environmental Protection Agency: No registered licences were found using the EPA online environmental authorisations (licences) search tool.

Land Services Group:	No registered encumbrances found.
City of Marion:	<i>'Residential development sensitive to the particular topography of the area and which has minimal visual and environmental impacts.'</i>
Consultation with Landowner:	No known environmental issues or restrictions for the established property.

5.1.4 Forestry Rights

Land Services Group:	None identified on the certificate of title.
City of Marion:	None identified on the council plan.
Consultation with Landowner:	None identified.

5.1.5 Mineral Rights

Land Services Group:	No notations on CT.
City of Marion:	Area deemed hills residential, not suitable for mining operations. Not in a mineral extraction zone.
Landowner:	No knowledge of any interests in minerals.

5.1.6 Riparian Rights to Water

Subject land does not contain and is not adjacent to any water body.

Land Services Group: No water access licence identified.

Consultation with Landowner: No water access licence identified.

5.1.7 Contaminated Land

Environmental Protection Agency: No entries exist in the EPA online contamination site index for the land, or entire suburb.

City of Marion: *'Development, including land division, should not occur where site contamination has occurred unless the site has been assessed and remediated as necessary to ensure that it is suitable and safe for the proposed use.'*

Consultation with Landowner: No current or known past use that could contribute to contaminated land.

The EPA online search tool allows for the search of an entire area not just a parcel of land. As such, the entire surrounding region of the land has no known contaminants that could foreseeably affect the land.

5.1.8 Heritage Rights

City of Marion:	Property not affected by any heritage listing in the City of Marion Development Plan Local Heritage Places Table.
South Australian Heritage Database:	Property not affected by any heritage listing on the South Australian Heritage Database.
Australian Heritage Database:	Property not affected by any heritage listing on the Australian Heritage Database.
Land Services Group:	No heritage agreements or rights noted.
Consultation with Landowner:	No knowledge of any heritage listing or agreement in relation to the existing structures or land itself.

5.1.9 Conservation Agreements

Consultation with Landowner:	No conservation agreements identified.
Site Inspection:	No significant trees located on site, or any flora or fauna worthy of a conservation agreement.
City of Marion:	No conservation agreements as the site does not have any significant trees that require development control.

5.1.10 Native Title

National Native Title Tribunal:	No registered native title claims or determinations of native title exist.
Land Services Group:	No registered records of native title exist.

5.1.11 Access Agreements

Consultation with Landowner:	No access agreements identified.
Site inspection:	Property is fenced off on three sides with one driveway for access to the garage. No visible access to neighbouring properties.

5.1.12 Taxes, Rates, and Charges

Consultation with Landowner:	
Payments to Revenue SA:	Payment of land tax is not required as the site is the landowner's principal place of residence.
Payments to City of Marion:	Payment of council rates is required annually based on the property's value.
Payments to public utilities:	Payment required for the use of services on usage basis. Services include electricity, telecommunications, gas and water.

5.2 Case Study 2

The following results apply the typology as outlined in Chapter 4 to the subject parcel of land at Allotment 201 in Deposited Plan 6397. Refer to appendix I for a copy of the certificate of title 5638/768 as purchased for this case study.



Scale \approx 1:500 (on A4 page)

20 metres \approx

Figure 5.2 - Site locality map A201 D6397

5.2.1 Estates

Land Services Group utilizing SAILIS

Certificate of Title:	5638/768
Dealing(s) Creating Title:	Converted Title
Title Issued:	25/03/1999
Edition:	1
Edition Issued:	25/03/1999
Estate Type:	Fee Simple
Shared Rights:	Joint Tenancy (both owners noted on title)
Security Rights:	Mortgage to nominated bank.
Easements:	Nil
Dealings affecting title:	Nil
Notations on Plan:	Nil
Registrar-General's Notes:	Converted title with next dealing lodge CT 2677/62
Administrative Interests:	Nil
Current Land Use:	House – Site & Capital Value
Street Address:	11 Horizon Parade
Suburb:	Carrickalinga
Postcode:	5204
Hundred:	Myponga
Council:	District Council (DC) of Yankalilla
Ward:	Light Ward
Plan/Parcel:	DP 6397 A 201
Consultation with landowner:	No knowledge of any short term or unregistered leases or interests that are not recorded on the register.

Site visit: Confirmation that the landowners are in full possession of the land. There is no evidence of unregistered leases or possible adverse possession claims.

Site improvements: Single storey house with surrounding verandah. Workshed/ garage located at the rear of block which is accessible by a gravel driveway. Native shrubs and trees located throughout the site.

5.2.2 Development Rights

DC of Yankalilla

Overlay Map: Ya/25
Zone: Residential
Policy Area: R (Residential)
Residential: Refer to appendix J for the council objectives relating to residential properties.

5.2.3 Environmental Rights

Environmental Protection Agency: No registered licences were found using the EPA online environmental authorisations (licences) search tool.

Land Services Group: No registered encumbrances found.

DC of Yankalilla: Council wide provisions:
*'Minimisation of environmental impacts from the location and operation of waste management facilities.
The maintenance of the scenic environment of the coast.'*

Consultation with Landowner: No known environmental issues or restrictions for the established property.

5.2.4 Forestry Rights

Land Services Group: None identified on the certificate of title.

DC of Yankalilla: None identified on the council plan.

Consultation with Landowner: None identified.

5.2.5 Mineral Rights

Land Services Group: No notations on CT.

DC of Yankalilla: Mining and Related Activity:
*'The siting and management of quarrying and similar extractive and associated manufacturing industries so that minimum damage is caused to the landscape.
The continued availability of metallic, industrial and construction minerals, by*

preventing development likely to inhibit their exploitation.'

Landowner: No knowledge of any interests in minerals.

5.2.6 Riparian Rights to Water

Subject land does not contain and is not adjacent to any water body.

Land Services Group: No water access licence identified.

Consultation with Landowner: No water access licence identified.

5.2.7 Contaminated Land

Environmental Protection Agency: No entries exist in the EPA online contamination site index for the land, or entire suburb.

DC of Yankalilla: No mention of contaminated land. New developments or construction are subject to meeting the DC of Yankalilla's requirements for water or land contamination.

Consultation with Landowner: No current or known past use that could contribute to contaminated land.

5.2.8 Heritage Rights

DC of Yankalilla: Property not affected by any heritage listing in the DC of Yankalilla development plan.

South Australian Heritage Database: Property not affected by any heritage listing on the South Australian Heritage Database.

Australian Heritage Database: Property not affected by any heritage listing on the Australian Heritage Database.

Land Services Group: No heritage agreements or rights noted.

Consultation with Landowner: No knowledge of any heritage listing or agreement in relation to the existing structures of land itself.

5.2.9 Conservation Agreements

Consultation with Landowner: No conservation agreements identified.

Site Inspection: No significant trees located on site, or any significant flora or fauna noted on site..

DC of Yankalilla: *'Preservation of trees of historic, local or particular visual significance. The retention of native vegetation where clearance is likely to lead to problems of soil erosion, soil slip and salinization, flooding or a deterioration in the quality of surface waters.'*

5.2.10 Native Title

National Native Title Tribunal:	No registered native title claims or determinations of native title exist.
Land Services Group:	No registered records of native title exist.

5.2.11 Access Agreements

Consultation with Landowner:	No access agreements identified.
Site inspection:	Property is fenced off on three sides with two driveways. No visible access to neighbouring properties.

5.2.12 Taxes, Rates, and Charges

Consultation with Landowner:

Payments to Revenue SA:	Payment of land tax is not required as the site is the landowner's principal place of residence.
Payments to DC of Yankalilla:	Payment of council rates are required annually based on the property's value.
Payments to public utilities:	Payment required for the use of services on usage basis. Services include electricity, telecommunications, gas and water.

5.3 Case Study 3

The following results apply the typology as outlined in Chapter 4 to the subject parcel of land at Allotment 22 in Filed Plan 32951. Refer to appendix K for a copy of the certificate of title 5151/844 as purchased for this case study.



Scale \approx 1:4000 (on A4 page)

200 metres \approx

Figure 5.3 - Site locality map A22 F32951

5.3.1 Estates

Land Services Group utilizing SAILIS

Certificate of Title:	5151/844
Dealing(s) Creating Title:	TG 7539140
Title Issued:	28/10/1993
Edition:	9
Edition Issued:	07/07/2015
Estate Type:	Fee Simple
Shared Rights:	Joint Tenancy in one 6/10 share to one owner and one 4/10 share to the other owner.
Security Rights:	Mortgage to nominated bank.
Easements:	Subject to an easement over the land marked A to the electricity trust of South Australia. Together with a free and unrestricted right of way over the new private road and rights of way originally delineated on DP 293.
Dealings affecting title:	Nil
Notations on Plan:	Nil
Registrar-General's Notes:	Nil
Administrative Interests:	Nil
Current Land Use:	Rural Residential House (House Without Primary Production) – Site & Capital Value
Street Address:	360 Paechtown Road
Suburb:	Paechtown
Postcode:	5245
Hundred:	Kuitpo
Council:	Mount Barker District Council
Ward:	North Ward
Plan/Parcel:	FP 32951 A 22

Consultation with landowner:	No knowledge of any short term or unregistered leases or interests that are not recorded on the register.
Site visit:	Confirmation that the landowners are in full possession of the land. There is no evidence of unregistered leases or possible adverse possession claims.
Site improvements:	Single storey house surrounded by native vegetation. Numerous rain water tanks on site and existing dam in rear clearing for water storage. Multiple sheds/ carports around the front ½ of site. The rear ½ of site is an open clearing with trees along the majority of the boundary line.

The CT has noted the 6/10 and 4/10 shared rights of ownership between the two owners. The associated diagram image also clearly shows the electricity easement and right of way location as noted on the CT.

5.3.2 Development Rights

Mount Barker District Council

Overlay Map:	MtB/2
Zone and Policy Area:	Watershed Protection (Mount Lofty Ranges)
Residential:	Refer to appendix L for the council objectives relating the WP (MLR) area.

5.3.3 Environmental Rights

Environmental Protection Agency: No registered licences were found using the EPA online environmental authorisations (licences) search tool.

Land Services Group: No registered encumbrances found.

Mount Barker DC: Council wide objectives

- ‘1 Retention, protection and restoration of the natural resources and environment.*
- 2 Protection of the quality and quantity of South Australia’s surface waters, including inland and underground waters.*
- 3 The ecologically sustainable use of natural resources including water resources, including ground water, surface water and watercourses.*
- 4 Natural hydrological systems and environmental flows reinstated, and maintained and enhanced.*
- 5 Development consistent with the principles of water sensitive design.*
- 6 Development sited and designed to:*
 - (a) protect natural ecological systems*
 - (b) achieve the sustainable use of water*
 - (c) protect water quality, including receiving waters*
 - (d) reduce runoff and peak flows and prevent the risk of downstream flooding*
 - (e) minimise demand on reticulated water*

supplies

(f) maximise the harvest and use of stormwater

(g) protect stormwater from pollution sources.

7 Storage and use of stormwater which avoids adverse impact on public health and safety.

8 Native flora, fauna and ecosystems protected, retained, conserved and restored.

9 Restoration, expansion and linking of existing native vegetation to facilitate habitat corridors for ease of movement of fauna.

10 Minimal disturbance and modification of the natural landform.

11 Protection of the physical, chemical and biological quality of soil resources.

12 Protection of areas prone to erosion or other land degradation processes from inappropriate development.

13 Protection of the scenic qualities of natural and rural landscapes'

Consultation with Landowner:

No known environmental issues or restrictions for the established property.

5.3.4 Forestry Rights

Land Services Group:	None identified on the certificate of title.
Mount Barker DC:	Forestry development guidelines: <i>‘Forestry development that is designed and sited to maximise environmental and economic benefits whilst managing potential negative impacts on the environment, transport networks and surrounding land uses and landscapes.’</i>
Consultation with Landowner:	None identified.

5.3.5 Mineral Rights

Land Services Group:	No notations on CT.
Mount Barker DC:	Mining Extraction – Objectives: <i>‘1 Development of mining activities in a way that contributes to the sustainable growth of the industry. 2 Protection of mineral deposits against intrusion by inappropriate forms of development. 3 Areas with scenic or conservation significance protected from undue damage arising from mining operations. 4 Mining operations undertaken with minimal adverse impacts on the environment</i>

and on the health and amenity of adjacent land uses.

5 Minimisation of the impacts from mining activities upon the existing groundwater level and the quality of groundwater resources.

6 Mining operations that make adequate provision for site rehabilitation'

Landowner: No knowledge of any interests in minerals.

