AGENDA

FOR COUNCIL ASSESSMENT PANEL MEETING TO BE HELD ON

24 NOVEMBER 2020 AT 6:30 PM

Due to the *Emergency Management (Stay at Home) (COVID-19) Direction 2020* the meeting will be held by AUDIO VISUAL MEDIA

Public access to the meeting is available by emailing before 5pm on the day development@salisbury.sa.gov.au

MEMBERS

Mr T Mosel (Presiding Member)
Mr R Bateup
Ms C Gill
Mr B Brug
Mr M Atkinson

REQUIRED STAFF

General Manager City Development, Mr T Sutcliffe
Manager Development Services, Mr C Zafiropoulos (Assessment Manager)

APOLOGIES

LEAVE OF ABSENCE

PRESENTATION OF MINUTES

Copy of the Endorsed Minutes of the Council Assessment Panel Meeting held on 27 October 2020.

DECLARATIONS OF CONFLICTS OF INTEREST

REPORTS

Nil

OTHER BUSINESS

CLOSE

Please note:

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MINUTES OF COUNCIL ASSESSMENT PANEL MEETING HELD IN THE COUNCIL CHAMBER, 34 CHURCH STREET, SALISBURY ON

27 OCTOBER 2020

MEMBERS PRESENT

Mr T Mosel (Presiding Member)
Mr R Bateup
Ms C Gill
Mr B Brug
Mr M Atkinson

STAFF

General Manager City Development, Mr T Sutcliffe
Manager Development Services, Mr C Zafiropoulos (Assessment Manager)
Team Leader Planning, Mr A Curtis
Development Officer Planning, Ms K Thrussell
Team Leader, Business Services, Ms H Crossley

The meeting commenced at 6.30pm

The Presiding Member welcomed the members, staff and the gallery to the meeting.

APOLOGIES

Nil

LEAVE OF ABSENCE

Nil

ENDORSED MINUTES FROM PREVIOUS MEETING

The Minutes of the Council Assessment Panel Meeting held on 22 September 2020, be taken as read and confirmed.

DECLARATIONS OF CONFLICTS OF INTEREST

Mr M Atkinson declared a conflict of interest to Item 5.1.2.

REPORTS

Development Applications

5.1.1 361/870/2020/2A

Two (2) Two Storey Dwellings, Masonry and Timber Front Fence (1.2m High) and Combined Boundary Retaining Wall and Fence (Greater Than 2.1m) at 1 Yirra Crescent, Ingle Farm SA 5098 for A Lysandrou

REPRESENTORS

Mr M Teare, spoke to his representation.

Mrs P Teare, spoke to her representation.

APPLICANT

Mr Sam Toulaiki, property owner spoke on behalf of his application.

Mr Atkinson moved, and the Council Assessment Panel resolve that:

A. The proposed development is not considered to be seriously at variance with the Salisbury Development Plan – Consolidated 4 April 2019.

B. Pursuant to Section 33 of the *Development Act 1993*, Development Plan Consent is **GRANTED** to application number 361/870/2020/2A for Two (2) Two Storey Dwellings, Masonry and Timber Front Fence (1.2m High) and Combined Boundary Retaining Wall and Fence (Greater Than 2.1m) in accordance with the plans and details submitted with the application and subject to the following conditions:

Development Plan Consent Conditions

1. The development shall be carried out in accordance with the details submitted with the application and the following stamped approved plans and documents, except where otherwise varied by the conditions herein:

Drawing No.	Plan Type	Date	Prepared By
9026-1C	Siteworks & Drainage Plan	01/10/2020	Jim Pantzikas
1	Site Plan		The Design Shop Design and Development
2	Ground Floor Plan		The Design Shop Design and Development
3	First Floor		The Design Shop Design and Development
4	Elevations		The Design Shop

			Design and Development
5	Elevations		The Design Shop Design and Development
6	Elevations		The Design Shop Design and Development
7	Street View		The Design Shop Design and Development
8	Fence Elevation		The Design Shop Design and Development
9	Landscape		The Design Shop Design and Development
10	Shadow at 21 June 9am		The Design Shop Design and Development
11	Shadow at 21 June 12pm		The Design Shop Design and Development
12	Shadow at 21 June 3pm		The Design Shop Design and Development
13	Existing Dwelling Shadow		The Design Shop Design and Development

Reason: To ensure the proposal is established in accordance with the submitted plans.

2. Except where otherwise approved, the external finishes shall:

   (a) Be finished in new non-reflective materials; and
   (b) Be finished in natural tones, in accordance with the approved plans; and
   (c) Be maintained in good condition at all times.

   Reason: To achieve a high standard of external appearance.

3. The designated landscaping areas shall be planted with shade trees, shrubs and ground covers in accordance with the Approved Landscape Plan, prepared by The Design Shop Design and Development. All landscaping shall be maintained (including the replacement of diseased or dying plants and the removal of weeds and pest plants) to the reasonable satisfaction of Council. All landscaping shall be completed prior to the occupation of the dwellings.

   Reason: To ensure the subject land is landscaped so as to enhance the visual and environmental amenity of the locality.

4. All driveways and manoeuvring areas and hardstand areas as shown on the Approved Siteworks and Drainage Plan, prepared by Jim Pantzikas, shall be constructed with brick paving, concrete or bitumen to a standard appropriate for the intended traffic volumes and vehicle types. Individual car parking bays shall be clearly line marked. Driveways and car parking areas shall be established prior to the commencement of use and shall be maintained at all times to the satisfaction of Council.

   Reason: To ensure access and car parking is provided on the site in a manner that maintains and enhances the amenity of the locality.

5. A new invert, crossover and driveway shall be constructed, prior to occupation of the new dwelling, in accordance with the Approved Site Plan, and Council's Vehicle Crossover (Single Width) Standard Detail, Drawing SD-12 and 13.

   Reason: To ensure the new dwelling is served by an accessible driveway and crossover.

6. All existing crossovers made redundant by this development shall be reinstated to kerb, prior to occupation of the dwelling/commencement of use, in accordance with Council's kerb design standard, to the satisfaction of Council

   Reason: To maximise on-street parking and appropriately manage stormwater within the street water table.

7. All side and rear windows fixed to the upper storey walls of the building shall have a sill height of at least 1.7m above finished floor level or where the sill height is less than 1.7m above finished floor level, the window shall be fixed, unable to be opened and provided with translucent glass or film up to a height of 1.7m above finished floor level. The above-mentioned window treatments shall be established prior to occupation of the dwelling and shall be maintained to the reasonable satisfaction of Council.

   Note: Other forms of privacy screening may be a suitable alternative to the above such as fixed external screens, so long as it can be demonstrated to Council that the alternative screening solution will prevent overlooking. Should you wish to use an alternative screening method, you must lodge a Development Application with Council to vary the above condition.

   Reason: To minimise the loss of privacy for residents of adjacent dwellings.

Advice Notes

With regards to all proposed boundary fencing and boundary retaining walls, the applicant is reminded to appropriately consult with adjoining property owners and follow due process pursuant to the Fences Act 1975.

Development of the verge is encouraged. All applications for verge development are to be reviewed and approved by the City of Salisbury, Parks and Open Space Assets team prior to works commencing on site.

- All works and the ongoing maintenance of the verge is the responsibility of the property owner;
- All vegetation in the verge area are to be maintained less than 500mm in height;
- All works are not to pose a hazard for verge users, such as pedestrians and Australia Post staff;
- Existing street trees are to be retained and incorporated into the development. Should there be no tree an allowance needs to be made for a street tree where able to be accommodated.

The Verge Development application form can be obtained from Council's website at: http://www.salisbury.sa.gov.au/Build/Footpaths_Roads_Verges_and_Public_Lighting/Footpaths_and_Verges/Verge_Development_by_Residents

Mr M Atkinson declared a conflict of interest due to his previous involvement in the assessment of the application prior to becoming a member of the Council Assessment Panel.

Mr M Atkinson left the meeting at 7.04 pm.

5.1.2 361/301/2020/NB

Two storey addition to existing medical centre and expansion of car park onto 14 Peacock Road (Non-complying) at 33 McIntyre Road, 14 Peacock Road, Para Hills West for Katanoo Pty Ltd

REPRESENTORS

Nil

APPLICANT

Mr Phil Brunning, Planning Consultant, Dr Brian Symon, owner and Mr Jacobus Pienaar, Katanoo, spoke on behalf of the application.

Mr R Bateup moved, and the Council Assessment Panel resolve that:

A. The proposed development is not considered to be seriously at variance with the Salisbury Development Plan – Consolidated 4th April 2019.

B. Pursuant to Section 33 of the *Development Act 1993*, Development Plan Consent is **GRANTED** to application number 361/301/2020/NB for Two storey addition to existing medical centre and expansion of car park onto 14 Peacock Road (Non-complying) in accordance with the plans and details submitted with the application and subject to the following Reserved Matters and conditions:

Reserved Matters:

The following matter/s shall be submitted for further assessment and approval by the Manager – Development Services, as delegate of the Development Assessment Panel, as Reserved Matters under Section 33(3) of the Development Act 1993:

1. Final Stormwater Management Plan and Civil & Siteworks Plan, prepared by a suitably qualified engineer that includes all of the following:

    (a) Finished floor levels for all buildings and hardstand surfaces;
    (b) Cut/fill details;
    (c) Retaining walls, kerbing or ramps, their design and grades;
    (d) Pavement design details and gradients;
    (e) Tree protection works in the vicinity of the Regulated Trees;
    (f) Car parking dimensions, aisle widths, circulation movements and associated parking markings and signage compliant with AS2890.1:2004;
    (g) Stormwater management arrangements, including accompanying design calculations, which consider the minor storm (Q10) and major storm (Q100) events. Discharge to the street water table is not to exceed the equivalent of the pre-development minor storm flows;
    (h) The following stormwater quality targets shall be met:

        i. Suspended solids – 80% retention of the typical urban annual load with no treatment;
        ii. Total phosphorus – 60% retention of the typical urban annual load with no treatment;
        iii. Total nitrogen – 60% retention of the typical urban annual load with no treatment;
        iv. Gross pollutants – 100% retention of the typical urban annual load with no treatment;
        v. No visible oil and grease up to the 3-month ARI peak flow.

    (i) Water sensitive urban design measures to maximise stormwater detention on-site
    (j) Surface water treatment to ensure water quality objectives are met.

2. Final Landscaping Plan, which shall include all of the following:

    a) Final locations for all landscaped areas, including designated areas for trees, shrubs and groundcovers;
    b) Where stormwater swales are proposed, species that are suited to growing in conditions where water is temporarily detained within the swales;
    c) Designated species to be used, using species derived from Council's Landscape Plan;
    d) Shade trees within the car parking areas;
    e) In the case of tree planting, shall comprise advanced growth species at time

of planting;

f) Maintenance methods including irrigation, barriers and protection from vehicles and pedestrians;

g) Tree protection measures in respect to the two Regulated Trees to be retained.