5.3.6 Riparian Rights to Water

Subject is not adjacent to any water body but does contain a large dam for catching rainwater and water storage.

Land Services Group: No water access licence identified.

Consultation with Landowner: Dam on site as noted above.

5.3.7 Contaminated Land

Environmental Protection Agency: No entries exist in the EPA online contamination site index for the land.

Mount Barker DC: Site Contamination:
'Development, including land division, should not occur where site contamination has occurred unless the site has been assessed and remediated as necessary to

ensure that it is suitable and safe for the proposed use.'

Consultation with Landowner: No current or known past use that could contribute to contaminated land.

5.3.8 Heritage Rights

Mount Barker DC: Property not affected by any heritage listing in the Mount Barker DC development plan.

South Australian Heritage Database: Property not affected by any heritage listing on the South Australian Heritage Database.

Australian Heritage Database: Property not affected by any heritage listing on the Australian Heritage Database.

Land Services Group: No heritage agreements or rights noted.

Consultation with Landowner: No knowledge of any heritage listing or agreement in relation to the existing structures of land itself.

5.3.9 Conservation Agreements

Consultation with Landowner: No conservation agreements identified.

Site Inspection: Due to the rural location of the site not all of it can be inspected easily. In consultation

with the landowner it has been established that there are no conservation agreements or known areas worth such an agreement.

Mount Barker DC:

Soil Conservation:

'51 Development should not have an adverse impact on the natural, physical, chemical or biological quality and characteristics of soil resources.

52 Development should be designed and sited to prevent erosion.

53 Development should be designed in a manner that will minimise the deterioration of soil quality and maximise the retention of top soil.

54 Development should take place in a manner that will minimise alteration to the existing landform.

55 Development should minimise the loss of soil from a site through soil erosion or siltation during the construction phase of any development and following the commencement of an activity.'

5.3.10 Native Title

National Native Title Tribunal:	No registered native title claims or determinations of native title exist.
Land Services Group:	No registered records of native title exist.

5.3.11 Access Agreements

Consultation with Landowner:	No access agreements identified (besides noted right of way from CT).
Site inspection:	No additional access roads/walkways visible besides the right of way as noted on the CT.

5.3.12 Taxes, Rates, and Charges

Consultation with Landowner:

Payments to Revenue SA:	Payment of land tax is not required as the site is the landowner's principal place of residence.
Payments Mount Barker DC:	Payment of council rates are required annually based on the property's value.
Payments to public utilities:	Payment required for the use of services on usage basis. Services include electricity, telecommunications, gas and water.

Chapter 6

Conclusions

6.1 Introduction

After adapting Temple's typology for investigating all RORs that may exist over a freehold parcel of land in South Australia it is possible to identify the main impediments to efficient land right searching under the current system. The impediments discovered and discussed may have an impact on the future reform of land administration systems in South Australia and other regions.

6.2 Discussions

The discussion is concerned primarily with the inefficiencies found during the performance of the case studies. Particular attention is paid to the efficient searching of relevant RORs.

6.2.1 Research Required

Prior to the gathering of RORs over the case study sites extensive research and knowledge was required. This includes the prior knowledge garnered through 9 years of working in a South Australian land surveying firm and 30 university courses relating to Spatial Science. Furthermore there was also the focused research conducted throughout this project to identify the types of RORs that may exist and the ways in which they are managed and administered in South Australia.

6.2.2 Landowner Knowledge

In the case studies completed the owners of each site have been in possession of the land for large amounts of time - in excess of 15 years for each site. From this experience the owners have gathered a greater knowledge of the land rights associated with their parcel of land the longer they have held it.

For example, in case study 1 the land owners were not aware of the particular development rights (or lack thereof) that their parcel of land held prior to purchasing it. If the owners were fully aware of the development requirements for their land as per the council zoning at the time of purchase then the property itself would have been less appealing as an investment.

6.2.3 Limitations of the Typology

The ever changing nature of property details and land management systems makes it almost impossible to guarantee that the typology created is an exhaustive list of *every* possible type of ROR that may exist. This is despite the prior knowledge, experience, and expansive research required to create and test a typology pertaining to RORs.

It therefore must be considered that the adapted and constructed typology for RORs in South Australia likely does not contain every possible ROR despite the expansive research conducted. It is highly doubtful that the average landowner or potential landowner will be able to ascertain full knowledge of all RORs affecting a given freehold parcel of land.

This may impact on the ability for the average landowner to actively and effectively participate in the land market. It may also result in additional unexpected costs to the average landowner such as professional consultants (e.g. heritage and NNTT departments), surveyors, council liaison, lawyers, and conveyancers.

When these potential unforeseen costs are compared to the relatively cost effective and time efficient typology created it can be shown that completing the typology prior to the purchase of a property is a highly effective tool for locating RORs over a freehold parcel of land. The current inefficiencies may be unnecessarily costing valuable time and money to landowners and taxpayers.

6.2.4 Exclusions from the Typology

As discussed in Chapter 4 it is agreed that in general the courts are reluctant to accept additional categories of property rights beyond the manageable scope that currently exist. As such the list of non-possessory rights included in the typology was limited to those that are vested in the parcel of land itself, rather than rights that can affect land but are vested in a person or group.

The current trend of limitations to property rights categorisation means that many RORs such as contractual agreements, personal rights, or licences can be administered or exist outside of the current limited categorisation systems. As such these types of rights have been excluded from the typology under the premise that they are most likely to only affect the *current* registered land owner and not a bona-fide purchaser of a freehold parcel of land in good faith.

6.2.5 Classification System of the Typology

The typology created by Temple (2007) was shown to be effective for use in the NSW system. The associated classification system used to create the typology was also shown to be suitable for use in the NSW system and associated government departments. This same classification system has been successfully utilised in the completion of this project.

From this outcome there may be merit in the application of the classification system as a starting point for other state and country LASs. The classification system provides a significant starting point for the research and adaptation required for successful implementation of a typology for identifying RORs on freehold land in different systems.

6.2.6 Administrative Bodies

In South Australia there are numerous separate pieces of legislation which relate to RORs and multiple administrative bodies which are responsible for the administration and maintenance of these RORs. This creates the potential for conflicting rights if the separate administrative bodies do not suitably interact and maintain up to date and accurate records.

The main problem with searching for relevant information throughout multiple government bodies, websites, registers, and administrative bodies is that many of these agencies do not guarantee that their records are 100% accurate and up to date. This can lead to a case of a member of the public completing thorough research and utilizing the created typology but still not uncovering all RORs relating to the subject land because of an administrative error or lack of accountability by the various agencies involved.

6.2.7 Inefficiencies Relating to Particular Administrative Bodies

Land Services Group

In April 2015 the government of South Australia introduced a new public use website called SAILIS (South Australian Integrated Land Information System). It replaced approximately 28 different government websites to create a central source for plan lodgement, searching, and other land and cadastre related services.

From the research conducted and case studies completed it has been shown that the SAILIS system has worked effectively and efficiently for locating registered and documented RORs over freehold parcels of land in South Australia.

Local Council

In South Australia there are currently 68 councils who each act independently of each other. They also create their own development guidelines and plans. While these development plans and guidelines are all of a similar design, they each have their own intricacies and unique factors which can make the guidelines cumbersome and confusing to understand. In some instances these guidelines also contain contradictions which can further complicate the current system.

National Native Title Tribunal (NNTT)

The process of searching the NNTT database is rather simple and time efficient. However, the average landowner or potential buyer may find it difficult to understand the complex RORs associated with Native Title, and also the manner in which to check for registered claims.

Environmental Protection Agency (EPA)

The EPA has a legal obligation under the *Land and Business (Sale and Conveyancing) Act 1994* (SA) to maintain a record of every report for land in South Australia. Overall the EPA has maintained an efficient manner for checking through their records for parcels of land – or designated areas in general.

Water Licence and Permit Register

As the case study properties did not have any water licences or permits there is no feedback available for the NRM Register managed by the Government of South Australia.

6.2.8 Inefficiencies Relating to Water RORs

From the research conducted and case studies completed it has been shown that there are numerous intricacies associated with water RORs. Appendix D highlights this with a list of 16 different *Natural Resource Management* pieces of legislation which relate to different water bodies or areas in South Australia.

As such, a water body and its associated RORs can actually vary over a short distance depending on which area it falls under. This can lead to confusion over which piece of legislation applies to a particular portion of water and therefore can also confuse particulars relating to riparian rights to water over an area.

6.2.9 Items of Heritage Significance

As outlined in Chapter 4 there are a multitude of different government departments and agencies which can create or maintain a heritage right or record. These rights and restrictions can vary greatly depending on the age of the site and the significance of the structure or object.

The City of Marion development plan maintains a table of current heritage listings which is an effective and efficient tool. However, not every council maintains an up to date table which means searching through the different databases is required.

6.2.10 Future Heritage Interests

There are multiple heritage organisations that manage and maintain items of heritage significance in South Australia and throughout the world. One critical unforeseeable interest in property arises from a relatively simple question – at what point does an object or building qualify to become a registered item of heritage significance?

The simple answer to the above question is when it is officially registered by an administrative body. However, prior to that decision there must be a period of delineation or discussion as to the merits of its significance. A potential purchaser of a property which may find itself subject to a heritage land right in the future would undoubtedly like to be informed of this potential unforeseeable interest prior to purchasing the property.

It is beyond the scope of this project to make specific recommendations to administrative bodies but there is merit in looking into establishing a second tier of heritage listing for those properties or items that may at some point in the relative future be subject to a heritage right.

6.2.11 User Interface

The user interface (UI) utilized by the administrative bodies is often the most important connection between the administrative body maintaining RORs and the general public. If the UI is difficult to navigate or understand then the quality of detail maintained in the register is secondary in nature.

A summary of the UI issues face by different administrative bodies' websites is listed below:

- Overall the SAILIS website and UI is of a high quality. The website and searching facilities appear to be quite simple to understand for the general public and those with additional knowledge of land details will find the details provided to be both relevant and easily locatable.
- In general terms the local council development plans are cumbersome and can be quite confusing for the general public. From the case studies example the City of Marion Development Plan is 355 pages in total. In many cases only a small portion of these pages would be deemed relevant to a landowner in that region – namely the specific council zone that their property falls into.
- From the case studies completed the most difficult section to understand and complete was relating to items of heritage significance. As there are multiple different heritage databases to clarify the heritage rights associated with a property requires searching through multiple databases and UIs.

Even though these impediments can be viewed as trivial it is important for the administrative bodies to maintain a high quality UI to be able to effectively inform the public of the ever changing RORs associated with land.

6.2.12 Continuous Evolutions of LASs and RORs

As new legislation is created and other acts repealed both Land Administration Systems and RORs are continuously changing and evolving. Over time the development plans quoted throughout these case studies will evolve and change. Furthermore the legislation governing many of the RORs researched and documented will also evolve and change.

All searching completed through SAILIS and the Land Services Group is defined as only correct at the specific time of searching. This includes certificates of title, plan references, ownership information, and all supplementary details.

6.2.13 Application of Typology

The adapted typology compiled throughout this project has been shown to be relatively inexpensive, efficient, and user friendly in its application. This is mainly due to the significant research compiled to analyse the methods and administrative bodies who manage the associated RORs.

The administrative bodies responsible for the communication and maintenance of RORs have in general maintained a high quality of accessibility for the general public. The main issue identified was not the quality of information stored by the administrative bodies, but rather the accessibility and ease of use for the general public to locate the relevant data.

The typology designed and adapted throughout this project is an attempt to assist the general public in navigating these inefficiencies in a suitable and practical manner. Secondly to the above mentioned issue, the fact that there is no assurance that a complete listing of RORs can be compiled is in itself an inefficiency to the effective identification of RORs on a freehold parcel of land in South Australia.

6.3 Limitations of Results

The aim of this project was to identify RORs relating to a freehold parcel of land. As such, land and the associated administrative bodies that operate outside of the freehold land system were not tested or researched as part of this project. Furthermore, the case studies are able to test the effectiveness of the LAS for recognizing RORs that are relevant to the subject parcel of land.

Personal rights affecting freehold land have been largely excluded from this project. These rights often exist outside of general property law and are in theory infinite in possibility. For these reasons personal rights have been deemed beyond the scope of this project.

The findings from the completed case studies are limited by the subject land parcels. Given the vast range of RORs that have been researched and documented it is difficult to draw large conclusions from the limited case studies completed. While general results and impediments have been found and discussed it cannot be assumed that the entire scope of impediments has been discovered and discussed through the completion of this research project.