Development Plan Consent Conditions

1. The development shall be carried out in accordance with the details submitted with the application and the following stamped approved plans and documents, except where otherwise varied by the conditions herein:

Drawing No.	**Plan Type**	**Date**	**Prepared By**
1779 003	Letter to Council – Amended Application	23rd June 2020	Phil Brunning & Associates
1779 002	Statement in Support	23rd June 2020	Phil Brunning & Associates
-	Statement of Effect	8th September 2020	Phil Brunning & Associates
1779 006	Response to Representations	2nd October 2020	Phil Brunning & Associates
Dwg No. SK201-D	Site Plan & Site Plan Enlargement	31st August 2020	Katanoo
Dwg No. SK210-A	Ground Floor Plan	23rd June 2020	Katanoo
Dwg No. SK211-B	First Floor Plan	31st March 2020	Katanoo
Dwg No. SK 220-A	Roof Plan	3rd February 2020	Katanoo
Dwg No. SK 230-A	Section 4 and 5	3rd February 2020	Katanoo
Dwg No. SK 240-B	Elevation Plan	23rd June 2020	Katanoo
Dwg No. SK 290-B	Perspectives	23rd June 2020	Katanoo
-	Stormwater Management Plan	23rd June 2020	CPR
Dwg No. 180336-C01 Rev C	Overall Site Plan	27th August 2020	CPR
Dwg No. 180336-C02 Rev C	Stormwater Management Plan – Site Plan 1	27th August 2020	CPR
Dwg No. 180336-C02 Rev C	Stormwater Management Plan – Site Plan 1	27th August 2020	CPR
Dwg No. 180336-C04 Rev B	Stormwater Management Plan – South Car Park	27th August 2020	CPR

Issue 03	New Car Park Lighting Arrangement	2nd September 2020	Bestec
S6391C3	Noise Assessment	June 2020	Sonus
Ref 19268 BNW	Car Parking Assessment	8th September 2020	Cirqa

* *The approved documents referred above are subject to change permitted by minor variations pursuant to Regulation 47A of the Development Regulations 2008.*

* *Except where otherwise stated, the development shall be completed prior to occupation/commencement of use.*

* *All documents approved under Reserved Matters 1 and 2 constitute approved documents and form part of this Consent.*

Reason: To ensure the proposal is established in accordance with the submitted plans.

2. Except where otherwise approved, the external finishes of the building shall:

   (a) Be of new non-reflective materials; and
   (b) Be finished in materials and colours/tones as shown on the Approved Plans; and
   (c) Be maintained in good condition at all times.

   Reason: To ensure the building achieves a high standard of external appearance.

3. Any roof mounted plant or equipment shall be screened in a manner that forms an integral part of the building design.

   Reason: To ensure roof mounted plant and equipment is appropriately designed.

4. All of the recommendations contained in the acoustic report, prepared by Sonus Acoustic Consultants, dated June 2020, shall be implemented in full, prior to commencement of use (as hereby approved) and shall remain in place at all times thereafter.

   Reason: To ensure all acoustic treatments are implemented in accordance with the consultant's recommendations.

5. Except where otherwise approved, no materials, goods or containers shall be stored in the designated car parking area or driveways at any time.

   Reason: To ensure the car parking areas and manoeuvring areas are always available for the purpose they are designed. Further, that the site be maintained in a clean and tidy state.

6. All trade waste and other rubbish shall be contained and stored pending removal in covered containers which shall be screened from public view.

   Reason: To maintain the amenity of the locality.

7. All loading and unloading of vehicles and manoeuvring of vehicles in connection with the development shall be carried out entirely within the site.

   Reason: To ensure that vehicles associated with the land use do not cause disruption or danger to vehicles on adjoining public roads.

8. All landscaping identified on the Landscaping Plan, approved by Council under Reserved Matter 2, shall be completed, prior to commencement of use (as hereby approved) and shall be maintained at all times thereafter (including the replacement of diseased or dying plants and the removal of weeds and pest plants).

   Reason: To ensure the site is landscaped so as to enhance the visual and environmental amenity of the locality.

9. All tree protection works in the vicinity of the Regulated Trees, identified on the Approved Stormwater Management Plan, Sheets C02 (Revision C) and C04 (Revision B), prepared by CPR, shall be adopted and implemented at all times.

   Reason: To ensure the tree protection works are incorporated and implemented into the development.

10. All driveways, manoeuvring areas and hardstand areas shall be constructed in accordance with the Approved Stormwater Management Plan, Sheets C02 (Revision C) and C04 (Revision B), prepared by CPR. The surface shall be of a standard appropriate for the intended traffic volumes and vehicle types. Individual car parking bays shall be clearly line-marked. Driveways and car parking areas shall be established prior to commencement of use (as hereby approved) and shall be maintained at all times thereafter to the satisfaction of Council.

    Reason: To ensure access and car parking is provided on the site in a manner that maintains and enhances the amenity of the locality.

11. The stormwater system shall be designed and constructed to cater for minor storm flows (Industrial / Commercial ARI = 10 years). The design of the stormwater system shall ensure that no stormwater is discharged onto any adjoining land. Surface stormwater is to be managed in a manner that ensures no ponding of water against buildings and structures, no creation of any insanitary condition and no runoff into neighbouring property for the major storm event ARI = 10 years.

    Reason: To ensure flood protection of the buildings.

12. The common property associated with 14 Peacock Road, Para Hills West, shall not be used at any time in associated with the medical centre, except for emergency access or general maintenance.

    Reason: To ensure the common property associated with 14 Peacock Road is not used by customers and/or staff associated with the medical centre.

Advice Notes

1. Except where otherwise approved, no other advertisements or advertising displays shall be displayed on or about the site.

2. A final survey of the site boundaries is recommended to ensure the approved building works are accommodated within the designated footprint and achieves the designated boundary setbacks.

3. The applicant is reminded that demolition and construction is required to be carried out so that it complies with the mandatory construction noise provisions of Part 6, Division 1 of the *Environment Protection (Noise) Policy 2007* and the provisions of the *Local Nuisance and Litter Control Act 2016*. Under the *Local Nuisance and Litter Control Act 2016*, construction noise is declared to constitute a local nuisance as follows:

   The noise has travelled from the location of the construction activity to neighbouring premises –

   - *On any Sunday or public holiday; or*
   - *After 7pm or before 7am on any other day.*

4. Please note that any boundary fencing work is subject to consultation with the neighbor pursuant to the *Fences Act 1975*. For further information, please visit the Legal Services Commission of SA website: https://lsc.sa.gov.au/resources/FencesandtheLawBooklet.pdf

Mr M Atkinson returned the meeting at 7.16 pm.

OTHER BUSINESS

5.2.1 Status of Current Appeal Matters and Deferred Items

Nil

5.2.2 Policy Issues is Arising from Consideration of Development Applications

Nil

5.2.3 Future Meetings & Agenda Items

Next meeting scheduled for Tuesday 24 November 2020.

ADOPTION OF MINUTES

Mr B Brug moved , and the Council Assessment Panel resolved that the Minutes of the Council Assessment Panel Meeting be taken and read as confirmed.

The meeting closed at 7.30 pm

PRESIDING MEMBER: Mr T Mosel

DATE: 27 October 2020
(refer to email approving minutes registered in Dataworks Document Number 6265190)

ITEM	5.2.1
	COUNCIL ASSESSMENT PANEL
DATE	24 November 2020
HEADING	Policy for the Assessment Panel Review of Decisions of the Assessment Manager
AUTHOR	Chris Zafiropoulos, Manager Development Services, City Development
CITY PLAN LINKS	4.4 We plan effectively to address community needs and identify new opportunities
SUMMARY	This report seeks the Panel's decision on a policy for reviewing the decision of the Assessment Manager under the *Planning, Development and Infrastructure Act 2016*.

RECOMMENDATION

1. That the Council Assessment Panel resolves to adopt the template *Policy for Assessment Panel Review of Decision of Assessment Manager* in Attachment...
2. The Policy be presented to the next meeting of the Panel for confirmation.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Prescribed Form
2. LGA Simple Template - Review of Assessment Manager Decision
3. LGA Prescriptive Template - Review of Assessment Manager Decision
4. LGA Amendment Guide

1. BACKGROUND

1.1 The Planning Development and Infrastructure Act 2016 (the Act) introduces changes to the planning and development system. The changes include some statutory functions of Council Assessment Panels.

1.2 The Act provides that where the application is made to an Assessment Manager, a person who has applied for the development authorisation may apply to the Assessment Panel for a review of a prescribed matter.

1.3 Legal advice on this review process is that the review does not apply to applications that have been delegated from the Panel to the Assessment Manager, but those applications assigned by the regulations to the Assessment Manager.

1.4 A prescribed matter is defined in the Act as:

- *any assessment, request, decision, direction or act of a relevant authority under this Act that is relevant to any aspect of the determination of the application; or*
- *decision to refuse to grant the authorisation; or*

- *the imposition of conditions in relation to the authorisation; or*
- *subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of a relevant authority under this Act in relation to the authorisation.*

1.5 The Local Government Association has prepared template policies for assessment Panels to adopt for this function. The policies are presented in this report for the Panel's consideration and adoption.

2. REPORT

2.1 This new statutory function will become available to applicants on the designated day, being the day that the Planning and Design Code is *turned on* in the metropolitan area. The Minister for Planning has not confirmed this date, except that it will be sometime in 2021.

2.2 A person that has the benefit of this review may also still apply to the court for a full hearing of the matter. The person may also appeal against the review decision of the Panel.

2.3 The Act sets out some prescribed legislative requirements for the review process. Panels may establish their own policies and procedures for matters that are not prescribed.

2.4 The prescribed legislative requirements include:

2.4.1 The application must be made in a prescribed manner and form (refer to Attachment 1) and pay a fee of $511.

2.4.2 The application must be made within 1 month after the applicant receives the notice of the decision and the Panel may provide additional time for a review.

2.4.3 The Panel may adopt a procedure for a review of a decision.

2.4.4 The Panel is not bound by the rules of evidence, may inform itself as it thinks fit and draw any conclusions of fact it considers proper.

2.4.5 The Assessment Manager must provide the panel all relevant documentation for the application and relevant material requested by the Panel, including a report on the matter if requested by the Panel.

2.4.6 The Panel may, on a review affirm the decision, vary the decision or set aside the decision and substitute its own decision.

2.5 The LGA has produced two policy templates for the Panel's consideration. A simplified policy template and a prescriptive policy template. The templates do provide the Panel some discretion for how it sets its policy. Copies of the templates are provided in Attachments, together with guidance on amending the template.

2.6 The templates provide the following recommended key clauses:

2.6.1 That the Presiding Member be provided the task to determine if an extension of time should be granted, for practical expediency.

2.6.2 That the Assessment Manger provides the Panel all the material which was considered in the application, for procedural fairness.

2.6.3 That the Assessment Manger provides the Panel a report setting out all the relevant details and reasons for the decision.

2.6.4 That the Panel considers the prescribed matter afresh, rather than a narrower approach to consider whether errors were made during the decision.

2.7 The prescriptive template includes the following additional matters:

2.7.1 Repeats the *prescribed matters* meaning from the Act and how an applicant may be lodged.

2.7.2 Prescribes a detailed process for an applicant to submit additional information for the review.

2.8 The prescriptive process provides considerable scope for new information to be considered by the Panel, and associated administrative steps, particularly for the Presiding Member. Arguably, additional information that may materially influence the decision that was made by the Assessment Manager should be considered in a new development application.

2.9 In considering the appropriate process, it is noted that this new legislative process is intended as a *review* of prescribed matters and applicants have the opportunity to lodge a *full appeal* to the court.

2.10 On balance, the simplified process is considered an appropriate policy for this step in the legislative process. Furthermore, the Panel is able to review this policy after an initial period of operation.

2.11 It is proposed that Council's website will be updated to provide information on the review process, including links to the prescribed form and the Panel's adopted policy from the date it becomes operational.

3. CONCLUSION / PROPOSAL

3.1 That the Panel determine the policy for the review of the decision of the Assessment Manager.

CO-ORDINATION

Officer: GMCiD
Date: 12.11.2020

Application to Assessment Panel[1]

DECISION REVIEW REQUEST

Prescribed form pursuant to section 203(1) for review of a decision of an Assessment Manager under section 202(1)(b)(i)A) of the *Planning, Development and Infrastructure Act 2016* (Act)

Applicant details:	Name: Click here to enter text. Phone: Click here to enter text. Email: Click here to enter text. Postal address: Click here to enter text.
Development Application Number:	Click here to enter text.
Subject Land:	Click here to enter text. *[street number, street name, suburb, postcode]* *[lot number, plan number, certificate of title number, volume and folio]*
Date of decision of the Assessment Manager:	Click here to enter text.
Decision (prescribed matter[2]) for review by Assessment Panel:	Click here to enter text.
Reason for review:	Click here to enter text. *[Briefly state the facts, circumstances and other relevant matters upon which this application is based. Attach additional pages as necessary]*
Do you wish to be heard by the Assessment Panel?	☐ Yes ☐ No
Date:	Click here to enter text.
Signature:	☐ *If being lodged electronically please tick to indicate agreement to this declaration.*

[1] This application must be made through the relevant facility on the SA planning portal. To the extent that the SA planning portal does not have the necessary facilities to lodge this form, the application may be lodged—
(i) by email, using the main email address of the relevant assessment panel; or
(ii) by delivering the application to the principal office or address of the relevant assessment panel.