6.4 Further Research and Recommendations

It is not the intention of this project to make informed and detailed recommendations for the reform of current administrative process for the LAS in South Australia. However, it is relevant to note that once the typology was adapted and refined for use in the South Australian system the process of searching for and noting any RORs over the subject parcels of land was relatively simple to complete.

While there are inefficiencies throughout the current system it has been shown that there is no dire need of reform of the whole LAS. Further research and documentation would be required to make informed decisions about potential changes, such as the formation of a department which is wholly responsible for the maintenance and administration of all RORs, or the creation of a combined online register or database for public use.

Further analysis of RORs can be compiled through additional research of Commonwealth and State legislation. The working typology could then be adjusted to reflect the additional research and therefore create a more complete typology for RORs. These amendments would improve the quality and overall usefulness of the typology.

6.5 Conclusions: Chapter 6

From the completed case studies the inefficiencies to the searching of existing RORs on freehold parcels of land in South Australia were found to be:

- Extensive research and knowledge is required to understand the different components involved in completing a search.
- Registered interests on the CT are clearly described and sorted under appropriate headings.
- The ever changing nature of property details and land management systems makes it almost impossible to guarantee that the typology contains every possible ROR that may exist.
- A detailed typology is required to assist in completing a search.

- There are numerous administrative bodies responsible for the administration and maintenance of RORs in the current system. Each administrative body acts independently of each other which can lead to issues and the potential for conflicting data.
- RORs relating to water are intricate and harder to define in general. This is partially due to the sheer amount of legislation associated with different water bodies and areas in South Australia.
- There are numerous agencies which can create or maintain a heritage right or record.
- General issues were encountered throughout various interfaces of the government and professional bodies.
- Administrative bodies often limit the details made readily available for searching on the public registers.
- Administrative bodies often do not guarantee that their records are 100% accurate and up to date.
- LASs and RORs are continuously evolving.

The typology was found to be efficient and practical for use throughout the completed case studies. The current land administration system was found to have some inefficiencies and flaws; however, large scale reform does not appear to be required.

References

Ali, Z, Tulandhar, A, Zevenbergen, J, 2013, *Quality assessment of the land administration system in Pakistan*, University of Twente, Enchede, Netherlands.

Becker, L, 1977, *Property rights: Philosophic foundation*, Routledge and Kegan Paul, London.

Bennett, R, Tambuwala, N, Rajabifard, A, Wallace, J, Williamson I, 2012, *On recognizing land administration as critical, public good infrastructure*, The University of Melbourne, Victoria.

Chambers, R, 2001, *An Introduction to Property law in Australia*, LBC Information Services, Pyrmont, NSW.

Department of Environment, Water and Natural Resources (DEWNR), 2014, *Cultural Heritage*, Department of Environment, Water and Natural Resources (DEWNR), viewed 12 August 2015. <<http://www.environment.sa.gov.au>>

Department of Planning, Transport and Infrastructure, 2015, *Heritage listed properties*, Department of Planning, Transport and Infrastructure, viewed 12 August 2015. <<http://www.sa.gov.au>>

Department of State Development, 2015, *Department of State Development*, Department of State Development, viewed 14 August 2015. <<http://www.statedevelopment.sa.gov.au>>

Edgeworth, B, Rossiter, C, Stone, M, O'Connor, P, 2008, *Sackville and Neave's Property Law Cases and Materials*, Lexis Nexis, Australia

Enemark, S, Wallace, J, Williamson, I, 2005, 'Building Modern Land Administration Systems in Developed Economies', *Journal of Spatial Science*, 50:2, 51-68

Enemark, S, Hvingel, L, Galland, D, 2014, *Land Administration, Planning and Human Rights*, Department of Development and Planning, Aalborg University, Denmark.

Environmental Protection Agency, 2015, *About Us*, Environmental Protection Agency, viewed 12 August 2015. <<http://www.epa.sa.gov.au>>

Hallmann, 2007, *Legal Aspects of Boundary Surveying as Apply in New South Wales*, Release 6, Institute of Surveyors, Sydney

Katigbak J, 2015, 'Philippines inefficient land administration system causing fraudulent titles', *The Philippine Star*, 23 August, viewed 1 September 2015. <<http://www.philstar.com/headlines/2015/08/23/1491144/philippines-inefficient-land-administration-system-causing-fraudulent>>

Judicial Commission of New South Wales, 2004, *Possession*, NSW Government, viewed 14 September 2015. <<http://www.judcom.nsw.gov.au>>

Land Services Group, 2015, *Land services industry entry point*, Government of South Australia, viewed 17 August 2015. <www.sa.gov.au/topics/housing-property-and-land/land-services-industry>

Local Government Association of South Australia, 2009, *Planning Fact Sheet*, viewed 19 July 2015. <<http://www.lga.sa.gov.au>>

Lyons, K, Cottrell, E, Davies, K 2002, The case for refocussing and re-engineering land administration to better meet contemporary and future needs in property rights and markets, *Joint AURISA and Institution of Surveyors Conference*, November 2002, Adelaide, South Australia

Lyons, K, Cottrell, E, Davies, K 2002, *On the efficiency of property rights administration in Queensland*, Queensland Government Natural Resources and Mines.

McDougall, K, Paterson, M, 2003, *Land tenure management in a dynamic social, economic and environmental context*, Surveying and Land Information Discipline, University of Southern Queensland.

National Native Title Tribunal, 2015, *Tribunal's role*, National Native Title Tribunal, viewed 21 July 2015. <<http://www.nntt.gov.au>>

NSW Government – Rural Fire Service, 2015, *Building in a bushfire area – Legal obligations*, NSW Government, viewed 26 April 2015.
<<http://www.rfs.nsw.gov.au/plan-and-prepare/building-in-a-bush-fire-area/legal-obligations>>

NSW Government – Land & Property Information, 2014, *Restrictions on use of land*, NSW Government, viewed 28 April 2015.
<http://rgdirections.lpi.nsw.gov.au/land_dealings/dealings_involving/covenants/restrictions_on_use_land>

Primary Industries and Regions SA (PIRSA), 2015, *About Us*, Primary Industries and Regions SA (PIRSA), viewed 13 August 2015.
<<http://www.pir.sa.gov.au>>

Queensland Government, 2014, *Land and conservation obligations as a landowner*, Queensland Government, viewed 26 April 2015.
<<https://www.business.qld.gov.au/industry/agriculture/land-management/managing-environmental-impacts/conservation-obligations>>

Reeve, IJ 1999, *Tiptoeing round the Slumbering Dragon: Property Rights and Environmental Discourse in Rural Australia*, The Rural Development Centre, University of New England.

SA Government – Housing, property & land, 2014, *Lease agreements explained*, SA Government, viewed 16 July 2015.
<<http://www.sa.gov.au/topics/housing-property-and-land>>

SVY4304 *Land and cadastral law*, 2014, University of Southern Queensland, Toowoomba.

Tambuwalla, N, Rajabifard, A, Bennett, R, Williamson, I, Wallace J, 2012, 'Inter-governmental land information asymmetries in Australia', *Journal of Spatial Science*, 57:1, 83-100

Temple J, 2007, *Impediments to Identifying Freehold Land Rights in N.S.W*, University of Southern Queensland, Toowoomba.

Un-habitat and GLTN, 2012, *Handling land – Innovative tools for land governance and secure tenure*, Nairobi, Kenya, viewed 28 May 2015.

Wallace, J, Williamson, I, Bennett, R, 2006, *Managing rights, restrictions and responsibilities affecting land*, Combined 5th Trans-Tasman Survey Conference & 2nd Queensland Spatial Industry Conference, September 2006 Cairns.

Williamson, I, Grant, D, Rajabifard, A, 2005, *Land administration and spatial data infrastructures*, Proceedings of FIG Working Week 2005.

Williamson, I & Ting, L 2001, *Land administration and cadastral trends – a framework for re-engineering*, Melbourne University Press, Melbourne.

Williamson, I & Ting, L 1999, *Spatial data infrastructures and good governance: frameworks for land administration reform to support sustainable development*, Melbourne University Press, Melbourne.

Legislation

Aboriginal Heritage Act 1988 (SA)

Adelaide Dolphin Sanctuary Act 2005 (SA)

Agricultural and Veterinary Chemicals Act 1994 (SA)

Agricultural and Veterinary Products (Control of Use) Act 2002 (SA)

Aquaculture Act 2001 (SA)

Atomic Energy Act 1953 (Cwlth)

Biological Control Act 1986 (SA)

Brands Act 1933 (SA)

Broken Hill Proprietary Company's Indenture Act 1937 (SA)

Community Titles Act 1996 (SA)

Community Titles Regulations 2011 (SA)

Conveyancers Act 1994 (SA)

Conveyancers Regulations 2010 (SA)

Cooper Basin (Ratification) Act 1975 (SA)

Crown Lands Act 1929 (SA)

Crown Land Management Act 2009 (SA)

Development Act 1993 (SA)

Development Regulations 2008 (SA)

Electricity Act 1996 (SA)

Electricity Corporations Act 1994 (SA)

Encroachments Act 1944 (SA)

Environment Protection (Used Packaging Materials) Policy 2012 (SA)

Environment Protection Act 1993 (SA)

Environment, Resources and Development Court Act 1993 (SA)

Fisheries Management Act 2007 (SA)

Forestry Act 1950 (SA)

Forest Property Act 2000 (SA)

Freedom of Information Act 1991 (SA)

Freedom of Information (Fees and Charges) Regulations 2003 (SA)

Genetically Modified Crops Management Act 2004 (SA)

Golden Grove (Indenture Ratification) Act 1984 (SA)

Heritage Places Act 1993 (SA)

Highways Act 1926 (SA)

Hindmarsh Island Bridge Act 1999 (SA)

Historic Shipwrecks Act 1981 (SA)

Historic Shipwrecks Act 1976 (Cwlth)

Housing Improvement Act 1940 (SA)

Impounding Act 1920 (SA)

Land Acquisition Act 1969 (SA)

Land and Business (Sale and Conveyancing) Act 1994 (SA)

Land and Business (Sale and Conveyancing) Regulations 2010 (SA)

Landlord and Tenant Act 1936 (SA)

Law of Property Act 1936 (SA)

Limitations of Actions Act 1936 (SA)

Livestock Act 1997 (SA)

Local Government Act 1999 (SA)

Local Government (Forestry Reserves) Act 1944 (SA)

Marine Parks Act 2007 (SA)

Mining Act 1971 (SA)

Mining Regulations 2011 (SA)

National Parks and Wildlife Act 1972 (SA)

Native Title Act 1993 (Cwlth)

Native Title (South Australia) Act 1994 (SA)

Native Title (South Australia) Regulations 2001 (SA)

Natural Gas Authority Act 1967 (SA)

Natural Resources Management Act 2004 (SA)

*Natural Resources Management (Baroota Prescribed Water Resources Area)
Regulations 2008 (SA)*

*Natural Resources Management (Central Adelaide—Prescribed Wells Area)
Regulations 2007 (SA)*

*Natural Resources Management (Eastern and Western Mount Lofty Ranges—
Prescribed Water Resources) (Exemption of Certain Existing Users)
Regulations 2012 (SA)*

*Natural Resources Management (Eastern Mount Lofty Ranges—Longer-Term
Water Conservation Measures) Regulations 2014 (SA)*

Natural Resources Management (Eastern Mount Lofty Ranges—Prescribed Watercourses and Surface Water Prescribed Area) Regulations 2005 (SA)

Natural Resources Management (Eastern Mount Lofty Ranges—Prescribed Wells Area) Regulations 2005 (SA)

Natural Resources Management (Financial Provisions) Regulations 2005 (SA)

Natural Resources Management (General) Regulations 2005 (SA)

Natural Resources Management (Mallee Prescribed Wells Area) Regulations 2005 (SA)

Natural Resources Management (Marne Saunders Prescribed Water Resources Area—Reduction of Water Access Entitlements) Regulations 2009 (SA)

Natural Resources Management (Peake, Roby and Sherlock Prescribed Wells Area) Regulations 2005 (SA)

Natural Resources Management (Peake, Roby and Sherlock Prescribed Wells Area—Reduction of Water Access Entitlements) Regulations 2010 (SA)

Natural Resources Management (Transitional Provisions—Levies) Regulations 2005 (SA)

Natural Resources Management (Western Mount Lofty Ranges—Prescribed Watercourses) Regulations 2005 (SA)

Natural Resources Management (Western Mount Lofty Ranges—Prescribed Wells Area) Regulations 2005 (SA)

Natural Resources Management (Western Mount Lofty Ranges—Surface Water Prescribed Area Regulations 2005 (SA)

Opal Mining Act 1995 (SA)

Opal Mining Regulations 2012 (SA)

Pastoral Land Management and Conservation Act 1989 (SA)

Petroleum and Geothermal Energy Act 2000 (SA)

Petroleum (Submerged Lands) Act 1982 (SA)

Phylloxera and Grape Industry Act 1995 (SA)

Plant Health Act 2009 (SA)

Primary Industry Funding Schemes Act 1998 (SA)

Primary Produce (Food Safety Schemes) Act 2004 (SA)

Primary Producers Emergency Assistance Act 1967 (SA)

Radiation Protection and Control Act 1982 (SA)

Racial Discrimination Act 1975 (Cwlth)

Real Property Act 1886 (SA)

Real Property Regulations 2009 (SA)

Registration of Deeds Act 1935 (SA)

Residential Tenancies Act 1995 (SA)

Roads (Opening and Closing) Act 1991 (SA)

Roads (Opening and Closing) Regulations 2006 (SA)

Roxby Downs (Indenture Ratification) Act 1982 (SA)

Rural Industry Adjustment and Development Act 1985 (SA)

Settled Estates Act 1880 (SA)

South Australian Forestry Corporation Act 2000 (SA)

South Australian Housing Trust Act 1995 (SA)

South Australian Meat Corporation Act 1936 (SA)

South Australian Meat Corporation (Sale of Assets) Act 1996 (SA)

Stamp Duties Act 1923 (SA)

Stock Mortgages and Wool Liens Act 1924 (SA)

Strata Titles Act 1988 (SA)

Strata Titles Regulations 2003 (SA)

Supreme Court Act 1935 (SA)

Survey Act 1992 (SA)

Survey Regulations 2007 (SA)

Trustee Act 1936 (SA)

Veterinary Practice Act 2003 (SA)

Water Industry Act 2012 (SA)

Whyalla Steel Works Act 1958 (SA)

Wilderness Protection Act 1992 (SA)

Wine Grapes Industry Act 1991 (SA)

Legal Authorities

D.K.L.R. Holding Co. (No. 2) Pty. Ltd. v. Commissioner of Stamp Duties
(N.S.W.) (1982) 149 CLR 431

Mabo v. Queensland (No. 2) (1992) 175 CLR 1

Appendices

Appendix A

Project Specification

University of Southern Queensland
Faculty of Engineering and Surveying

ENG4111/4112 Research Project
Project Specification

For: Brad Mattsson
Topic: The Identification of all Rights, Obligations and Restrictions on Freehold Land in South Australia.
Supervisor: Glenn Campbell
Enrolment: ENG4111 – S1 2015
ENG4112 – S2 2015
Project Aim: To identify inefficiencies in the South Australian system for the searching of existing rights, obligations and restrictions (RORs) on freehold parcels of land.
Sponsorship: -
Program: Issue A

1. Research relevant literature and background information relating to existing forms of rights, obligations and restrictions in the Torrens title system.
2. Identify all relevant legislation (National, State and Local government) that can impact on RORs over freehold land in South Australia.
3. Identify how each ROR is managed and recorded and adapt Temple's typology to be suitable for use in South Australia.
4. Select suitable existing parcels of land in both urban and rural areas as case studies and collate all relevant documentation for RORs relating to the subject land.
5. Analyse the information from the case studies and reference any difficulties in collating the relevant data.
6. Identify the inefficiencies in the South Australian system for the searching of existing RORs on freehold parcels of land.
7. Make recommendations based on the research conducted and case studies for the future improvement of locating RORs in an efficient manner.
8. Prepare and submit project dissertation.

As time permits

9. Conduct additional case studies of suitable land parcels and analyse the information for urban and rural areas.
10. Conduct additional case studies of suitable land parcels and analyse the information for peri urban areas.

Agreed:

_____ (student)

_____ (supervisor)

Date: ___/___/_____

Date: ___/___/_____

Examiner/Co-examiner: _____

Appendix B

The following is a list of the relevant acts relating to Easements:

- *Community Titles Act 1996 (SA)*
- *Development Act 1993 (SA)*
- *Development Regulations 2008 (SA)*
- *Electricity Act 1996 (SA)*
- *Electricity Corporations Act 1994 (SA)*
- *Encroachments Act 1944 (SA)*
- *Forestry Act 1950 (SA)*
- *Local Government Act 1999 (SA)*
- *Natural Gas Authority Act 1967 (SA)*
- *Natural Resources Management Act 2004 (SA)*
- *Petroleum and Geothermal Energy Act 2000 (SA)*
- *Real Property Act 1886 (SA)*
- *Real Property Regulations 2009 (SA)*
- *Roads (Opening and Closing) Act 1991 (SA)*
- *Roads (Opening and Closing) Regulations 2006 (SA)*
- *Strata Titles Act 1988 (SA)*
- *Water Industry Act 2012 (SA)*

Appendix C

The following is a list of the relevant acts relating to Covenants:

- *Broken Hill Proprietary Company's Indenture Act 1937 (SA)*
- *Cooper Basin (Ratification) Act 1975 (SA)*
- *Environment Protection (Used Packaging Materials) Policy 2012 (SA)*
- *Environment Protection Act 1993 (SA)*
- *Golden Grove (Indenture Ratification) Act 1984 (SA)*
- *Highways Act 1926 (SA)*
- *Hindmarsh Island Bridge Act 1999 (SA)*
- *Housing Improvement Act 1940 (SA)*
- *Land and Business (Sale and Conveyancing) Act 1994*
- *Landlord and Tenant Act 1936 (SA)*
- *Law of Property Act 1936 (SA)*
- *Real Property Act 1886 (SA)*
- *Registration of Deeds Act 1935 (SA)*
- *Roxby Downs (Indenture Ratification) Act 1982 (SA)*
- *Settled Estates Act 1880 (SA)*
- *South Australian Housing Trust Act 1995 (SA)*
- *Stamp Duties Act 1923 (SA)*
- *Stock Mortgages and Wool Liens Act 1924 (SA)*
- *Supreme Court Act 1935 (SA)*
- *Trustee Act 1936 (SA)*
- *Whyalla Steel Works Act 1958 (SA)*

Appendix D

The following is a list of the relevant acts relating to specific water bodies:

- *Natural Resources Management (Baroota Prescribed Water Resources Area) Regulations 2008 (SA)*
- *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Regulations 2007 (SA)*
- *Natural Resources Management (Eastern and Western Mount Lofty Ranges—Prescribed Water Resources) (Exemption of Certain Existing Users) Regulations 2012 (SA)*
- *Natural Resources Management (Eastern Mount Lofty Ranges—Longer-Term Water Conservation Measures) Regulations 2014 (SA)*
- *Natural Resources Management (Eastern Mount Lofty Ranges—Prescribed Watercourses and Surface Water Prescribed Area) Regulations 2005 (SA)*
- *Natural Resources Management (Eastern Mount Lofty Ranges—Prescribed Wells Area) Regulations 2005 (SA)*
- *Natural Resources Management (Financial Provisions) Regulations 2005 (SA)*
- *Natural Resources Management (General) Regulations 2005 (SA)*
- *Natural Resources Management (Mallee Prescribed Wells Area) Regulations 2005 (SA)*
- *Natural Resources Management (Marne Saunders Prescribed Water Resources Area—Reduction of Water Access Entitlements) Regulations 2009 (SA)*
- *Natural Resources Management (Peake, Roby and Sherlock Prescribed Wells Area) Regulations 2005 (SA)*

- *Natural Resources Management (Peake, Roby and Sherlock Prescribed Wells Area—Reduction of Water Access Entitlements) Regulations 2010 (SA)*
- *Natural Resources Management (Transitional Provisions—Levies) Regulations 2005 (SA)*
- *Natural Resources Management (Western Mount Lofty Ranges—Prescribed Watercourses) Regulations 2005 (SA)*
- *Natural Resources Management (Western Mount Lofty Ranges—Prescribed Wells Area) Regulations 2005 (SA)*
- *Natural Resources Management (Western Mount Lofty Ranges—Surface Water Prescribed Area) Regulations 2005 (SA)*

Appendix E

The following is the pricing structure from SAILIS for available information as of 1 July 2015.

Lodgements

Priority Notice Lodge	\$20.00
Priority Notice Extend.....	\$10.00
Priority Notice Withdraw	No Charge

Land Search

Register Search.....	\$27.25
Register Search Plus.....	\$32.50
Check Search.....	No Charge
Historical Search	No Charge
Child Parent Title Search.....	No Charge
Title Details	\$9.60
Title and Valuation Details	\$13.90
Title for Owner Name	\$7.20
Valuation Details	\$9.60
Plan Details	No Charge
Priority Notice Details	No Charge
Building Details.....	\$1.75

Image Search

Plan Image.....	\$10.00
Dealing Image	\$10.00
Title Image (Cancelled)	No Charge
Historical Name Index Search	No Charge

Dealing Search

Benefitting Name	No Charge
Dealing Details.....	No Charge
Item Delivery.....	No Charge
Location Search.....	No Charge
Series Details.....	No Charge

General Search

Property Interest Report (PIR).....	\$279.00
Property Interest Report (PIR) (Related Titles)	\$42.00
Property Interest Report (PIR) (Refresh)	\$140.00
Property Interest Report (PIR) (Refresh Related Titles).....	\$10.70
Form 1 Template	\$279.00
Form 1 Template (Related Title)	\$42.00
Form 1 Template (Refresh).....	\$140.00
Form 1 Template (Refresh Related Title)	\$10.70
SA Water Certificate of Charges	\$17.50
SA Water Special Meter Reading.....	\$16.40
Survey Mark Details.....	No Charge
Survey Plan Details.....	No Charge
Miscellaneous.....	\$10.00
Agent Code Search.....	No Charge

Appendix F

The following is a list of legislation that PIRSA has administrative responsibility for as of January 6 2015:

- Agriculture, food and fisheries
 - Agricultural and Veterinary Chemicals (South Australia) Act 1994.
 - Agricultural and Veterinary Products (Control of Use) Act 2002.
 - Aquaculture Act 2001.
 - Biological Control Act 1986.
 - Brands Act 1933.
 - Fisheries Management Act 2007.
 - Genetically Modified Crops Management Act 2004.
 - Impounding Act 1920.
 - Livestock Act 1997.
 - Phylloxera and Grape Industry Act 1995.
 - Plant Health Act 2009.
 - Primary Industry Funding Schemes Act 1998.
 - Primary Produce (Food Safety Schemes) Act 2004.
 - Primary Producers Emergency Assistance Act 1967.
 - Rural Industry Adjustment and Development Act 1985.
 - South Australian Meat Corporation Act 1936.
 - South Australian Meat Corporation (Sale of Assets) Act 1996.
 - Veterinary Practice Act 2003.
 - Wine Grapes Industry Act 1991.
- Forests
 - Forest Property Act 2000.
 - Local Government (Forestry Reserves) Act 1944.
 - Forestry Act 1950.
 - South Australian Forestry Corporation Act 2000.

Appendix G

The following is a copy of CT 5596/310 with private details covered.



The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.