[2] **Prescribed matter**, in relation to an application for a development authorisation, means—
(a) any assessment, request, decision, direction or act of the Assessment Manager under the Act that is relevant to any aspect of the determination of the application; or
(b) a decision to refuse to grant the authorisation; or
(c) the imposition of conditions in relation to the authorisation; or
(d) subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of the assessment manager under the Act in relation to the authorisation.

This form constitutes the form of an application to an assessment panel under section 202(1)(b)(i)(A) of the *Planning, Development and Infrastructure Act 2016*, determined by the Minister for Planning pursuant to regulation 116 of the Planning, Development and Infrastructure (General) Regulations 2017.

First Published: 1 July 2019 Last amended: 31 July 2020

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INFORMATION SHEET

POLICY FOR ASSESSMENT PANEL REVIEW OF DECISION OF ASSESSMENT MANAGER

(Simplified)

1. **LEGISLATIVE FRAMEWORK**

1.1 This Policy applies in addition to the statutory requirements for the review by the Council Assessment Panel/Regional Assessment Panel (**Panel**) of A decision of an Assessment Manager as set out in Part 16, Division 1 of the *Planning, Development and Infrastructure Act* 2016 (**Act**).

2. **COMMENCING A REVIEW**

2.1 An application for review must relate to a prescribed matter, as defined in Section 201 of the Act, for which an Assessment Manager was the relevant authority.

2.2 An application for review must be:

2.2.1 made using the Application to Assessment Panel for Assessment Manager's Decision Review (the Form);

2.2.2 lodged in a manner identified on the Form; and

2.2.3 lodged within one month of the applicant receiving notice of the Prescribed Matter, unless the Presiding Member in his or her discretion grants an extension of time.

2.3 In determining whether to grant an extension of time, the Presiding Member may consider:

the reason for the delay;

2.3.1 the length of the delay;

2.3.2 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time;

2.3.3 the interests of justice;

2.3.4 whether the applicant has, or is within time to, appeal the prescribed matter to the ERD Court; and

2.3.5 any other matters the Presiding Member considers relevant.

3. **MATERIALS FOR REVIEW HEARING**

3.1 The Assessment Manager shall collate for the Panel:

Comment [jfc1]: As relevant to each Council

Comment [jfc2]: We have nominated the Presiding Member for this role for reasons of practical expediency. However, if preferred, it could be a decision of the Panel.

The Panel could also choose to delegate this function, in which case the last portion of clause 2.2.3 should read *"unless an extension of time has been granted"*.

Comment [jfc3]: Or Panel (refer comment jfc2)

If the power to grant an extension of time in 2.2.3 is delegated, this clause may be deleted (or it could be retained, as the delegation does not mean that the panel could not also choose to exercise the power from time to time).

Comment [jfc4]: While 3.1 need only occur upon request (see s 203(3)(a)), to ensure procedural fairness, etc, we strongly recommend that the policy require all materials which were before the Assessment Manager (or delegate) be before the Panel

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July 17 2020 ECM 713811

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3.1.1 all materials which were before the Assessment Manager (or delegate) at the time of the decision on the Prescribed Matter, including but not limited to:

3.1.1.1 application documents, reports, submissions, plans, specifications or other documents submitted by the applicant;

3.1.1.2 internal and/or external referral responses; and

3.1.1.3 any report from Council staff or an external planning consultant written for the Assessment Manager;

3.1.2 any assessment checklist used by the Assessment Manager or delegate when making the decision on the Prescribed Matter;

3.1.3 any other information requested by the Presiding Member.

3.2 The Assessment Manager (or delegate) must prepare a report to the Panel setting out the details of the relevant development application, the prescribed matter the subject of the review and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter.

4. **REVIEW HEARING**

4.1 The Assessment Manager must advise the applicant of the time and date of the Panel meeting at which the review application will be heard.

4.2 On review, the Panel will consider the Prescribed Matter afresh..

4.3 Information, materials and submissions which were not before the Assessment Manager at the time of the decision on the Prescribed Matter will not be considered by the Panel.

4.4 The Panel will not receive submissions or addresses from any party.

4.5 The Presiding Member may permit Panel members to ask questions or seek clarification from the applicant and/or the Assessment Manager, in his or her discretion.

4.6 The Assessment Manager must be present at the Panel meeting to respond to any questions or requests for clarification from the Panel.

4.7 Where the decision on the Prescribed Matter was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.

4.8 The Presiding Member will invite all Panel Members to speak on any matter relevant to the review.

4.9 The Panel may resolve to defer its decision if it considers it requires additional time or information to make its decision.

5. **OUTCOME ON REVIEW HEARING**

5.1 The Panel may, on a review:

5.1.1 affirm the Assessment Manager's decision on the Prescribed Matter;

Comment [jfc5]: While 3.2 need only occur upon request (see s 203(3)(b)), we prefer to include it as a requirement. Panels are generally assisted by reports, and i would likely cause more work for the Panel to not have a report before it.

However, the Panel could decide to delete the clause (in which case no reports would be provided unless specifically requested), or amend it from "*must*" to "*must, on the request of the Assessment Manager*". If it becomes "must, upon request", there will need to be a process (which need not be captured in the policy) by which reviews are flagged to the Presiding Member at an early stage, so that he or she can determine which ones will require reports.

Comment [jfc6]: While there is no right to be heard by the Panel at the review, the applicant should be informed of when it will occur. This remains the case whether or not the Panel will conduct its deliberations in confidence.

Comment [jfc7]: While this is not mandatory, i.e. a Panel could choose to only review alleged errors in the Assessment Manager's decision-making, we consider it a more robust process for this review to heard afresh.

Comment [jfc8]: An alternative mode would be to delete clauses 4.3 and 4.4 This would mean there's no prescription as to whether additional information or submissions will be received or not. However, we caution against this approach, as it may lead to ad-hoc decisions being made as to whether to permit additional information in different cases, which may lead to claims the Panel is treating different applicants differently. Should Panels wish to consider additional information or submissions, these provisions can be inserted from the comprehensive review policy.

Comment [jfc9]: If the Panel wishes to make its decision on the papers only clause 4.5 may be deleted

Comment [jfc10]: If the Panel considers it unlikely that clarification will be required, clauses 4.6 and 4.7 can be deleted.

Comment [jfc11]: This is discretionary. It may be deleted if the Panel would prefer to hear from the Assessment Manager in all cases.

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5.1.2 vary the Assessment Manager's decision on the Prescribed Matter; or

5.1.3 set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.

5.2 An applicant should be advised in writing of the Panel's decision by the Assessment Manager.

6. DRAFT RESOLUTIONS

Draft resolution 6.1 below may be adopted by Panels in order to adopt this Policy and delegate to the Presiding Member administrative decisions regarding the manner in which reviews will proceed.

Comment [jfc12]: The wording of these resolutions are suggestions only, and can be amended as appropriate for each Panel.

6.1 *The Panel resolves to adopt the Policy for Assessment Panel Review of Decision of Assessment Manager dated January 2020 (the Policy).*

Draft resolutions 6.2 to 6.5 below are intended to provide guidance to Panels as to how they might word resolutions to give effect to the decisions they make on review. Panels may adopt this wording, or amend it as appropriate.

6.2 Resolution to affirm a decision of the Assessment Manager:

The Panel resolves to affirm the decision of the Assessment Manager [insert description of decision, for example:]

- *that the application is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that planning consent be granted to DA No [insert] for [insert nature of development] subject to the [insert number] of conditions imposed by the Assessment Manager*
- *that DA No [insert] is classified as code assessed (performance assessed) development*
- *that the application is not seriously at variance with the Planning and Design Code (disregarding minor variations), but that DA No. [insert] does not warrant planning consent for the following reasons:*

6.3 Resolution to vary a decision of the Assessment Manager:

The Panel resolves to vary the decision of the Assessment Manager in relation to DA No [insert] by deleting condition [insert number] of planning consent and replacing it with the following condition:

[insert varied condition]

6.4 Resolution to set aside a decision of the Assessment Manager:

The Panel resolves to set aside the decision of the Assessment Manager to [insert description of decision being reversed, for example, refuse planning consent to DA No [insert]] and substitute the following decision:

- *DA No [insert] is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that*

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planning consent is granted to the application subject to the following conditions:

6.5 Resolution to defer review hearing:

The Panel resolves to defer its decision in relation to its review of the decision of the Assessment Manager to [insert description of the decision] in relation to DA No [insert] until:

- *the next ordinary meeting of the Panel;*
- *the next ordinary meeting of the Panel after [insert additional information which has been requested by the Panel] is provided*
- *until the next ordinary meeting of the Panel after [insert date (i.e. giving an applicant 2 months to provide information)]*

(etc).

Further Information

Contact Stephen Smith, Planning Reform Partner, LGA
Email: stephen.smith@lga.sa.gov.au
Telephone: 0409 286 734

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INFORMATION SHEET

POLICY FOR ASSESSMENT PANEL REVIEW OF DECISION OF ASSESSMENT MANAGER

(Prescriptive)

1. LEGISLATIVE FRAMEWORK

1.1 This Policy applies in addition to the statutory requirements for the review by the Council Assessment Panel/Regional Assessment Panel (**Panel**) of a decision of an Assessment Manager as set out in Part 16, Division 1 of the *Planning, Development and Infrastructure Act* 2016 (**Act**).

2. COMMENCING A REVIEW

2.1 An application for review in relation to a development application or development authorisation may only be commenced by the applicant for the development authorisation.

2.2 An application for review must relate to a Prescribed Matter in relation to which the Assessment Manager was the relevant authority.

2.3 A "Prescribed Matter" means:

2.3.1 any assessment, request, decision, direction or act of the Assessment Manager under the Act that is relevant to any aspect of the determination of the development application; or

2.3.2 a decision to refuse to grant development authorisation to the application; or

2.3.3 the imposition of conditions in relation to a grant of development authorisation; or

2.3.4 subject to any exclusion prescribed by the *Planning, Development and Infrastructure (General) Regulations 2017*, any other assessment, request, decision, direction or act of the Assessment Manager under the Act in relation to the grant of development authorisation.

2.4 An application for review must be:

2.4.1 made using the Application to Assessment Panel for Assessment Manager's Decision Review (MS Word Document, 63.4 KB) (**the Form**);

2.4.2 lodged in a manner identified on the Form; and

2.4.3 lodged within one month of the applicant receiving notice of the Prescribed Matter, unless the Presiding Member, in his or her discretion, grants an extension of time.

Comment [jfc1]: As relevant to each Council

Comment [jfc2]: We have included information in this Part which is also contained in the Act (so that an applicant does not need to also consult the Act).

Comment [jfc3]: The Act identifies this as a decision of the Panel. We have recommended the Panel nominate the Presiding Member to undertake this task for reasons of practical expediency, but it need not, and could remain a decision of the Panel. If so, subsequent amendments will need to be made to Clauses 2.5.