Registrar-General

Certificate of Title - Volume 5596 Folio 310

Parent Title(s) CT 3299/76
Dealing(s) CONVERTED TITLE
Creating Title
Title Issued 16/11/1998
Edition 2
Edition Issued 21/01/2000



Estate Type

FEE SIMPLE

Registered Proprietor



OF 10 BRAESIDE AVENUE SEACOMBE HEIGHTS SA 5047
AS JOINT TENANTS

Description of Land

ALLOTMENT 26 DEPOSITED PLAN 7618
IN THE AREA NAMED SEACOMBE HEIGHTS
HUNDRED OF NOARLUNGA

Easements

NIL

Schedule of Dealings

Dealing Number	Description
	MORTGAGE TO

Notations

Dealings Affecting Title

NIL

Priority Notices



NIL

Notations on Plan

NIL

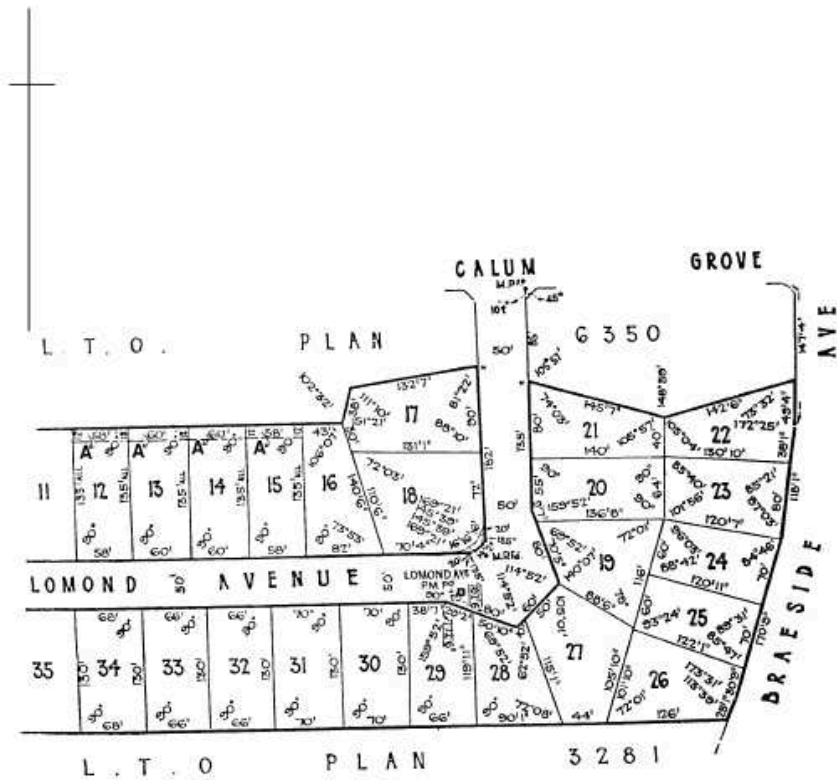
Registrar-General's Notes

NIL

Administrative Interests

NIL

* Denotes the dealing has been re-lodged.



DISTANCES ARE IN FEET AND INCHES
FOR METRIC CONVERSION
1 FOOT = 0.3048 metres
1 INCH = 0.0254 metres

Appendix H

The following is a copy of the Hills Policy Area 11 information from the City of Marion development guidelines.

Objectives:

- 1) A policy area primarily comprising of detached dwellings at low densities.
- 2) Residential development sensitive to the particular topography of the area and which has minimal visual and environmental impacts.
- 3) Development that contributes to the desired character of the policy area.

Desired Character:

The policy area encompasses parts of the hills escarpment that forms an east-west band through the centre of the council area, including elevated land visible from the Adelaide Plains in the suburbs of Seacliff Park, Seaview Downs, Seacombe Heights and Darlington. The policy area also contains undulating to steep land along the coast from Marino to Hallett Cove. Many dwelling sites have good views of the Adelaide Plains or the coast.

The desired character is of a high quality residential environment containing appropriately designed houses set in attractively landscaped, relatively large gardens. This desired character is also derived from the existing prevailing character where it is based on low-density detached dwellings of a variety of architectural styles on relatively large, sloping allotments.

The importance of the landscape character, the protection of existing trees and vegetation and the revegetation of land are all emphasised, particularly in those parts of the policy area that function as a backdrop to the Adelaide Plains or contribute to scenic coastal landscapes.

Other important features are the varied natural topography, natural watercourses and steep gullies, and interfaces with adjoining areas of open space including Hills Face and coastal land. This landscape character warrants protection from inappropriate development and earthworks.

Buildings and associated earthworks will be designed to minimise alteration of the natural or existing landform. Designs include split-level to reduce visual bulk and reduce the need to cut and fill sloping sites.

Buildings, particularly on a site in a highly visible and prominent location or adjoining an area of open space or other natural character, will be finished with colours and materials complementing the surrounding environment. Highly reflective and very bright materials and colours that detract from the prevailing residential or natural character are inappropriate.

It is important when designing new building and extensions (and associated finished levels and decks) on sloping sites to pay considerable attention to, and reduce the potential impact on, the privacy and amenity of existing development.

Buildings and subdivision of land will reflect the existing pattern and scale of nearby development, except that in some areas where land has been subdivided into smaller allotment sizes, any new development will be at a lower density and scale. In addition, larger allotments may be appropriate due to the natural gradient of land.

Principles of Development Control

Land Use

- 1) The following forms of development are envisaged in the policy area:
 - a. Detached dwelling
 - b. Group dwelling.
2. Form and Character
- 2) Development should not be undertaken unless it is consistent with the

desired character for the policy area.

- 3) Development should be designed and sited to relate to the slope of the land, so that:
 - a) The bulk and scale of the buildings do not dominate the landscape.
 - b) The amount of cutting and filling of the natural ground profile is minimised.
- 4) Wherever possible, existing vegetation should be used to screen the building and excavation or filling from view.
- 5) Development that would be prominently visible from the Adelaide plains should:
 - a) Achieve a profile that blends with the topography of the land.
 - b) Avoid the use of bright and highly reflective external materials and finishes
 - c) Incorporate existing vegetation wherever possible and additional landscaping to assist in reducing the apparent bulk and scale of the building and any site works.
- 6) Development of more than one storey in height should take account of the height and bulk of the proposed building relative to adjoining dwellings by:
 - a) Incorporating stepping in the design in accordance with the slope of the land
 - b) Where appropriate, setting back the upper storey of a dwelling a greater distance from front and side boundaries than the lower storey.
- 7) A dwelling should have minimum site area and a frontage to public road or allotment depth not less than that shown in the following table:
 3. Detached – 700m² minimum area. 18m minimum frontage. 20m minimum depth.
 4. Group – 700m² minimum area. 24m minimum frontage. 45m minimum depth.

Appendix I

The following is a copy of CT 5638/768 with private details covered.

The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.



Registrar-General

Certificate of Title - Volume 5638 Folio 768

Parent Title(s) CT 2677/62
Dealing(s) CONVERTED TITLE
Creating Title
Title Issued 25/03/1999
Edition 1
Edition Issued 25/03/1999



Estate Type

FEE SIMPLE

Registered Proprietor

[REDACTED]
OF 17 MOUNTAIN AVENUE NORMANVILLE SA 5204
AS JOINT TENANTS

Description of Land

ALLOTMENT 201 DEPOSITED PLAN 6397
IN THE AREA NAMED CARRICKALINGA
HUNDRED OF MYPONGA

Easements

NIL

Schedule of Dealings

Dealing Number	Description
[REDACTED]	MORTGAGE TO [REDACTED]

Notations

Dealings Affecting Title

NIL

Priority Notices

NIL

Notations on Plan

NIL

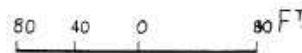
Registrar-General's Notes

CONVERTED TITLE WITH NEXT DEALING LODGE CT 2677/62

Administrative Interests

NIL

* Denotes the dealing has been re-lodged.



DISTANCES ARE IN FEET AND INCHES
FOR METRIC CONVERSION
1 FOOT = 0.3048 METRES
1 INCH = 0.0254 METRES

Appendix J

The following is a copy of the residential policy information from the DC of Yankalilla development guidelines.

Objectives:

Residential Zone.

Introduction – The objectives and principles of development control that follow apply in the Residential Zone shown on Maps Ya/24-27, 29-32, 34 and 36. They are additional to those expressed for the entire Council area. To the extent of any inconsistency between the zone provisions and those provisions applying to the entire Council area, the zone provisions will prevail.

Objectives.

Land Use Intent – Objective 1: Primarily detached dwellings at low densities.

Objective 2: Small-scale tourist accommodation and aged persons' housing designed and sited to be compatible with the zone's primary purpose for detached dwellings at low densities.

Local Shopping and Other Local Facilities

Objective 3: Local shopping facilities and other local facilities catering for the day-to-day needs of local residents in suitable parts of the zone.

The Links Lady Bay Golf Course

Objective 4: The Links Lady Bay Golf Course Estate developed in accordance with The Links Lady Bay Golf Course Estate Concept Plan Figure R(LB)/1.

Pedestrians, Cyclists and Roads

Objective 5: Walking and cycling encouraged by providing safe, convenient and legible movement networks.

Objective 6: A road network which provides for safe and convenient movement, accommodates public utility services and drainage systems, and creates an attractive living environment.

Stormwater Drainage, Water Quality and Stormwater Harvesting

Objective 7: Drainage systems which collect and carry stormwater to: (a) protect people and the natural and built environments;
(b) contribute positively to environmental enhancement of catchment areas; and
(c) minimise disturbance to natural drainage systems.

Objective 8: Stormwater used to reduce demands on mains water supplies.

Objective 9: Provision for on-site detention, retention and re-use of stormwater where possible.

Streetscape Design

Objective 10: Attractive streetscapes and landscaping which reinforce the functions of a street, enhance the amenity of buildings and are sensitive to the built form, landscape and environmental conditions of the locality.

Building Appearance and Siting

Objective 11: Building appearance when viewed from public streets, other public places and adjoining residential sites which is attractive and visually compatible with surrounding development.

Objective 12: Site layouts that provide a pleasant, attractive, safe and resource-efficient and sustainable living environment.

Objective 13: Dwellings, carports and garages set-back from streets to provide adequate space for landscaping, open space, visual and acoustic privacy and vehicle parking, and to assist in establishing attractive streetscapes.

Objective 14: Buildings sited to:

- (a) protect neighbouring amenity;
- (b) maintain desired residential character; and (c) ensure adequate daylight to dwellings and sunlight to private open space.

Energy and Water Conservation

Objective 15: Energy and water conservation measures in and around housing to assist in establishing ecologically sustainable residential environments and reduce reliance on external energy and water sources.

Private Open Space

Objective 16: Private open space provided for each dwelling to meet the requirements for private outdoor activities.

Privacy

Objective 17: Dwellings sited and designed to achieve visual and acoustic privacy, in dwellings and private open space, for:

- (a) the occupants of the dwellings; and
- (b) nearby residents.

On-Site Car parking

Objective 18: Secure and accessible on-site car parking provided to meet the needs of residents and visitors.

Safety and Security

Objective 19: Personal and property security enhanced for residents and their visitors.

Structure Plans and Design Guidelines

1 Development should be in accordance with:

- (a) the Carrickalinga, Normanville and Yankalilla (Town) Structure Plan Map Ya/1 (Overlay 1) Enlargement A; and
- (b) the Residential Design Guidelines, Table Ya/2.

Allotment Size and Site Coverage

Principles 2, 3, 4, 5 and 6 which follow do not apply to that part of the Residential Zone which is

defined as The Links Lady Bay Golf Course Estate Policy Area on Map Ya/38.

2 Any allotment for a detached dwelling should be:

- (a) no smaller than 560 square metres, and have a frontage to a public road of not less than 17 metres, in those parts of the zone which are serviced by a sewer or a septic tank effluent drainage scheme; and
- (b) no smaller than 1000 square metres, and have a frontage to a public road of not less than 20 metres, in those parts of the zone which are not serviced by a sewer or a septic tank effluent drainage scheme.

3 Allotments for the accommodation of semi-detached dwellings, group dwellings and row dwellings should be confined to those areas identified on Maps Ya/37, 39 and 40 as Housing Diversity Policy Area 3.

4 Semi-detached dwellings and row dwellings should have a minimum site area

of 560 square metres per dwelling, and a frontage to a public road of not less than 8.0 metres per dwelling.

5 Group dwellings should have a minimum site area of 600 square metres per dwelling, and be contained on an allotment with a frontage to a public road of not less than 18 metres.

6 Dwellings in any configuration should:

- (a) not cover more than 50 percent of the development site with dwellings, carports, garages and other outbuildings; and
- (b) have a total floor area, exclusive of carports, garages and verandahs, of not less than 100 square metres per dwelling.

Tourist Accommodation Facilities

7 Except for The Links Lady Bay Golf Course Estate Policy Area defined on Map Ya/38, tourist accommodation facilities in the form of bed and breakfast style accommodation (hosted or non-hosted), and cottage style accommodation should be small in scale and designed to be in keeping with the low density residential character of the locality, and should not detract from the character and amenity of the locality by reason of:

- (a) excessive noise;
- (b) the type or number of vehicles;
- (c) the size, number, location and appearance of advertisements; or
- (d) the design, siting or landscaping of the development.

Non-residential Development

8 Non-residential development of a local community nature such as small shops or groups of shops less than 200 square metres in floor area, health and welfare services, child care facilities, schools, recreation and open space, should only be located in accordance with the relevant Structure Plan.

9 Non-residential development should be of a nature and scale that serves a local area function and does not detrimentally affect the character and amenity of the locality by way of emissions, traffic generation or other negative effects.

10 The scale, bulk, design and siting of non-residential development should be sensitive to the desired low density residential character of the surrounding

locality.