Alternatively, the Panel could choose to delegate this function , in which case the last portion of clause 2.4..3 should read *"unless an extension of time has been granted"*, and clause 2.5 deleted

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2.5 In determining whether to grant an extension of time, the Presiding Member may consider:

2.5.1 the reason for the delay;

2.5.2 the length of the delay;

2.5.3 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time;

2.5.4 the interests of justice;

2.5.5 whether the applicant has, or is within time to, appeal the Prescribed Matter to the ERD Court; and

2.5.6 any other matters the Presiding Member considers relevant.

2.6 An application for review should, upon receipt by the Panel, be notified to the Assessment Manger within 2 business days.

3. APPLICANT'S DOCUMENTS

Written submission

3.1 An applicant may provide a written submission in support of his or her application for review.

3.2 Such a submission must be received by the Presiding Member within one month of the lodgement of the application for review, or such longer period as is requested by the applicant and granted by the Presiding Member, in his or her discretion.

3.3 A written submission should be marked to the attention of the Presiding Member and lodged in a manner specified in Clause 7.

3.4 The Presiding Member should provide a copy of any written submission to the Assessment Manager within 2 business days of its receipt.

Additional information

3.5 An applicant may request the opportunity to place additional information and/or materials before the Panel, by application to the Presiding Member lodged in a manner specified in Clause 7.

3.6 Any such application must be received by the Presiding Member within one month of the lodgement of the application for review, or such longer period as is requested by the applicant and granted by the Presiding Member, in his or her discretion and either attach the additional information and/or materials, or set out the nature of the information and/or materials and by whom it has been or will be prepared.

3.7 The Presiding Member will determine, in his or her discretion, whether to permit the additional information and/or materials to be put before the Panel within 5 business days.

3.8 In making this decision, the Presiding Member may consider:

Comment [jfc4]: This need not be the Assessment Manager if there are concerns about the Assessment Manager receiving applications to review his or her own decisions. However, each Panel will need to determine a mechanism by which Council staff are advised of the review in order to commence compiling the relevant documents for the Panel.

Comment [jfc5]: We have nominated 2 business days for all notifications. However, 2 days is not prescribed, and these timeframes can be amended as each Panel sees fit, or removed altogether.

Comment [jfc6]: The Act does not grant an applicant a right to provide a written submission. This option can be deleted if a Panel would prefer.

Comment [jfc7]: This timeframe can be amended at the discretion of each Panel. The ability to grant an extension of time can be deleted if a Panel does not wish to offer additional time

Comment [jfc8]: There is no obligation for a Panel to consider new information. If a Panel determines that i will not consider additional information, Clauses 3.5 to 3.13, 4.1.5, 4.5.3 and 4.5.4 can be deleted

Comment [jfc9]: We have nominated the Presiding Member for this role, but it need not be. The application could be made to the Panel instead. If so, amendments will be required to reflect this change in Clauses 3.6 to3.13).

Comment [jfc10]: This timeframe can be amended at the discretion of each Panel, but should be consistent with the timeframe to provide a written submission in Clause 3.2. The ability to grant an extension of time can be deleted if a Panel does not wish to offer additional time.

Comment [jfc11]: We have nominated 5 business days for all decisions of the Presiding Member (or Panel). This is not prescribed, and can be amended as appropriate for each Panel, or deleted alltogether.

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3.8.1 the relevance of the information and/or materials to the review application;

3.8.2 the amount of time the Panel would need to consider the additional information and/or materials;

3.8.3 whether the information and/or materials relate to a matter which has been the subject of a referral to a referral agency;

3.8.4 the reasons the additional information and/or materials were not put before the Assessment Manager;

3.8.5 the interests of justice;

3.8.6 whether the information and/or materials would cause prejudice to any party; and

3.8.7 any other matters the Presiding Member considers relevant.

3.9 The Presiding Member should advise the applicant of his or her decision within 2 business days. If the decision is to allow the provision of additional information and/or materials, the Presiding Member should also advise the applicant of the time within which the information and/or materials is to be provided.

3.10 Additional information provided in accordance with Clause 3.7 should be marked to the attention of the Presiding Member and lodged in a manner specified in Clause 7.

3.11 Upon receipt of additional information and/or materials, the Presiding Member should provide a copy to the Assessment Manager within 2 business days.

3.12 Within 5 business days of the receipt of additional information, the Presiding Member should determine, in his or her discretion, whether to provide a referral agency which provided a response on the application with the opportunity to review and respond to the additional information and/or materials, in such manner and within such time as is determined by the Presiding Member.

3.13 Where a response is received from a referral agency, the Presiding Member should provide a copy to the applicant and Assessment Manager within 2 business days.

4. MATERIALS FOR REVIEW HEARING

4.1 Within the time prescribed in clause 4.5, the Assessment Manager should collate for the Panel:

4.1.1 all materials which were before the Assessment Manager (or delegate) at the time of the decision on the Prescribed Matter, including but not limited to:

4.1.1.1 application documents, reports, submissions, plans, specifications or other documents submitted by the applicant;

4.1.1.2 internal and/or external referral responses; and

4.1.1.3 any report from Council staff or an external planning consultant written for the Assessment Manager;

Comment [jfc12]: Clauses 4.1.1 to 4.1.3 are discretionary. A Panel can choose to require all information in all cases (as this Policy does), or can delete or amend clauses 4.1.1 to 4.1.3 as it sees fit.

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4.1.2 any assessment checklist used by the Assessment Manager or delegate when making the decision on the Prescribed Matter;

4.1.3 a report prepared by the Assessment Manager (or delegate) setting out the details of the relevant development application; the Prescribed Matter; an assessment of any additional information and/or materials provided by the applicant pursuant to clause 3.7 (including, where appropriate, whether the additional information and/or materials changes the Assessment Manager's original decision on the Prescribed Matter); and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter;

4.1.4 any written submission prepared by the applicant pursuant to clause 3.1;

4.1.5 such additional information or materials as the Presiding Member has permitted to be placed before the Panel pursuant to clause 3.7; and

4.1.6 any further information requested by the Presiding Member.

4.2 After the completion of the requirements in Clause 4.1, the Assessment Manager should assign the review application to the next available Panel meeting.

4.3 The documents identified in Clause 4.1 will be included as Annexures to the agenda item.

4.4 The Assessment Manager should advise the applicant in writing of the time and date of the Panel meeting at which the review application will be heard not less than 5 business days before the meeting.

4.5 The Assessment Manager should comply with Clause 4.1 within the following period of time:

4.5.1 one month from the lodgement of the application for review; plus

4.5.2 where the applicant is granted an extension of time to provide a written submission pursuant to clause 3.2, the period of time granted by the Presiding Members; plus

4.5.3 where the applicant requests the opportunity to put additional information and/or materials before the Panel, the time taken by the Presiding Member to determine that request and advise the applicant; plus

4.5.4 where the Presiding Member determines to allow an applicant to put additional information and/or materials before the Panel:

Comment [jfc13]: Or Panel

Comment [jfc14]: To provide flexibility, the policy does not dictate that an application will be assigned to a Panel meeting after a prescribed period of time, but only once all necessary procedural steps have been completed.

Comment [jfc15]: It is not intended that a review application will always be heard at the next in time Panel meeting (which could be a matter of days away) If the agenda for the next meeting has closed or is full, or if there would be insufficient time for the Panel members to consider the information provided to them, it is intended that the review would be assigned to and heard at the meeting *after* the next in time meeting.

Comment [jfc16]: This timeframe can be amended as each Panel considers appropriate

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the time allowed by the Presiding Member for those materials to be provided; plus

the time taken to determine whether to provide those materials to a referral agency; plus

the time allowed for the referral agency to respond; plus

4.5.5 any additional period of time granted by the Presiding Member, in his or her discretion, upon the request of the Assessment Manager.

5. **REVIEW HEARING**

5.1 On review, the Panel will consider the Prescribed Matter afresh.

5.2 The Panel will not hear from any party other than the applicant and the Assessment Manager.

5.3 The Panel will hear from the applicant (or his or her representative), where he or she requests to be heard.

5.4 An applicant will be allowed five minutes to address the Panel. The Presiding Member may allow additional time at his or her discretion.

5.5 Where an applicant is heard by the Panel, the Assessment Manager will be allowed five minutes to respond to any issues raised by the applicant. The Presiding Member may allow additional time at his or her discretion.

5.6 Panel members may ask questions and seek clarification from the applicant and/or Assessment Manager at the conclusion of their addresses.

5.7 Whether or not the applicant chooses to be heard by the Panel, the Assessment Manager should be present at the Panel meeting to respond to any questions or requests for clarification from the Panel.

5.8 Where the Decision was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.

5.9 Following any addresses from the applicant and/or Assessment Manager, the Presiding Member will invite all Panel Members to speak on any matter relevant to the review.

5.10 The Panel may resolve to defer its decision if it considers it requires additional time, or additional information from the applicant or the Assessment Manager (including legal or other professional advice), to make its decision.

5.11 The deferral will be to the next ordinary meeting of the Panel, or such longer period of time as is determined by the Panel to enable the information sought to be obtained and considered.

5.12 Where an applicant is to provide further information to a Panel pursuant to Clause 5.10, the information must be provided within the time specified by the Panel and in a manner specified in Clause 7.

5.13 Where an Assessment Manager is to provide further information to a Panel pursuant to Clause 5.10, a copy of the information must also be provided to the

Comment [jfc17]: This can be deleted at the discretion of each Panel, in which case the Assessment Manager will simply respond to questions raised by the Panel in Clause 5.7 below. If so, also delete from Clause 5.6 the words "and/or Assessment manager"

Comment [jfc18]: This is discretionary. It may be deleted if the Panel would prefer to hear from the Assessment Manager in all cases.

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applicant not less than 5 business days before the meeting at which it will be considered by the Panel.

Comment [jfc19]: Or such other period of time as is preferred by the Panel

6. **OUTCOME ON REVIEW HEARING**

6.1 The Panel may, on a review:

6.1.1 affirm the Assessment Manager's decision on the Prescribed Matter;

6.1.2 vary the Assessment Manager's decision on the Prescribed Matter; or

6.1.3 set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.

6.2 An applicant should be advised in writing of the Panel's decision (including its reasons) by the Assessment Manager (or delegate) within 2 business days of the Panel's decision.

7. **LODGING WRITTEN MATERIALS & DOCUMENTS WITH THE PANEL**

7.1 All documents and written communications with the Panel must be lodged via:

7.1.1 the SA Planning Portal (to the extent the Portal is able to receive such a submission);

7.1.2 email to: [insert relevant email address]; or

7.1.3 hand-delivery or post to [insert address of principal office/address of CAP]

8. **DRAFT RESOLUTIONS**

Draft resolution 8.1 below may be adopted by Panels in order to adopt this Policy and delegate to the Presiding Member administrative decisions regarding the manner in which reviews will proceed.

Comment [jfc20]: The wording of these resolutions are suggestions only, and can be amended as appropriate for each Panel.

8.1 *The Panel resolves to adopt the Policy for Assessment Panel Review of Decision of Assessment Manager dated January 2020 (**the Policy**).*

Draft resolutions 8.2 to 8.5 below are intended to provide guidance to Panels as to how they might word resolutions to give effect to the decisions they make on review. Panels may adopt this wording, or amend it as appropriate.

8.2 Resolution to affirm a decision of the Assessment Manager:

The Panel resolves to affirm the decision of the Assessment Manager [insert description of decision, for example:]

- *that the application is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that planning consent be granted to DA No [insert] for [insert nature of development] subject to the [insert number] of conditions imposed by the Assessment Manager*
- *that DA No [insert] is classified as code assessed (performance assessed) development*

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- *that the application is not seriously at variance with the Planning and Design Code (disregarding minor variations), but that DA No. [insert] does not warrant planning consent for the following reasons:*

8.3 Resolution to vary a decision of the Assessment Manager:

The Panel resolves to vary the decision of the Assessment Manager in relation to DA No [insert] by deleting condition [insert number] of planning consent and replacing it with the following condition:

[insert varied condition]

8.4 Resolution to set aside a decision of the Assessment Manager:

The Panel resolves to set aside the decision of the Assessment Manager to [insert description of decision being reversed, for example, refuse planning consent to DA No [insert]] and substitute the following decision:

- *DA No [insert] is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that planning consent is granted to the application subject to the following conditions:*

8.5 Resolution to defer review hearing:

The Panel resolves to defer its decision in relation to its review of the decision of the Assessment Manager to [insert description of the decision] in relation to DA No [insert] until:

- *the next ordinary meeting of the Panel;*
- *the next ordinary meeting of the Panel after [insert additional information which has been requested by the Panel] is provided*
- *until the next ordinary meeting of the Panel after [insert date (i.e. giving an applicant 2 months to provide information)]*

(etc).