The Links Lady Bay Golf Course Estate

11 Development within The Links Lady Bay Golf Course Estate Policy Area should be primarily for a golf course, residential uses and for recreational and tourist facilities associated with the golf course, all located in accordance with The Links Lady Bay Golf Course Estate Concept Plan, Figure R(LB)/1.

12 Allotments created and intended to be used for residential purposes should not have direct access to or from Willis Drive.

Pedestrian, Cyclist and Other Movement Systems

13 Road reserves should be wide enough to accommodate, where required: (a) footpaths;

(b) cycle ways; and (c) shade trees;

for the safety, comfort and convenience of pedestrians and cyclists.

14 Footpaths and cycle ways should be: (a) well lit; and

(b) located along public spaces fronted by houses or streets.

15 Footpaths, cycle ways and shared paths should be constructed to a safe and convenient width and gradient, to cater for pedestrians and cyclists, particularly elderly and very young people, people with prams and in wheelchairs and people with disabilities.

16 Safe transitions should be provided between paths and street pavements, particularly for sight- impaired pedestrians.

17 Pedestrian and cyclist paths should have a stable, smooth surface which can be easily maintained.

18 Street layout and design should facilitate the efficient provision of utility services and stormwater drainage, & an adequate amount of on-street car parking.

19 Traffic generated by a development should be within the acceptable environmental capacity of the roads and streets likely to be affected by the development.

20 Street design should facilitate safe use by pedestrians, particularly people with disabilities, the aged and children, by:

(a) providing a carriageway width which allows vehicles to proceed safely at the

operating speed intended for that level of street;

- (b) making allowances for restrictions caused by on-street parking;
- (c) providing a horizontal and vertical alignment which is not conducive to excessive speeds;
- (d) promoting the safety of pedestrians where it is intended that they use the carriageway at bus stops and other crossing points; and
- (e) promoting the safety of cyclists in streets and at crossing points.

Stormwater Drainage, Water Quality and Stormwater Harvesting

21 Stormwater drainage systems should be designed to:

- (a) optimise the interception, retention and removal of water-borne pollutants prior to their discharge to receiving waters, whether surface or underground; and
- (b) ensure the continuation of, or assist in the establishment of, healthy and diverse wetland environments.

22 On-site stormwater should:

- (a) include, where practicable, scope for stormwater detention, retention and use, including the collection and storing of water from roofs;
- (b) provide on-site infiltration where practicable, having regard to: (i) the availability of unbuilt upon or unsealed areas;
- (ii) the ability of soils to absorb water;
- (iii) the ability of building footings on and adjacent to the site to withstand the likely effects of retained water; and
- (iv) the potential adverse effects on ground water levels;
- (c) allow convenient access to all components of the drainage system for maintenance purposes; and
- (d) not cause damage or nuisance flows on-site, or to adjoining properties.

23 Where site conditions do not permit either on-site stormwater retention or detention, site drainage should be directed into the street drainage network.

24 Residential development that is dependent on the use of holding tanks for the storage of household wastewater for subsequent removal off-site should not occur.

Streetscape Design

25 Landscaping of streets and other public spaces should be designed to:

- (a) define a theme for new streets, or complement existing attractive streetscapes, to create a 'sense of place';
- (b) reinforce the function of the street according to its position in the residential street hierarchy;
- (c) reinforce desired traffic speed and driver behaviour;
- (d) achieve adequate lines of sight for pedestrians, cyclists and vehicles; (e) enhance attractive site attributes;
- (f) incorporate existing vegetation, where practicable;
- (g) be of an appropriate scale relative to both the street reserve width and the building bulk; (h) promote safety and casual street surveillance;
- (i) improve privacy and minimise unwanted overlooking;
- (j) contribute to energy efficiency and amenity by providing substantial shade in summer, especially to west-facing windows, on-street car parking spaces and footpaths, and admitting winter sunlight to outdoor and indoor living areas;
- (k) minimise the visual impact of above-ground utilities and service areas;
- (l) minimise the risk of damage to buildings, overhead and underground power lines and other services; and
- (m) minimise maintenance and irrigation requirements.

Building Height

26 Building height onto the street frontage should maintain a compatible scale with adjacent development.

27 No building should exceed a maximum height, measured from the lowest point of the building at natural ground level to the highest point of the building, of:

- (a) 7.5 metres, where the site of the proposed development has a natural gradient equal to or flatter than one in six;
- (b) 9.0 metres, where the site of the proposed development has a natural gradient steeper than one in six; or
- (c) 9.5 metres in The Resort Clubhouse and Terraced Apartments area at The Links Lady Bay Golf Course Estate, as shown on Figure R(LB)/1.

Building Appearance, Design and Siting

28 Dwellings adjacent to streets should emphasise their residential function by

facing doors and other openings towards the primary street frontage.

29 Buildings should incorporate articulation along the street frontages to create interest and individuality, and to reduce visual bulk.

30 Dwellings should be designed and sited to acknowledge the surrounding private open space of surrounding development by:

(a) keeping the upper storey sections of the buildings away from neighbouring private open space, in order to avoid an unreasonable sense of visual enclosure;

and

(b) using articulation, colour and detailing to reduce visual bulk.

31 Garages or carports should be designed so that they do not dominate the street frontage by: (a) minimising their width; and

(b) ensuring roof form and pitch, building materials and detailing complement the associated dwelling.

32 The excavation and/or filling of land should:

(a) be kept to a minimum so as to preserve the natural land form and avoid existing vegetation, particularly native vegetation;

(b) only be undertaken to reduce the visual impact and vertical profile of buildings; and

(c) only be undertaken if the resultant scree slope can be adequately stabilised to prevent erosion, then covered with topsoil and landscaped

33 Dwellings should be sited to maximise the beneficial effects of cool breezes in summer, & minimise the effects of hot breezes in summer & cold winter winds.

Sheds, Garages and Residential Outbuildings

34 Sheds, garages and other residential outbuildings should:

(a) not exceed, either singly or in combination, a floor area of 72 square metres per allotment;

(b) not exceed a side wall height of 3.0 metres, nor exceed an overall height of 3.7 metres to the highest point of the building;

(c) have external walls consisting of new pre-colour coated metal, or masonry, timber, compressed fibre cement or metal which is painted in a muted or earthy colour within six months of the building's construction; and

(d) not be erected unless there exists or is under construction a dwelling on the same allotment, or a valid planning authorisation exists for the construction of a dwelling on the same allotment.

Building Set-backs

35 Set-backs of dwellings, carports and garages from the front of the allotment should: (a) contribute to the attractive existing or desired streetscape character; (b) provide adequate visual and acoustic privacy by separating habitable rooms from pedestrian and vehicle movement; and (c) provide for the efficient use of the site.

36 Within the above context, dwellings, carports and garages should be set-back from the road boundaries of an allotment as follows:

- (a) 8.0 metres, other than at the corner of two roads in which case the set-back distance should be 8.0 metres from the primary road and 2.5 metres from the secondary road; or
- (b) in relation to a dwelling which is located between two existing dwellings and with frontage to one road boundary only, a set-back distance equal to the average of the set-back distances of the dwellings on either side of the proposed dwelling.

37 Dwellings, carports and garages should be set-back from the side and rear boundaries of an allotment as follows:

- (a) 1000 millimetres for dwellings, but where the side or rear wall in question contains no windows and has no roof overhang, the wall of the dwelling may be built on the boundary; and
- (b) either on the boundary or not less than 600 millimetres for carports and garages.

38 The location of carports and garages should:

- (a) not diminish the attractiveness of the streetscape;
- (b) not dominate views of the dwelling from the street; and
- (c) provide for adequate and conveniently accessible on-site car parking.

39 Side boundary walls should be limited in length and height to:

- (a) minimise the visual impact of buildings from adjoining properties; (b) minimise the overshadowing of adjoining properties;

- (c) maintain adequate daylight to adjoining dwellings; and
- (d) reduce risk of damage to mature vegetation on adjoining properties, taking into account potential major damage to root systems.

Energy and Water Conservation

40 Dwellings should be sited and designed to provide adequate thermal comfort for occupants while minimising the need for mechanical heating and cooling, by:

- (a) providing internal day living areas with north facing windows;
- (b) incorporating external opening doors and windows fitted with draught control devices;
- (c) designing living areas to be capable of being closed off from other areas of the dwelling to allow sufficient heating and cooling;
- (d) providing opportunities to vary thermal conditions through movement of air between rooms;
- (e) using building materials appropriate to the climatic conditions;
- (f) incorporating appropriately located, sized and shaded windows and glass doors to reduce summer heat load and permit entry of winter sun; and
- (g) incorporating adequate building insulation.

41 Building design should incorporate techniques for conserving water, for example by fitting low flow water regulators to all kitchen and bathroom taps and shower roses, and the fitting of rainwater tanks.

42 External clothes drying areas with access to sunlight and breezes should be provided.

Overshadowing

43 Dwellings should be sited so as not to significantly overshadow neighbouring dwellings: to meet this requirement, the north-facing windows to living areas of neighbouring dwellings should not have the amount of sunlight received over portion of their surface reduced to less than 3 hours between 9:00 am and 5:00 pm on 21 June.

44 Dwellings should be sited and designed to maximise solar access to north-facing windows of living areas: to meet this requirement the north-facing windows to living areas should receive at least 3 hours of sunlight over portion of their

surface between 9.00 am and 5.00 pm on 21 June.

Private Open Space

45 Dwellings should have private open space areas which are at an appropriate location, dimension and gradient.

46 Dwellings should be provided with private outdoor living space which is equal to or greater than 20 percent of the dwelling site area, and where the private outdoor living space:

- (a) is directly accessible from the living area of that dwelling;
- (b) is located and screened to provide privacy from adjoining residents; (c) has a minimum dimension in any direction of 2.5 metres; and
- (d) is capable of containing at least one part of the outdoor space measuring not less than 4.0 metres by 4.0 metres.

Privacy

47 Direct overlooking from upper level habitable room windows and balconies, terraces and decks into the habitable rooms, windows and useable private open spaces of nearby dwellings should be minimised by building layout, location and design of windows and balconies, screening devices and landscaping, or separation by distance.

48 Direct views from upper level habitable room windows to the habitable room windows or useable private open space of an adjacent dwelling should be restricted by:

- (a) permanently fixed translucent glazing in any part of the window below 1.5 metres from floor level; or
- (b) window sill heights of 1.5 metres above floor level; or
- (c) permanently fixed external screens, including wing walls, solid or translucent panels and planter boxes; or
- (d) by permanently fixed external perforated panels or trellises which have a maximum of 25 percent openings.

On-Site Car parking

49 Each dwelling should be provided with not less than two on-site parking spaces, one of which is covered and the other of which may be directly behind that

covered space in the open air.

50 Open car parking areas and access ways should:

- (a) where practicable be designed, surfaced and graded to facilitate stormwater infiltration on-site; and
- (b) be landscaped to enhance amenity while providing for the security needs of residents and visitors.

Safety and Security

51 Dwellings should, wherever reasonably practical, be designed to overlook public and communal streets and public open space, in order to provide casual surveillance.

52 Entries to dwellings should allow visitors to be seen from inside the dwelling without opening the door.

53 Landscaping and fencing should not present a security risk by hiding doors, windows and major paths.

Advertising

54 Advertising signs should only be located on non-residential premises, and should be: (a) for direction, identification and interpretation purposes only; (b) low key in terms of their size, design and colour. (c) restricted to one sign per allotment.

55 Third party signs, roof-mounted signs, illuminated signs, flashing signs and bunting should not be erected.

56 No advertisement should:

- (a) exceed an area of 1.5 square metres where the advertisement is to be fixed to the building; or
- (b) exceed an area of 1.5 square metres, per advertisement panel, and an overall height of 3.0 metres, where the advertisement is to be freestanding.

Complying Development

57 Those kinds of development listed in Table Ya/4, together with the following kinds of development, are complying in the Residential Zone:

New shed, garage or other freestanding outbuilding where:

- (a) not more than 72 square metres of the allotment is covered in such buildings;

- (b) the side wall height of the building does not exceed 3.0 metres, and the overall building height does not exceed 3.7 metres;
- (c) there already exists on the same allotment an occupied dwelling, or a dwelling under construction;
- (d) the building is set-back at least 8.0 metres from the road boundary of the allotment, and at least 1000 millimetres from the side and rear boundaries of the allotment;
- (e) the external walls of the building consist of either masonry (rendered or exposed), compressed fibre cement, pre-treated timber, pre colour-coated metal or metal which is painted in a muted or earth colour within 6 months of the building's construction; and
- (f) the building is only used for purposes accessory to a dwelling. Pergola, where the pergola:
 - (a) is to be erected on an allotment where a dwelling already exists or is under construction;
 - (b) does not have a roof;
 - (c) is open-sided; and
 - (d) is not more than 4.0 metres above natural ground level.