Further Information

Contact Stephen Smith, Planning Reform Partner, LGA
Email: stephen.smith@lga.sa.gov.au
Telephone: 0409 286 734

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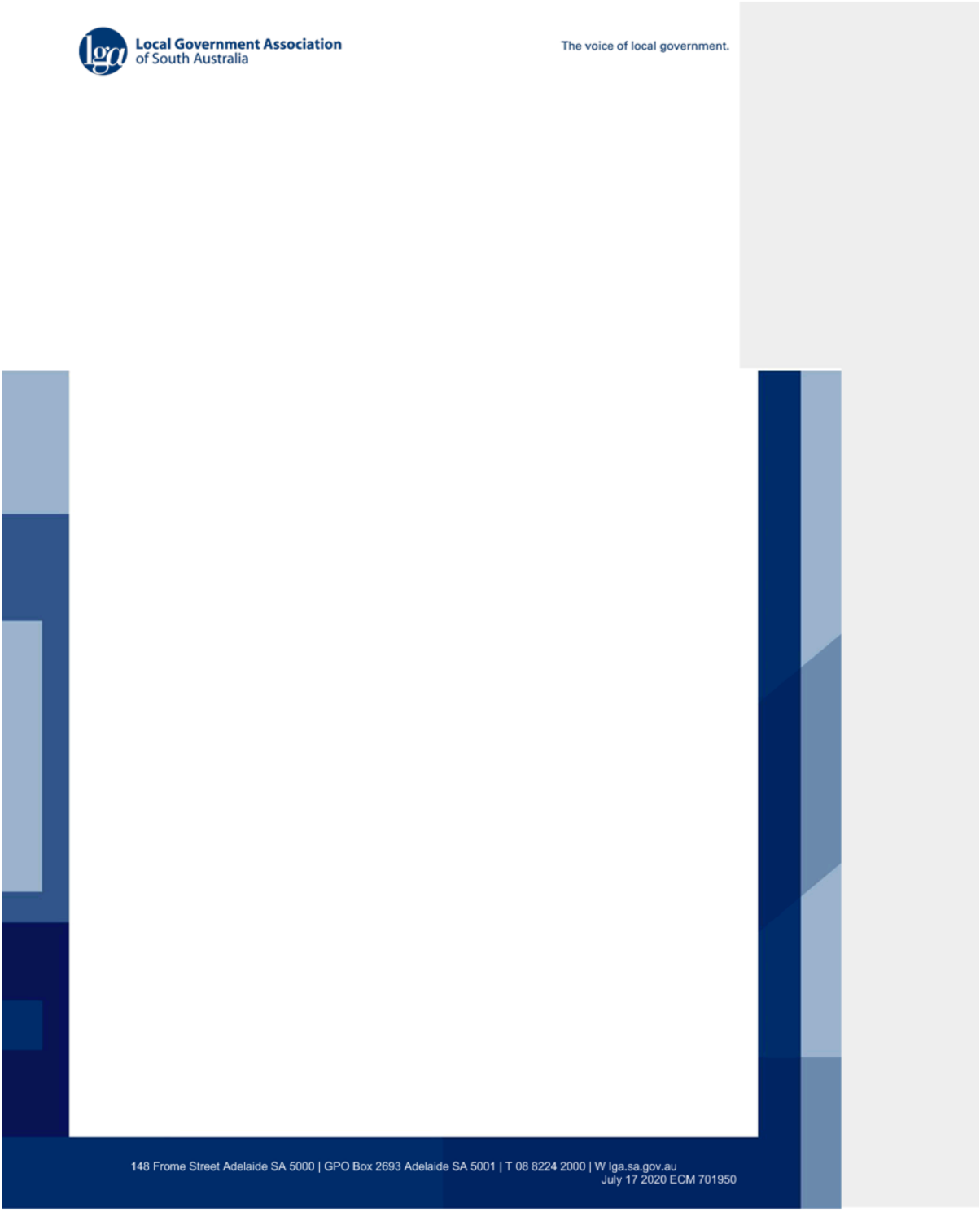

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AMENDMENT GUIDE: POLICY FOR ASSESSMENT PANEL REVIEW OF DECISION OF ASSESSMENT MANAGER

Legislative framework

- We do not recommend deletion of clause **1.1**. It provides guidance regarding the legislative basis of the policy and provides context for applicants.

Commencing a review

- Clauses **2.1, 2.2 and 2.3** repeat matters set out in Sections 201 and 203 of the PDI Act. They can be deleted. However, if deleted, we recommend the following clause be inserted in their place:

  An application for review must relate to a prescribed matter, as defined in Section 201 of the Act, for which an Assessment Manager was the relevant authority.

- We recommend the retention of clause **2.4**, although it does repeat material in Section 203 of the PDI Act, and can be deleted.
  - If deleted, the Panel will be deleting the referral of the power to extend time to lodge a review application to the Presiding Member. The Panel could separately address this issue if it so chose (either in this policy, or in its delegations).
- If clause 2.4 is deleted, clause **2.5** may also be deleted. However, we do not recommend its retention as it provides applicants with an assurance that decisions regarding extensions of time will be made having regard to the principles of natural justice.

Applicant's documents

- The review application form affords an applicant the opportunity to set out the reasons they are requesting review.
- There is no requirement in the PDI Act or General Regs that an applicant be afforded any additional opportunities in this regard, such as through providing written submissions or additional information to the Panel. Permitting each of these matters (in clause 3) is at the discretion of the Panel. Panels can 'pick and choose' which (if any) of these opportunities they wish to afford to applicants:

Written submissions

- Where a Panel does not wish to provide an applicant the opportunity to make written submissions, clauses **3.1 to 3.4** and **4.1.4** can be deleted.
- Where a Panel wishes to provide an applicant the opportunity to make written submissions, but in a more informal manner than the current policy, clauses **3.2 to 3.4** may be amended to suit the preferences of the Panel. However, we do recommend the retention of:

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- Details as to how an applicant is to nominate that they intend to provide a written submission; and
    - A mechanism for a copy of any such submission to be provided to the Assessment Manager, for collating with all other relevant documents and information.

Additional Information

- Where a Panel does not wish to provide an applicant the opportunity to present additional information, delete clauses **3.5 to 3.13** and **4.1.5,** and delete the words "*an assessment of any additional information and/or materials provided by the applicant pursuant to clause 3.7*" from cluse **4.1.3**.
- Where a Panel wishes to provide an applicant the opportunity to make written submissions, but in a more informal manner than the current policy, clauses **3.5 to 3.13** may be amended to suit the preferences of the Panel (this includes the amendment or deletion of all timeframes within these clauses). However we do recommend the retention of, at least:
    - a timeframe within which an applicant should request to provide additional information;
    - the factors the Presiding Member (or Panel) may consider when determining whether to permit the application to provide additional information;
    - the requirement that if additional information is provided, the Presiding Member (or Panel or delegate) consider whether to provide a referral agency with the opportunity to review and respond to the additional information; and
    - ensuring that a copy of any further information is provided to the Assessment Manager, for consideration in the writing of his or her report, and for collating with all other relevant documents and information.

Materials for review hearing

- Clause **4.1**: We recommend the retention clause 4.1, which sets out what materials must be collated by the Assessment Manager. While the PDI Act provides that it is at the discretion of each Panel as to what materials they wish to have before them (Section 203(3)), to ensure integrity in the review process, we strongly recommend that the policy require all materials which were before the Assessment Manager (or delegate) be before the Panel (as well as any additional materials the Panel has permitted).
- Clauses **4.2 and 4.5**: There is no prescribed time within which a review application should come before a Panel for determination, although panels should seek to conduct reviews in a timely manner. We recommend the retention of clause **4.2** for this reason - it seeks to have reviews put to the next available panel meeting after the relevant materials have all been collated (i.e. the next meeting for which the agenda has not yet been finalised, not necessarily the next in time meeting). However, this is not a requirement, and clause 4.2 can be deleted. Clause **4.5**, which sets out times within which various steps are to be completed, may be deleted (there is no prescribed time in the PDI Act or PDI (General) Regulations (**General Regs**) within which these steps must be completed).

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- We strongly recommend the retention of clause **4.4,** which requires the applicant to be advised of the time and date of the Panel meeting at which the review will be heard. We consider this requirement should remain, even if the Panel will not hear from the applicant, and/or will hear the matter in confidence (see Deliberations below).

Review hearing

- The PDI Act and General Regs do not specify how the review hearing is to proceed. Subject to common law requirements of procedural fairness, this is entirely at the discretion of the Council.

Nature of review hearing

- We have recommended in clause **5.1** that the Panel consider the Prescribed Matter the subject of the review afresh. This means that the Panel will make its own decision on the matter on the materials before it, rather than considering whether there was an *error* in the decision made by the Assessment Manager. However, this is not required. A panel could choose to take a narrower approach and only consider whether errors were made during the Assessment Manager's decision–making.

Site view

- The policy is silent on whether a site view is undertaken by the Panel. There is no requirement that that the Panel view a site, but if Panels doe routinely view sites the subject of development applications, they may wish to continue this practice for review applications (at least those in which the review is of a decision to grant or refuse planning consent). Presumably, the manner in which such site visits presently occur in relation to applications for planning consent are contained within either (or both) the Panel's Terms of Reference or Meeting Procedures. The procedure for a site view in relation to review hearings could either refer back to those documents, or copy them and follow the same procedures.

Hearing from applicant

- An applicant for review does not have a right to be heard before the Panel. If a Panel does not wish to hear from applicants, clauses **5.3 to 5.6** can be deleted; and references to hearing from parties removed from clauses **5.2, 5.7** and **5.8** (or, alternatively, clauses **5.7** and **5.8** can be deleted).
- We recommend that if Panels decide that they will not hear from applicants, that this is specified in the policy. Without such specificity, it will remain open for applicants to request to be heard. Such a clause may be:

  The Panel will not hear addresses from any party.

- Where a Panel wishes to permit applicants to address the Panel, but in a more informal manner than the current policy, clauses **5.2 to 5.8** can be amended as the Panel sees fit. For example, a Panel may not wish to allow applicants to address the Panel, but may wish to ask them questions.

Deferrals

- Clauses **5.9 to 5.12** relate to deferring a decision on an application in order to have further time, or receive further information. Should Panels not wish to permit

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additional information in any circumstances (i.e. even at the Panel's request), clauses **5.10 to 5.12** can be deleted, and the words *"or additional information from the applicant or the assessment manager"* deleted from clause **5.9.**

Deliberations

- The draft policy is silent as to whether the Panel will deliberate in public or in confidence. This is a decision for each panel to make. We note that the ability for a Panel to determine review applications in confidence is found in Regulation 13(2)(b) of the General Regs.
- We understand some panels wish to hold these reviews in public, for reasons of openness and transparency in decision-making, while others will prefer to go into confidence, as the Panel's decision may be appealed to the ERD Court. Either approach is suitable.
- The policy is also silent on how decisions are made (i.e. majority vote, etc) and recorded (minuted, etc). This is because such matters should be part of each Panel's meeting procedures (as these reviews are conducted as part of Panel meetings). Having said that, we encourage all Panels to review their meeting procedures to incorporate references to review hearings, where appropriate. The LGA model meeting procedures have been updated to incorporate these references.

Outcome of review hearing

- Clause **6.1** repeats Section 203(4) of the PDI Act. However, we recommend its retention for clarity for applicants.
- Clause **6.2** is discretionary, although we strongly recommend written notification be provided to the applicant. The timeframe in clause 6.2 may be deleted.

Lodging written materials & documents with the panel

- Clause **7** is not required. We recommend its inclusion where panels will permit applicants to lodge written submissions and/or additional information.

Draft resolutions

- Clause **8** includes draft text for Panel resolutions, both to adopt the review policy (8.1), and when making decisions on review applications (to be minuted, as per clause 6.3). This text is for guidance only and can be amended as appropriate for each Panel.

Further Information

Contact Stephen Smith, Planning Reform Partner, LGA
Email: stephen.smith@lga.sa.gov.au
Telephone: 0409 286 734

148 Frome Street Adelaide SA 5000 | GPO Box 2693 Adelaide SA 5001 | T 08 8224 2000 | W lga.sa.gov.au
17 July 2020 ECM 713812

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17 July 2020 ECM 713812

ITEM	5.2.2
	COUNCIL ASSESSMENT PANEL
DATE	24 November 2020
HEADING	Standing Referral for Building Rules Assessments
AUTHOR	Chris Zafiropoulos, Manager Development Services, City Development
CITY PLAN LINKS	4.4 We plan effectively to address community needs and identify new opportunities
SUMMARY	This report seeks the Panel's decision on referring building assessments to the Council under the Planning, Development and Infrastructure Act 2016.

RECOMMENDATION

1. The Salisbury Council Assessment Panel determines to act under Section 99(1)(b) of the Planning, Development and Infrastructure Act 2016 (the Act) in relation to all development applications received by it that involve the performance of building work.
2. Pursuant to Section 99(1)(c) of the Act, where the Panel has determined to act under Section 99(1)(b) of the Act, the Salisbury Council Assessment Panel refers the assessment of the development in respect of the Building Rules to the City of Salisbury.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Local Government Association Advice for Referring Building Rules Assessments to Council

1. BACKGROUND

1.1 The *Planning Development and Infrastructure Act 2016* (the Act) introduces changes to the planning and development system. The changes include some statutory functions of Council Assessment Panels.

1.2 The Panel is designated as a relevant authority in its own right under the Act. The implication of this change is that the Panel will also be the relevant authority for building consent, where the applicant has not nominated a building certifier (Accredited Professional).

1.3 The Local Government Association has provided advice for Panels to consider referring the building consents to Council. Refer to Attachment 1.

2. REPORT

2.1 Section 93 of the Act prescribes relevant authorities. The Council Assessment Panel is designated as the relevant authority where development is to be undertaken within the area of Council, subject to prescribed exclusions. The exclusions include where:

- Another Panel has been appointed (e.g. Local / Regional / Combined or Panel under a Planning Agreement).
- The regulations prescribe that an Assessment Manager or Accredited Professional acts the relevant authority.
- The State Planning Commission or Minister for Planning is assigned the relevant authority.

2.2 Where the applicant does not nominate a building certifier for the building assessment, the Panel will be the relevant authority (section 99 of the Act). This will require Panels to implement a series of administrative measures to for the building assessment, including seeking and providing delegation to accredited professionals.

2.3 There does not appear to be any particular reason that Panels have been assigned the relevant authority in respect to building consent, given Panels are essentially established as authorities to assess planning matters – as reflected in the skills and experience requirements for Panel Members.

2.4 The Act provides that Panels may refer a proposed development which involves the assessment of the Building Rules to the council for the area in which the proposed development is to be undertaken. This is the practice anticipated to be adopted by Panels. The Local Government Association has prepared a resolution that will provide for a standing referral for all building rules assessments to Council. It is recommended that the Panel consider referring all proposed development which involves the assessment of the Building Rules to the Council.

3. CONCLUSION / PROPOSAL

3.1 That the Panel consider referring all building assessments to Council.

CO-ORDINATION

Officer: GMCiD
Date: 12.11.2020

Local Government Association of South Australia

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Draft

Information Sheet

Draft wording for a standing referral for Building Rules assessments from Panels to councils

As many councils will be aware, where an applicant does not nominate a private building certifier to determine their building consent, the relevant authority will not be the council, but the relevant assessment panel.

However, Section 99(1) of the Act enables assessment panels to refer Building Rules assessments on to the relevant council, at which point the council becomes the relevant authority for building consent.

For panels that do not propose to take an active role in *any* Building Rules assessments, a standing referral can be made in relation to all future Building Rules applications. Draft wording for such a referral is set out below.

Should any panel prefer to approach Building Rules assessment referrals on a case-by-case basis, this is also possible. Amendments to the below wording would be required.

Standing referral for CAPs:

1. The [insert name of Panel] determines to act under Section 99(1)(b) of the *Planning, Development and Infrastructure Act 2016* (**the Act**) in relation to all development applications received by it that involve the performance of building work.

2. Pursuant to Section 99(1)(c) of the Act, where the Panel has determined to act under Section 99(1)(b) of the Act, the [insert name of Panel] refers the assessment of the development in respect of the Building Rules to the [insert name of the Council]

Standing referral or RAPs:

1) The [insert name of Panel] determines to act under Section 99(1)(b) of the *Planning, Development and Infrastructure Act 2016* (**the Act**) in relation to all development applications received by it that involve the performance of building work.

2) Pursuant to Section 99(1)(c) of the Act, where the Panel has determined to act under Section 99(1)(b) of the Act, the [insert name of Panel] refers the assessment of the development in respect of the Building Rules to the council for the area in which the proposed development is to be undertaken.

Advice provided to the LGA by Norman Waterhouse Lawyers on 3 March 2020.

Further Information
Contact: Stephen Smith, Planning Reform Partner, LGA
Email: Stephen.smith@lga.sa.gov.au
Telephone: mobile 0409 286 734

March 2020

148 Frome Street Adelaide SA 5000 | GPO Box 2693 Adelaide SA 5001 | T 08 8224 2000 | W lga.sa.gov.au

ECM 701885

ITEM	5.2.3
	COUNCIL ASSESSMENT PANEL
DATE	24 November 2020
HEADING	Delegations
AUTHOR	Chris Zafiropoulos, Manager Development Services, City Development
CITY PLAN LINKS	4.4 We plan effectively to address community needs and identify new opportunities
SUMMARY	This report provides information and seeks the Panel's decision on delegations under the *Planning, Development and Infrastructure Act 2016*.

RECOMMENDATION

1. The instrument for delegations under the *Planning, Development and Infrastructure Act 2016* be presented to the next meeting of the Panel that includes granting power to the Assessment Manager to:
    a. Perform the various duties and responsibilities for the efficient processing of development applications.
    b. Assess and determine development applications where no valid representations are received, valid representations are withdrawn, or where no valid representor wishes to be heard in support of their representation.
    c. Grant planning consent for development applications which are subject to a deemed consent notice.
    d. Commence applications to the ERD Court seeking orders quashing deemed consent notices in situations where the Panel will not meet before the application is required to be commenced, either alone or in consultation with the Presiding Member.
    e. Refuse planning consent, and not hear representors if applicable, for development applications which are nearing the end of the prescribed timeframe for determining the application, where the Panel will not have met before 'time' expires, and where the applicant has not agreed to extend the statutory timeframe for the Panel to consider the development application.
2. The General Operating Procedures be presented to the next meeting of the Panel with additional provisions that provide for advice to be provided to the Panel of all the applications determined under delegated authority by the Assessment Manager.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. LGA Delegations Template
2. LGA Delegations Advice Sheet
3. LGA Advice Sheet - FAQs

4. Relevant Authorities Overview
5. Public Notification Tables for Key Zones in Salisbury
6. Comparsion of Applications for Public Notification

1. BACKGROUND

1.1 The Planning Development and Infrastructure Act 2016 (the Act) introduces changes to the planning and development system. The changes include some statutory functions of Council Assessment Panels.

1.2 The Panel has been assigned as a relevant authority in its own right under the Act. In the exercise of its duties, the Panel will need to consider delegations to Council staff to undertake specific duties or exercise powers on its behalf.

1.3 Delegations enhance decision making processes and allow nominated matters to be resolved efficiently and effectively without the need for the Panel's consideration, in much the same way as current delegations from Council under the Development Act.

1.4 Delegations templates and advice about the use of delegations has been prepared by the Local Government Association (LGA) for the consideration of Panels (Refer to Attachment 1 and 2). The delegations provide for:

- Tasks to be delegated to Council Staff to assist in the timely processing of applications.
- Determination of prescribed development applications by Council staff.

1.5 This report provides information for the Panel to consider delegations under the Act. It is proposed that the Panel consider its preferred delegations and that a report be presented at the next meeting of the Panel to formalise the delegations.

1.6 The Panel is able to consider delegations ahead on the new legislative system becoming live. Refer advice (clause 16, page 9) from the LGA in Attachment 3.

2. REPORT

2.1 The Act establishes the relevant authorities for development applications. The various relevant authorities are outlined in the Relevant Authority Overview in Attachment 4.

2.2 The Act provides that an Assessment Panel will be a relevant authority (planning and building) in relation to a proposed development that is to be undertaken within the area of a council, unless another authority is prescribed by the Act or regulations (section 93 of the Act).

2.3 The Assessment Panel is designated the relevant authority for:

- Performance assessed development under section 107 of the Act where notice of the application must be given under section 107(3) of the Act.
- Development which involves the assessment of the Building Rules under section 99 of the Act where a building certifier has not been nominated. (Refer to separate report item in this agenda regarding building rules assessment).

Administrative Tasks

2.4 Delegations are necessary for an effective and efficient development assessment system to the achieve outcomes described under the Act. Tasks delegated to Council staff, similar to those that are currently delegated to staff by Council, facilitate the assessment process. These types of delegations include, but are not limited to:

- Verification of the development application, information and fees.
- Determining that an application is minor and does not require public notification.
- Undertaking statutory referrals and public notification.

Publicly Notified Applications

2.5 The Act assigns all applications that undergo public notification to the Council Assessment Panel for assessment. By comparison, under the current *Development Act 1993*, Council assigns publicly notified development applications to the Panel where the representor wishes to make a verbal submission in support of their representation, with other publicly notified applications being delegated to staff for determination.

2.6 The public notification requirements under the new legislative scheme are intended to exclude from notification developments that are ordinarily expected in the zone and those developments identified in the *Accepted* or *Deemed to Satisfy* assessment pathways.

2.7 The Planning and Design Code identifies development that is excluded from notification in *Table 5 – Procedural Matters (PM) – Notification*. A summary of the exclusions for the major zones within the Salisbury Council Area are provided in Attachment 5.

2.8 A comparison of development applications notified in the 2018/19 and 2019/20 financial year with those that would be expect to have been notified under the new legislative scheme is provided in Attachment 6.

2.9 The key finding from this review reveals a significant reduction in the number of development applications that will be required to undergo public notification. This is primarily due to development involving tree damaging activity by a council being exempt from public notification.

2.10 In relation to other classes of development requiring notification, the analysis suggests relative minor differences to the overall number of applications that will be required to undergo public notification. Noting that while the overall numbers appear to be similar, the triggers for notification have been changed / modified in many instances. It is unknown therefore precisely how these triggers will influence the level of notification.

2.11 The table below summarises the number of applications historically assessed by the Panel over the last six (6) years, compared to the number of publicly notified applications for the same period. The table includes the hypothetical scenario of publicly notified applications if the new legislative scheme to applied in 2018/19 and 2019/20 period. The analysis shows an increase in the number of development applications considered by the Panel under the new system. This may be significant, as suggested for the 2019/20 period.