Water storage tank(s), where the capacity of the tank(s) does not exceed 45 000 litres.

Non-complying Development

58 The following kinds of development are non-complying in the Residential Zone: Amusement Machine Centre

Builders Yard Fuel Depot General Industry Horse Keeping Industry

Intensive Animal Keeping, Junk Yard

Land division (other than land division in The Links Lady Bay Policy Area on Maps Ya/37, 39 and

40, where the new allotment or allotments:

- (a) are smaller than 560 square metres in those parts of the zone serviced by a sewer or a septic tank effluent drainage scheme;
- (b) are smaller than 1000 square metres in those parts of the zone not serviced by a sewer or a septic tank effluent drainage scheme; and

(c) have a frontage to a public road of less than 10 metres.

Light Industry - Office

Motor Repair Station Petrol Filling Station Retail Showroom

Residential Flat Building, other than in The Links Lady Bay Golf Course Estate

Policy Area on Map Ya/38

Road Transport Terminal, Service Industry, Service Trade Premises

Shop or group of shops with a gross leasable floor area exceeding 200 square

metres. Special Industry, Stock Slaughter Works, Store, Timber Yard

Warehouse, Waste Disposal Depot, Waste Transfer Station, Public Notification

59 Those kinds of development listed in Table Ya/5, together with the following

kinds of development, are assigned as Category 1 Development in the Residential

Zone:

All kinds of development in The Links Lady Bay Golf Course Estate Policy Area

on Map Ya/38

Alterations and additions to existing residential development

Detached Dwelling

Land Division other than land division that would be non-complying in the zone

Pergola, Recreation Area

Shed, garage and other free standing outbuilding associated with a dwelling

Water storage tank

60 The following kinds of development are assigned as Category 2 Development in the Residential Zone:

Aged Persons Housing Child Care Centre Community Centre Consulting Rooms

Group Dwelling, Row Dwelling, Semi Detached Dwelling

Shop or group of shops with a gross leasable floor area of 200 square metres or less.

Tourist Accommodation Facility

Pursuant to Section 38(2a) of the Development Act, the assignment of a development to a Category 1 Development does not extend to developments that involve, or are for the purpose of, any activity specified in Schedule 22 of the Development Regulations (ie activities of major environmental significance)

Appendix K

The following is a copy of CT 5151/844 with private details covered.

The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.



Registrar-General

Certificate of Title - Volume 5151 Folio 844

Parent Title(s) CT 5128/289
Dealing(s) TG 7539140
Creating Title
Title Issued 28/10/1993
Edition 9
Edition Issued 07/07/2015



Estate Type

FEE SIMPLE

Registered Proprietor

OF 360 PEACHTOWN ROAD HAHNDORF SA 5245
4 / 10 SHARE

OF 360 PEACHTOWN ROAD HAHNDORF SA 5245
6 / 10 SHARE

Description of Land

ALLOTMENT 22 FILED PLAN 32951
IN THE AREA NAMED PAECHTOWN
HUNDRED OF KUITPO

Easements

SUBJECT TO EASEMENT(S) OVER THE LAND MARKED A TO THE ELECTRICITY TRUST OF SOUTH AUSTRALIA (TG 7539140)

TOGETHER WITH FREE AND UNRESTRICTED RIGHT(S) OF WAY OVER THE NEW ROAD PRIVATE ROAD AND RIGHT(S) OF WAY AS ORIGINALLY DELINEATED ON DP 293

Schedule of Dealings

Dealing Number	Description
	MORTGAGE TO

Notations

Dealings Affecting Title

NIL

Priority Notices

NIL

Notations on Plan

NIL

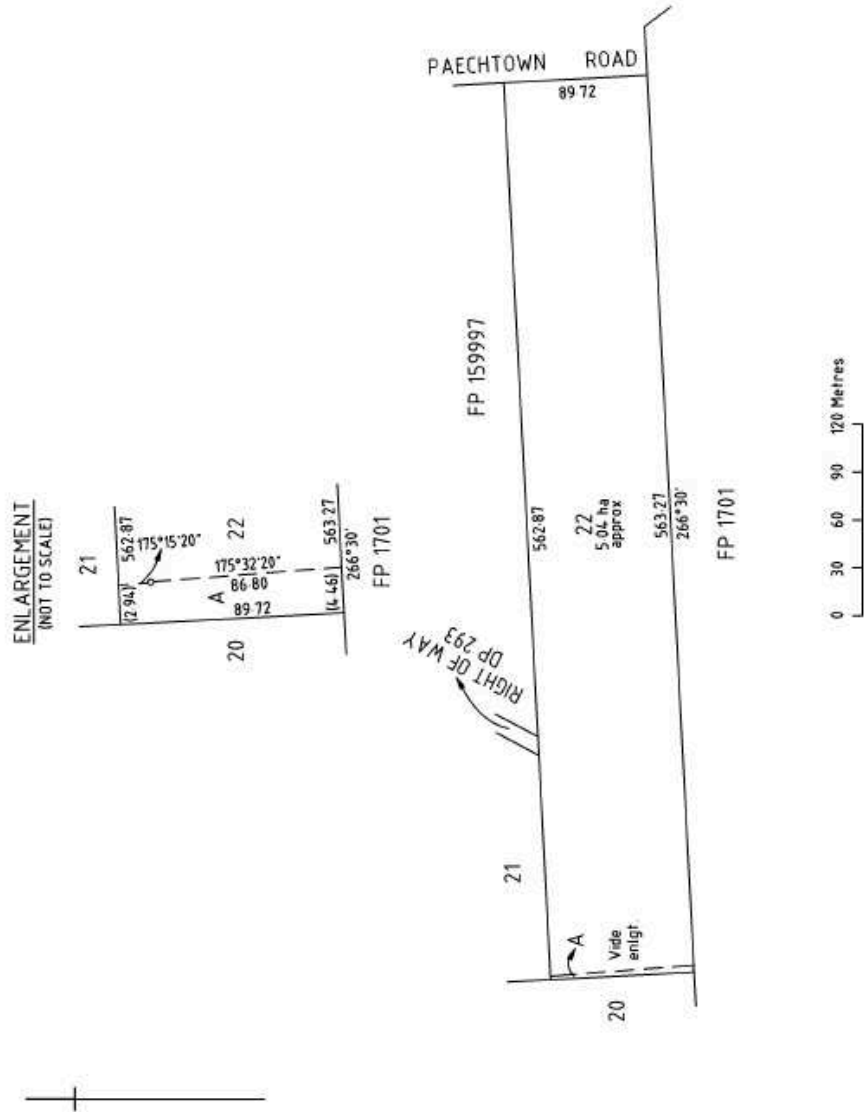
Registrar-General's Notes

NIL

Administrative Interests

NIL

* Denotes the dealing has been re-lodged.



Appendix L

The following is a copy of policy information from the Mount Barker DC development guidelines relating to the Watershed Protection (Mount Lofty Ranges) Zone.

OBJECTIVES

- 1 Provision of a safe drinking water supply to Adelaide by improving the quality and quantity of water harvested from the Mount Lofty Ranges Watershed.
- 2 Protection of unused catchments in the Mount Lofty Ranges Watershed from inappropriate development which may jeopardize their future use for water supply.
- 3 Development liable to contribute to the pollution or reduction of surface and/or underground water resources excluded from the zone.
- 4 Extensive areas of native vegetation to safeguard the catchment and recharge characteristics of the water resource.
- 5 A zone primarily for farming activities on large land holdings that do not pollute water resources.
- 6 The protection of catchments from development that could lead to land degradation.
- 7 The development of a sustainable tourism industry with accommodation, attractions and facilities which relate to and interpret the natural and cultural resources of the Mount Lofty Ranges, and increase the opportunities for visitors to stay overnight.
- 8 The development of small scale agricultural industries, wineries, mineral water extraction and processing plants and home based industries in rural areas.
- 9 Protection of the scenic qualities of rural landscape characterized by verdant undulating pasture lands, dotted with clumps of large majestic gum trees with the occasional cluster of farm buildings.
- 10 The enhancement of the amenity and landscape of the Mount Lofty Ranges for the enjoyment of all residents and visitors.
- 11 Development that contributes to the desired character of the zone.

DESIRED CHARACTER

The watershed area is of critical importance to South Australia as it provides on average 60 per cent of Adelaide's water supply. The zone contains catchment areas for existing as well as proposed reservoirs serving metropolitan Adelaide and the surrounding areas. Land within the zone is also used for a range of purposes including living, rural primary production, and conservation.

The quality of water entering existing reservoirs from the catchments is poor and often does not meet established guideline values. This poor water quality has been linked to the cumulative effects of a large number of small pollution sources. The maintenance and enhancement of water quality and prevention of pollution are of the highest priority in this zone. Strict control of development in the watershed is necessary to ensure a continued economic supply of safe drinking water.

This zone comprises much of the council area and is used mainly for farming, horticulture, dairy, intensive animal keeping, horse keeping and commercial forestry. The climate, soil and landform characteristics of this zone favour the continuance of primary production. It is desirable not only that these activities continue, but also that good land management techniques be encouraged to control proclaimed pest plants, vermin and soil erosion and maintain water quality.

In order to improve the economy of the district and the viability of primary production units, ancillary value adding and agro-based industry, such as processing or handling of primary produce, is warranted. However, a large-scale proliferation of intensive development and occupation of the zone would threaten its proper function and render the rural landscape susceptible to competing demands, urbanisation and undesirable change.

Development will be restricted to support the ongoing function of primary

production. Tourism development will be small in scale and appropriate to the rural amenity and environment, including preservation of water quality. Larger tourism developments and related retail activities are to remain primarily focused on townships and centres.

There is a considerable amount of significant native vegetation on private and public land. Buildings and structures on allotments which are wholly or partly covered in native vegetation will be designed and sited in a manner which requires the least area of vegetation to be cleared and the least fragmentation of homogenous areas of native vegetation. Development will revegetate denuded landscape with indigenous vegetation.

Pattern of Development

Large allotments are to be maintained and the amalgamation of allotments will increase, to reinforce the viability of primary production. No further fragmentation of rural properties is to be undertaken and existing small properties are to be encouraged, to consolidate into larger viable rural holdings. Land division will protect natural resources and promote viable primary production. This is designed to preserve productive rural land and to preserve water quality. Ancillary development to primary production, including dwellings and outbuildings will be in appropriate locations to minimise visual and operational impacts on primary production activities.

Development within existing minor settlements will be limited to prevent issues with the provision of services and the potential impacts on adjoining primary production. Dwellings and other structures will be set well back from all boundaries, except where they are located within existing minor settlements, where the existing pattern of development is to be followed.

Public Realm

The public road network throughout the primary production areas will serve

multiple functions such as freight networks, tourist routes, for the droving of stock, people movement routes, the transportation of farm machinery and as biodiversity corridors. The scenic qualities of the public routes and views across the zone will emphasis primary production and be unobstructed by inappropriate development, including excessive advertising signage.

The nature and appearance of road reserves will vary across the primary production area depending on the role the road plays. Freight routes will maintain wide, open reserves with limited driveway access points. Road reserves will generally be kept clear of obstructions for the movement of farm machinery. Special tourist drives, particularly to conservation parks, will include vegetation corridors of biodiversity significance. Areas of conservation and biodiversity significance are to be protected from inappropriate development.

Built Form

Structures will be associated with existing clusters of buildings and will be of complementary scale and massing to those buildings, while also being of appropriate dimensions to serve their intended function. Development, including large sheds, will also be located and designed to blend with the existing landscape with appropriate earthworks and building design to suit the natural landform. Other structures will be of a form that blends with, and does not detract from the scenic qualities and primary production function.

Building Materials / Character

Development will maintain the rural landscape with buildings appropriately sited, designed and screened by vegetation. Buildings are to be constructed using materials and low-light reflective natural colours that blend with the rural landscape.

PRINCIPLES OF DEVELOPMENT CONTROL

1 Development should not adversely affect the quality or quantity of water

resources.

Land Use

2 The following forms of development are envisaged in the zone: ▪ commercial forestry ▪ farming ▪ grazing ▪ horticulture ▪ small scale winery ▪ cellar door sales ▪ small scale restaurant associated with a winery or cellar door sales.

3 Development listed as non-complying is generally inappropriate.

4 Horticulture development should only occur where: (a) surface and/or subsurface water of sufficient quantity and quality is available to sustain the development (b) the soil structure and nature of the land are capable of supporting the proposed development (c) it does not cause an increase in the nutrients, turbidity, pesticides or salinity levels of either surface or groundwater supplies (d) it is located a minimum distance of 50 metres from the edge of stands of significant native vegetation or native grasses (e) it is located no closer than 50 metres from a lake, watercourse or wetland.

5 Irrigated horticulture should be designed to ensure that land that is prone to water-logging or subject to floodwater inundation is not irrigated.

6 Irrigated horticulture should only occur where one or more of the following applies: (a) there is no risk of the watertable either falling or rising significantly as a result of irrigation associated with the development (b) the depth to the watertable is greater than 2 metres from the ground surface.

7 Industry, home based industry, store and warehouse development should only occur where: (a) they are ancillary to the development envisaged within the zone (b) they are unlikely to limit or inhibit the use of adjoining land for primary production (c) the particular use requires a site in proximity to a particular natural resource or other product or materials sourced from the rural locality (d) they will not result in the alienation of land or water resources identified as significant for primary production or ecological reasons (e) the use would be inappropriate within a township (f) the capacity of the infrastructure, including roads, is capable of supporting the use without detriment to existing users.

8 Development should not adversely affect the quality or quantity of water resources and minimise the need to modify landscapes and natural features.

9 Activities should not be established that produce strong organic, chemical or other intractable wastes (other than wineries, where the risk to water supply is negligible with appropriate management, design and siting).

10 Activities which produce large amounts of wastewater should not be established unless they can be connected to an approved Community Wastewater Management Scheme (other than wineries, where the risk to water supply is negligible with appropriate management, design and siting).

11 Major tourism developments should be located within existing townships, settlements, urban areas or designated zones.

12 The change in use of buildings, structures or sites of heritage significance should only occur where the proposed use will support the continuing conservation, maintenance and/or restoration of such buildings, structures, or sites.

13 Agricultural industries (except wineries) and mineral water extraction and processing plants (except where bottling and packaging of mineral water in non-refillable containers for sale and distribution is to be undertaken) should not be located within an area with 900 millimetres or greater rainfall per year.

14 A dwelling should only be erected if such development: (a) is ancillary to development envisaged the zone (b) will not inhibit the continuation of farming, other primary production or other development that is in keeping with the provisions of the zone or policy area (c) it is located more than 500 metres from any existing intensive animal keeping operation unless used in association with that intensive animal keeping activity (d) results in no more than one dwelling per allotment.

15 Development listed as non-complying is generally inappropriate. Form and Character

16 Development should not be undertaken unless it is consistent with the desired character for the zone.

17 Development should include revegetation with locally indigenous species to increase the native vegetation cover within the zone.

18 Additions to buildings should be located to minimise the obtrusiveness of the completed building.

19 Outbuildings should be limited and grouped together in unobtrusive locations.

20 Development adjoining buildings, structures or sites of heritage significance should be visually compatible with that building, structure or site.

21 Detached dwellings should not be located: (a) within 50 metres of a home based industry (b) within 300 metres of an agricultural industry or mineral water extraction and processing plant not on the same allotment (c) within 500 metres of intensive animal keeping not on the same property. (d) where it will result in more than one dwelling per allotment, unless the additional dwelling is required to accommodate one of the following: (i) an aged or infirm relative (ii) a person employed in managing the farm property on which the additional dwelling is to be sited and in both instances of (i) and (ii), the dwelling is of a transportable nature to facilitate its removal on cessation of the intended use.

22 Accommodation in the form of a living unit for an aged or infirmed relative, or a person employed to manage an associated farm property should: (a) only be sited on an allotment which contains an existing detached dwelling (b) only occur where it achieves all of the following: (i) the accommodation is located on the same allotment as the existing detached dwelling (ii) the building is connected to the same services as that of the existing detached dwelling (iii) the accommodation has a small floor area relative to the existing detached dwelling (iv) the building is designed to, and is comprised of colours and materials that will complement the existing detached dwelling (v) the building is attached to or located within close proximity to the existing detached dwelling.

23 Intensive animal keeping should not be located within 2000 metres of a proclaimed township boundary or within 400 metres of a dwelling or tourist accommodation not on the same property as the intensive animal keeping.

24 Horticulture development should only occur where: (a) surface and/or subsurface water of sufficient quantity and quality is available to sustain the development (b) the soil structure and nature of the land are capable of supporting the proposed development (c) it does not cause an increase in the nutrients, turbidity, pesticides or salinity levels of either surface or groundwater supplies (d) it is located a minimum distance of 50 metres from the edge of stands of

significant native vegetation or native grasses (e) it is located no closer than 50 metres from a lake, watercourse or wetland.

25 Tourist accommodation should: (a) only occur where it is within existing buildings, or it is an integral part of a farm complex in the form of at least one of the following (i), (ii), (iii) or (iv): (i) farm stay (ii) guesthouse (iii) rural or nature retreat (iv) bed and breakfast accommodation.

(b) be designed and sited to be compatible with and minimise the potential for, disturbance and disruption upon agricultural seasonal activities and industry in order to ensure that the development envisaged within the zone remains the predominant land use (c) be staged in a co-ordinated manner to ensure consistency in appearance, building themes, materials, and links between buildings, vehicle parking and ancillary uses on the site (d) limit ancillary uses such as recreation, leisure, conference/meeting rooms and dining facilities to the requirements of guests staying at the facility and not generate additional visitors (e) not be located within 300 metres of an agricultural industry or mineral water extraction and processing plant not on the same allotment.

26 Wineries should only be located on an allotment with a vineyard or adjacent to an allotment with a vineyard.

27 Wineries processing grapes or grape product exceeding the equivalent of a 500 tonne crush per annum should: (a) not store winery waste water in holding tanks (b) locate winery waste water treatment equipment, effluent dams, buildings containing wine-making activities or buildings containing bottling activities no closer than 300 metres to: (i) tourist accommodation (except where it is sited on the same allotment as the winery) (ii) residential development (except where it is sited on the same allotment as the winery) (iii) a zone that includes any of the following wording in its title: (A) residential (B) deferred urban.

28 Winery development should be of a scale that does not result in: (a) detrimental impacts upon rural landscapes, infrastructure and services (b) the processing of grapes or grape product exceeding the equivalent of a 2500 tonne crush per annum on an allotment.

29 Winery development (including any accessory and subordinate uses) should be

located within the boundary of a single allotment and there should be no more than one winery on an allotment.

30 Winery development should house all structures involving wine-making, wine storage, packaging and bottling within enclosed buildings.

31 Wineries should be sited as follows: (a) a minimum of 300 metres from a: (i) watercourse, where a watercourse is identified as a blue line on a 1:50 000 current series Government standard topographic map or where there is observed a clearly defined bed and banks and where water flows at any time (ii) dam (but not including an effluent dam), bore or well other than where an associated spill retention basin(s) is constructed, in which circumstances the setback can be reduced to 50 metres.

(b) not within areas subject to inundation by a 1-in-100 year average return interval flood event or sited on land fill which would interfere with the flow of such flood waters (c) on land with a slope less than 20 per cent (1-in-5).

32 Wineries incorporating a spill retention basin(s), for the purposes of reducing the setback to a watercourse, dam, bore or well, should site and design the basins(s): (a) on the same allotment as the winery (b) in close proximity to the wine-making, wine storage and waste water treatment facilities (c) to minimise the risk of spills entering a downhill: (i) watercourse, where a watercourse is identified as a blue line on a current series 1:50 000 Government standard topographic map or where there is observed a clearly defined bed and banks and where water flows at any time (ii) dam (but not including an effluent dam), bore or well (d) to capture at least 120 per cent of the aggregate volume of juice, wine, brine and un-treated waste water of the associated winery, which can be contained or produced at any one time during the peak of vintage (e) to be impervious (f) to minimise the interception of any natural or artificial stormwater flow.

33 Wineries involving the on-site treatment and disposal of waste water should: (a) connect to a system capable of treating the winery waste water to a biological oxygen demand (BOD) of less than 100 milligrams per litre before it is stored in the open for more than 48 hours (b) dispose the treated winery waste water to a suitable irrigation field (c) mound the irrigation field in a manner that would direct

excess effluent runoff to a spill retention basin(s) and minimise the potential for treated waste water to enter: (i) an adjacent allotment (ii) public land (iii) a watercourse, where a watercourse is identified as a blue line on a 1:50 000 current series Government standard topographic map or where there is observed a clearly defined bed and banks and where water flows at any time (iv) a dam (but not including an effluent dam), bore or well.

34 Winery waste water holding tanks should: (a) have a total storage capacity of more than four days total flow during the peak of vintage (b) be contained within an impervious, bunded area having a total liquid holding capacity of more than 120 per cent of the total holding tank capacity.

35 Wineries should: (a) incorporate all-weather on-site parking (including for commercial vehicles) with safe and convenient access for staff and visitors. (b) utilise existing buildings except where a new building would minimise detrimental environmental impacts (c) process primary produce that is grown within the Mount Lofty Ranges Region and sell goods manufactured and produced by the industry (d) enhance the rural/agricultural character and/or heritage features and tourist activities of the Mount Lofty Ranges Region.

36 Wineries should not: (a) necessitate significant upgrading of public infrastructure including roads and other utilities, unless upgrading would be required through normal maintenance or was imminent due to growth in demand in the locality (b) generate traffic beyond the capacity of roads necessary to service the development (c) result in traffic volumes that would be likely to adversely alter the character and amenity of the locality (d) generate significant additional traffic noise or other nuisance which would detract from resident's or other land holder's enjoyment of the locality (e) generate noise of greater than 40 decibels during the hours of 10.00 pm to 7.00 am and 47 decibels between 7.00 am to 10.00 pm respectively as measured at the nearest neighbouring dwelling or boundary of a vacant allotment.

37 Restaurants should: (a) be established on the same allotment as, and be visually associated with a winery or shop where the tasting of wine and retail sale of wine are the predominant activities and where the sale of wine is limited to that which is

uniquely the licensee's own product (b) not result in more than 75 seats for customer dining purposes on the allotment (c) not result in a gross leasable area of greater than 25 square metres for the display and sale of any non-beverage or non-food items on the allotment.

38 Cellar door sales outlets should: (a) be established on the same allotment as a winery (b) primarily sell and offer the tasting of wine that is produced within the Mount Lofty Ranges Region (c) not result in a gross leasable area of greater than 25 square metres for the display and sale of any non-beverage or non-food items on the allotment (d) not result in a gross leasable area of greater than 250 square metres for wine tasting and retail sales (and this includes any retail sale of non-beverage or non-food items).

39 Shops where the tasting of wine and retail sale of wine are the predominant activities and where the sale of wine is limited to that which is uniquely the licensee's own product should: (a) be established on the same allotment as a vineyard, where the vineyard should be at least 0.5 hectares (b) primarily sell and offer the tasting of wine that is produced within the Mount Lofty Ranges Region (c) not result in a gross leasable area of greater than 25 square metres for the display and sale of any non-beverage or non-food items on the allotment (d) not result in a gross leasable area of greater than 250 square metres for wine tasting and retail sales (and this includes any retail sale of non-beverage or non-food items).

40 Restaurants, cellar door sales outlets and shops where the tasting of wine and retail sale of wine are the predominant activities and where the sale of wine is limited to that which is uniquely the licensee's own product should: (a) not be sited: (i) within areas subject to inundation by a 1-in-100 year average return interval flood event or sited on land fill which would interfere with the flow of such flood waters (ii) on land with a slope more than 20 per cent (1-in-5) (b) be setback a minimum of 25 metres from any bore, well or watercourse, where a watercourse is identified as a blue line on a current series 1:50 000 Government standard topographic map or where there is observed a clearly defined bed and banks where water flows at any time and includes all: (i) dams or reservoirs that

collect water flowing in a watercourse (ii) lakes through which water flows (iii) channels into which water has been diverted (iv) any known underground seepage condition (c) be setback a minimum of 50 metres from a road other than where occupying a local or state heritage listed building (d) not result in ribbon development along roads (e) maintain a clear delineation between urban and rural development.

Land Division

41 Land division should only occur if no additional allotments are created wholly or partly in the zone and where one or more of the following applies: (a) the proposal is for a minor readjustment of allotment boundaries to correct an anomaly in the placement of those boundaries with respect to the location of existing buildings or structures (b) the proposal is to alter the boundaries of an allotment in order to improve the management of the land for the purpose of primary production and/or the conservation of natural features.

42 Land should not be divided, nor allotment boundaries rearranged when the proposal is likely to result in an increased risk of pollution of surface or underground waters.