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
CAP Assessed under Development Act	19	15	23	9	19 (17*)	11 (11*)
Publicly Notified	87	69	48	89	102	89
CAP assessed under PDI Act scenario					21	31

* Development applications with representor wishing to be heard.

2.12 The increase in applications considered by the Panel is largely as a result of the drafting of the new legislative scheme. The new legislation requires that the relevant authority is confirmed upon verification of the application. It does not represent best practice in decision making which has evolved to elevate the more complex and controversial developments before the Panel.

2.13 An increase of development applications before the Panel has implications for customer service levels, timeframes, and resourcing. There potentially may be a need to also consider an increased meeting cycle in order to assess development applications within the prescribed timeframe.

2.14 The Panel can delegate applications to Council staff and it is recommended that the following development applications be delegated to the Assessment Manager:

2.14.1 Where no valid representations are received; or

2.14.2 All valid representations are withdrawn; or

2.14.3 No valid representor wishes to be heard.

2.15 This approach is consistent with the current delegations under the *Development Act 1993*.

2.16 It is proposed that the Assessment Manager provides advice to the Panel listing all the applications determined under delegated authority. This could be a regular meeting agenda item of the Panel, or another mechanism as determined by the Panel. This will provide the Panel the opportunity to review the performance / outcomes of the delegated decisions.

Deemed Approval

2.17 Section 125 of the PDI Act provides that in the event a relevant authority fails to determine an application for planning consent within the time stipulated by regulations, the applicant can choose to serve a "deemed consent notice" on the relevant authority. Upon service of a deemed consent notice, the application is taken to have been granted planning consent. The relevant authority can then:

2.17.1 Take no action, in which case the development authorisation will remain, subject to standard conditions set out in Practice Direction 11;

2.17.2 Within 10 business days, issue its own planning consent, including with its own conditions; or

2.17.3 Within one month, appeal the deemed consent notice.

2.18 Norman Waterhouse Lawyers, via the LGA has recommended that Panels (should they wish to avoid special meetings being convened from time to time), grant power to the Assessment Manager to grant planning consent within 10 days for development applications which are subject to a deemed consent notice.

2.19 This is because it is considered that the standard conditions in Practice Direction 11 may prove inadequate in some circumstances and it has been suggested that the enforceability of some conditions may prove difficult down the track. Accordingly, in such situations it is preferable to issue a planning consent subject to appropriate conditions for the development.

2.20 In addition, there may be a circumstance where a decision may be required to refuse a development application within the prescribed timeframe, in the event the applicant has not agreed to extend the timeframe for the Panel to consider the development application. This will avoid the possibility of a deemed consent notice being issued. It is recommended that this power also be delegated to the Assessment Manager.

2.21 In the event a deemed consent notice has been issued, it is proposed that the Assessment Manager provides a report to the Panel on the outcome of the notice. The Panel may, at this time, consider if it wishes to lodge an application with the ERD Court seeking an order to quash the deemed consent notice.

2.22 In the circumstance where such an application to quash a deemed consent notice must be lodged by a due date before the Panel is next due to meet, it is recommended that the power to lodge the application be delegated to the Assessment Manager, either alone or in consultation with the Presiding Member,

3. CONCLUSION / PROPOSAL

3.1 That the Panel considers the delegations for the efficient and effective processing of development applications under the *Planning, Development and Infrastructure Act 2016,* pending a further report to the Panel formalising proposed delegations.

CO-ORDINATION

Officer: GMCiD
Date: 12.11.2020

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.

2. Refer to the relevant Assessment Panel decision to identify when these delegations were made, reviewed and or amended.

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

1.	**Environment and Food Production Areas – Greater Adelaide**	
	1.1	The power pursuant to Section 7(5)(a) of the Planning, Development and Infrastructure Act 2016 (**the PDI Act**), in relation to a proposed development in an environment and food production area that involves a division of land that would create 1 or more additional allotments to seek the concurrence of the Commission in the granting of the development authorisation to the development.
	1.2	The power pursuant to Section 7(5)(d) of the PDI Act in relation to a proposed development in an environment and food production area that involves a division of land that would create one or more additional allotments, to, if the proposed development will create additional allotments to be used for residential development, refuse to grant development authorisation in relation to the proposed development.
2.	**Appointment of Additional Members**	
	2.1	The power pursuant to Section 85(1) of the PDI Act to appoint 1 or 2 members to act as additional members of the assessment panel for the purposes of dealing with a matter that the assessment panel must assess as a relevant authority under the PDI Act.
3.	**Relevant Authority – Commission**	
	3.1	The power pursuant to Section 94(3)(a) of the PDI Act, if the Minister acts under Section 94(1)(h) of the PDI Act to, at the request of the Commission, provide the Commission with a report relating to any application for development authorisation that has been under consideration by the relevant

	authority.		
4.	**Relevant Provisions**		
	4.1	The power pursuant to Section 99(1) of the PDI Act, if a proposed development involves the performance of building work to determine to act under Section 99(1) of the PDI Act to:	
		4.1.1	refer the assessment of the development in respect of the Building Rules to the council for the area in which the proposed development is to be undertaken; or
		4.1.2	require that the assessment of the development in respect of the Building Rules be undertaken by a building certifier.
5.	**Matters Against Which Development Must Be Assessed**		
	5.1	The power pursuant to Section 102(1) of the PDI Act to assess a development against, and grant or refuse a consent in respect of, each of the following matters (insofar as they are relevant to the particular development):	
		5.1.1	-
			5.1.1.1 the relevant provisions of the Planning Rules; and
			5.1.1.2 to the extent provided by Part 7 Division 2 of the PDI Act – the impacts of the development, (**planning consent**);
		5.1.2	the relevant provisions of the Building Rules (**building consent**);
		5.1.3	in relation to a proposed division of land (otherwise than under the Community Titles Act 1996 or the Strata Titles Act 1988) - the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under the PDI Act):
			5.1.3.1 requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;
			5.1.3.2 any relevant requirements set out in a design standard has been satisfied;
			5.1.3.3 the requirements of a water industry entity under the Water Industry Act 2012 identified under the regulations relating to the provision of water supply and sewerage services are

INSTRUMENT C
INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONSOF POWERS OF AN ASSESSMENT PANEL

		satisfied;
	5.1.3.4	where land is to be vested in a council or other authority - the council or authority consents to the vesting;
	5.1.3.5	requirements set out in regulations made for the purposes of Section 102(1)(c) of the PDI Act are satisfied;
5.1.4	in relation to a division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 - the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under the PDI Act):	
	5.1.4.1	requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;
	5.1.4.2	any relevant requirements set out in a design standard has been satisfied;
	5.1.4.3	any encroachment of a lot or unit over other land is acceptable having regard to any provision made by the Planning and Design Code or a design standard;
	5.1.4.4	where land is to be vested in a council or other authority - the council or authority consents to the vesting;
	5.1.4.5	a building or item intended to establish a boundary (or part of a boundary) of a lot or lots or a unit or units is appropriate for that purpose;
	5.1.4.6	the division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 is appropriate having regard to the nature and extent of the common property that would be established by the relevant scheme;
	5.1.4.7	the requirements of a water industry entity under the Water Industry Act 2012 identified under the regulations relating to the provision of water supply and sewerage services are satisfied;
	5.1.4.8	any building situated on the land complies with the Building Rules;
	5.1.4.9	requirements set out in the regulations made for the purposes of Section 102(d) of the PDI Act are satisfied;
5.1.5	any encroachment of a building over, under, across or on a public	

		place (and not otherwise dealt with above) is acceptable having regard to any provision made by the Planning and Design Code or a design standard;
	5.1.6	if relevant - requirements applying under Part 15 Division 2 of the PDI Act are satisfied;
	5.1.7	such other matters as may be prescribed.
5.2		The power pursuant to Section 102(3) of the PDI Act to, in relation to granting a planning consent, on the delegate's own initiative or on application, reserve the delegate's decision on a specified matter or reserve the delegate's decision to grant a planning consent:
	5.2.1	until further assessment of the relevant development under the PDI Act; or
	5.2.2	until further assessment or consideration of the proposed development under another Act; or
	5.2.3	until a licence, permission, consent, approval, authorisation, certificate or other authority is granted, or not granted (by the decision of another authority), under another Act.
5.3		The power pursuant to Section 102(4) of the PDI Act to allow any matter specified by the Planning and Design Code for the purposes of Section 102(4) of the PDI Act to be reserved on the application of the applicant.
6.	**Performance Assessed Development**	
6.1		The power pursuant to Section 107(2)(c) of the PDI Act to form the opinion that the development is seriously at variance with the Planning and Design Code (disregarding minor variations).
6.2		The power pursuant to Section 107(3) of the PDI Act, if a proposed development is to be assessed under Section 107 of the PDI Act to make a decision in accordance with a practice direction.
6.3		The power pursuant to Section 107(4) of the PDI Act to limit the matters that the delegate will take into account to what should be the decision of the relevant authority as to planning consent in relation to the performance based elements of the development as assessed on its merits.
7.	**Building Consent**	
7.1		The power pursuant to Section 118(1) of the PDI Act, if the Regulations provide that a form of building work complies with the Building Rules, to grant

INSTRUMENT C
INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONSOF POWERS OF AN ASSESSMENT PANEL

	any such building work a building consent (subject to such conditions or exceptions as may be prescribed by the regulations).			
7.2	The power pursuant to Section 118(2)(a) of the PDI Act to seek the concurrence of the Commission to grant a building consent in respect of a development that is at variance with the performance requirements of the Building Code or a Ministerial building standard.			
7.3	The power pursuant to Section 118(2) of the PDI Act, subject to Section 118(6) of the PDI Act, to grant a building consent to a development that is at variance with the Building Rules if:			
	7.3.1	the variance is with a part of the Building Rules other than the Building Code or a Ministerial building standard and the delegate determines that it is appropriate to grant the consent despite the variance on the basis that the delegate is satisfied:		
		7.3.1.1	that:	
			(a)	the provisions of the Building Rules are inappropriate to the particular building or building work, or the proposed building work fails to conform with the Building Rules only in minor respects; and
			(b)	the variance is justifiable having regard to the objects of the Planning and Design Code or the performance requirements of the Building Code or a Ministerial building standard (as the case may be) and would achieve the objects of this Act as effectively, or more effectively, than if the variance were not to be allowed; or
		7.3.1.2	in a case where the consent is being sought after the development has occurred - that the variance is justifiable in the circumstances of the particular case.	
7.4	The power pursuant to Section 118(4) of the PDI Act, to at the request or with the agreement of the applicant, refer proposed building work to the Commission for an opinion on whether or not it complies with the performance requirements of the Building Code or a Ministerial building standard.			
7.5	The power pursuant to Section 118(6) of the PDI Act if an inconsistency exists between the Building Rules and the Planning Rules in relation to a State heritage place or a local heritage place, to, in determining an application for building consent, ensure, so far as is reasonably practicable, that standards of building soundness, occupant safety and amenity are achieved			

	in respect of the development that are as good as can reasonably be achieved in the circumstances.	
7.6	The power pursuant to Section 118(7) of the PDI Act to seek and consider the advice of the Commission before imposing or agreeing to a requirement under Section 18(6) of the PDI Act that would be at variance with the performance requirements of the Building Code or a Ministerial building standard.	
7.7	The power pursuant to Section 118(8) of the PDI Act, to, subject to the PDI Act, accept that proposed building work complies with the Building Rules to the extent that:	
	7.7.1	such compliance is certified by the provision of technical details, particulars, plans, drawings or specifications prepared and certified in accordance with the regulations; or
	7.7.2	such compliance is certified by a building certifier.
7.8	The power pursuant to Section 118(10) of the PDI Act to refuse to grant a consent in relation to any development if, as a result of that development, the type or standard of construction of a building of a particular classification would cease to conform with the requirements of the Building Rules for a building of that classification	
7.9	The power pursuant to Section 118(11) of the PDI Act, if a relevant authority decides to grant building consent in relation to a development that is at variance with the Building Rules, to, subject to the regulations, in giving notice of the relevant authority's decision on the application for that consent, specify (in the notice or in an accompanying document):	
	7.9.1	the variance; and
	7.9.2	the grounds on which the decision is being made.
8.	**Application and Provision of Information**	
8.1	The power pursuant to Section 119(1)(b) of the PDI Act to require an application to the relevant authority for the purposes of Part 7 of the PDI Act, to include any information as the delegate may reasonably require.	
8.2	The power pursuant to Section 119(3) of the PDI Act to request an applicant:	
	8.2.1	to provide such additional documents, assessments or information (including calculations and technical details) as the delegate may reasonably require to assess the application;

	8.2.2	to remedy any defect or deficiency in any application or accompanying document or information required by or under the PDI Act;
	8.2.3	to consult with an authority or body prescribed by the regulations;
	8.2.4	to comply with any other requirement prescribed by the regulations.
8.3	The power pursuant to Section 119(6) of the PDI Act if a request is made under Section 119(3) of the PDI Act, and the request is not complied with within the time specified by the regulations, to	
	8.3.1	subject to Section 119(6)(b)(ii) of the PDI Act, refuse the application; and
	8.3.2	refuse the application in prescribed circumstances (including, if the regulations so provide, in a case involving development that is deemed-to-satisfy development).
8.4	The power pursuant to Section 119(7) of the PDI Act to, in dealing with an application that relates to a regulated tree, consider that special circumstances apply.	
8.5	The power pursuant to Section 119(9) of the PDI Act to:	
	8.5.1	permit an applicant:
		8.5.1.1 to vary an application;
		8.5.1.2 to vary any plans, drawings, specifications or other documents that accompanied an application,
		(provided that the essential nature of the proposed development is not changed);
	8.5.2	permit an applicant to lodge an application without the provision of any information or document required by the regulations;
	8.5.3	to the extent that the fee is payable to the relevant authority waive payment of whole or part of the application fee, or refund an application fee (in whole or in part);
	8.5.4	if there is an inconsistency between any documents lodged with the relevant authority for the purposes of Part 7 of the PDI Act (whether by an applicant or any other person), or between any such document and a development authorisation that has already been given that is relevant in the circumstances, return or forward any document to the

		applicant or to any other person and determine not to finalise the matter until any specified matter is resolved, rectified or addressed.
	8.6	The power pursuant to Section 119(10) of the PDI Act to grant a permission under Section 119(9) of the PDI Act unconditionally or subject to such conditions as the delegate thinks fit.
	8.7	The power pursuant to Section 119(12) of the PDI Act to, in a consent, provide for, or envisage, the undertaking of development in stages, with separate consents or approvals for the various stages.
	8.8	The power pursuant to Section 119(14) of the PDI Act to if an applicant withdraws an application to determine to refund the application fee.
9.	**Outline Consent**	
	9.1	The power pursuant to Section 120(1) of the PDI Act and subject to Section 120 of the PDI Act, to on application, grant a consent in the nature of an outline consent.
	9.2	The power pursuant to Section 120(3) of the PDI Act if an outline consent is granted and a subsequent application is made with respect to the same development (subject to any variations allowed by a practice direction) to:
		9.2.1 grant any consent contemplated by the outline consent; and
		9.2.2 not impose a requirement that is inconsistent with the outline consent.
10.	**Design Review**	
	10.1	The power pursuant to Section 121(7) of the PDI Act, to in acting under the PDI Act, take into account any advice provided by a design panel (insofar as may be relevant to the assessment of proposed development by the delegate).
11.	**Referrals to Other Authorities or Agencies**	
	11.1	The power pursuant to Section 122(1) of the PDI Act, where an application for consent to, or approval of, a proposed development of a prescribed class is to be assessed by a relevant authority, to:
		11.1.1 refer the application, together with a copy of any relevant information provided by the applicant, to a body prescribed by the regulations (including, if so prescribed, the Commission); and
		11.1.2 not make a decision until the relevant authority has received a

		response from that prescribed body in relation to the matter or matters for which the referral was made
		where the regulations so provide, subject to Section 122 of the PDI Act.
	11.2	The power pursuant to Section 122(5)(b) of the PDI Act, acting by direction of a prescribed body:
		11.2.1 to refuse the application; or
		11.2.2 consent to or approve the development and impose such conditions as the prescribed body thinks fit, (subject to any specific limitation under another Act as to the conditions that may be imposed by the prescribed body) where the regulations so provide.
	11.3	The power pursuant to Section 122(7) of the PDI Act, if the relevant authority is directed by a prescribed body to refuse an application and the refusal is the subject of an appeal under the PDI Act, to apply for the relevant authority to be joined as a party to the proceedings.
	11.4	The power pursuant to Section 122(10) of the PDI Act to, if requested by an applicant, defer a referral under Section 122 of the PDI Act to a particular stage in the process of assessment.
12.	**Preliminary Advice and Agreement**	
	12.1	The power pursuant to Section 123(2) of the PDI Act, if:
		12.1.1 a proposed development is referred to a prescribed body under Section 123(1) of the PDI Act; and
		12.1.2 the prescribed body agrees to consider the matter under Section 123 of the PDI Act after taking into account any matter prescribed by the regulations; and
		12.1.3 the prescribed body agrees, in the manner prescribed by the regulations, that the development meets the requirements (if any) of the prescribed body (including on the basis of the imposition of conditions),
		to, subject to Section 123(4)of the PDI Act if an application for planning consent with respect to the development is lodged with the relevant authority within the prescribed period after the prescribed body has indicated its agreement under Section 123(2)(c) of the PDI Act, form the opinion and be satisfied that the application accords with the agreement indicated by the

	prescribed body (taking into account the terms or elements of that agreement and any relevant plans and other documentation).
12.2	The power pursuant to Section 123(4) of the PDI Act to determine an agreement under Section 123 of the PDI Act is no longer appropriate due to the operation of Section 132 of the PDI Act.
13.	**Proposed Development Involving Creation of Fortifications**
13.1	The power pursuant to Section 124(1) of the PDI Act, if the delegate has reason to believe that a proposed development may involve the creation of fortifications, to refer the application for consent to, or approval of, the proposed development to the Commissioner of Police (the Commissioner).
13.2	The power pursuant to Section 124(5) of the PDI Act, if the Commissioner determines that the proposed development involves the creation of fortification, to:
13.2.1	if the proposed development consists only of the creation fortifications - refuse the application; or
13.2.2	in any other case - impose conditions in respect of any consent to or approval of the proposed development prohibiting the creation of the fortifications
13.3	The power pursuant to Section 124(6) of the PDI Act, if the relevant authority acting on the basis of a determination of the Commissioner under Section 124(2) of the PDI Act refuses an application or imposes conditions in respect of a development authorisation, to notify the applicant that the application was refused, or the conditions imposed, on the basis of a determination of the Commissioner under Section 124 of the PDI Act.
13.4	The power pursuant to Section 124(7) of the PDI Act, if a refusal or condition referred to in Section 124(5) of the PDI Act is the subject of an appeal under the PDI Act to apply to the Court to be joined as a party to the appeal.
14.	**Time Within Which Decision Must be Made**
14.1	The power pursuant to Section 125(6) of the PDI Act to form the opinion and consider that the relevant application for planning consent should have been refused and apply to the Court for an order quashing the consent.
14.2	The power pursuant to Section 125(7) of the Act to apply to the Court for an extension of time to make an application under Section 125(6) of the Act.
15.	**Determination of Application**

15.1	The power pursuant to Section 126(1) of the PDI Act to, on making a decision on an application under Part 7 of the PDI Act, give notice of the decision in accordance with the regulations (and, in the case of a refusal, to include in the notice the reasons for the refusal and any appeal rights that exist under the PDI Act).
15.2	The power pursuant to Section 126(3) of the PDI Act to, on the delegate's own initiative or on the application of a person who has the benefit of any relevant development authorisation, extend a period prescribed under Section 126(2) of the PDI Act.
16.	**Conditions**
16.1	The power pursuant to Section 127(1) of the PDI Act to make a decision subject to such conditions (if any) as the delegate thinks fit to impose in relation to the development.
16.2	The power pursuant to Section 127(2)(c) of the PDI Act to vary or revoke a condition in accordance with an application under Part 7 of the PDI Act.
16.3	The power pursuant to Section 127(4) of the PDI Act, subject to Sections 127(6) and (8) of the PDI Act, if a development authorisation provides for the killing, destruction or removal of a regulated tree or a significant tree, to apply the principle that the development authorisation be subject to a condition that the prescribed number of trees (of a kind determined by the delegate) must be planted and maintained to replace the tree (with the cost of planting to be the responsibility of the applicant or any person who acquires the benefit of the consent and the cost of maintenance to be the responsibility of the owner of the land).
16.4	The power pursuant to Section 127(6) of the PDI Act to, on the application of the applicant, determine that a payment of an amount calculated in accordance with the regulations be made into the relevant fund in lieu of planting 1 or more replacement trees under Section 127(4) of the PDI Act.
16.5	The power pursuant to Section 127(8)(b) of the PDI Act to:
16.5.1	determine that it is appropriate to grant an exemption under Section 127(8)(b) of the PDI Act in a particular case after taking into account any criteria prescribed by the regulations and provided the Minister concurs in the granting of the exemption;
16.5.2	to seek the Minister's concurrence to grant an exemption under Section 127(8)(b) of the PDI Act.
17.	**Variation of Authorisation**

17.1	The power pursuant to Section 128(2)(d) of the PDI Act to approve an application for a variation to a development authorisation previously given under the PDI Act, which seeks to extend the period for which the relevant authorisation remains operative.
18.	**Requirement to Up-grade**
18.1	The power pursuant to Section 134(1) of the PDI Act to form the opinion that the building is unsafe, structurally unsound or in an unhealthy condition.
18.2	The power pursuant to Section 134(1) of the PDI Act, if:
18.2.1	an application for a building consent relates to:
18.2.1.1	building work in the nature of an alteration to a building constructed before the date prescribed by regulation for the purposes of Section 134(1) of the PDI Act; or
18.2.1.2	a change of classification of a building; and
18.2.2	the building is, in the opinion of the delegate, unsafe, structurally unsound or in an unhealthy condition,
	to require that building work that conforms with the requirements of the Building Rules be carried out to the extent reasonably necessary to ensure that the building is safe and conforms to proper structural and health standards.
18.3	The power pursuant to Section 134(2) of the PDI Act, when imposing a requirement under Section 134(1) of the PDI Act, to specify (in reasonable detail) the matters under Section 134(1)(b) of the PDI Act that must, in the opinion of the delegate, be addressed.
18.4	The power pursuant to Section 134(3) of the PDI Act to impose a requirement under Section 134(1) of the PDI Act:
18.4.1	subject to Section 134(3)(b) of the PDI Act - on the basis that the relevant matters must be addressed as part of the application before the relevant authority will grant building consent; and
18.4.2	in cases prescribed by the regulations - as a condition of the building consent that must be complied with within a prescribed period after the building work to which the application for consent relates is completed
18.5	The power pursuant to Section 134(4) of the PDI Act if:

	18.5.1	an application is made for building consent for building work in the nature of an alteration of a class prescribed by the regulations; and
	18.5.2	the delegate is of the opinion that the affected part of the building does not comply with the performance requirements of the Building Code or a Ministerial building standard in relation to access to buildings, and facilities and services within buildings, for people with disabilities,
	to require that building work or other measures be carried out to the extent necessary to ensure that the affected part of the building will comply with those performance requirements of the Building Code or the Ministerial building standard (as the case may be).	
18.6	The power pursuant to Section 134(5) of the PDI Act to impose a requirement under Section 134(4) of the PDI Act:	
	18.6.1	subject to Section 134(5)(b) of the PDI Act - on the basis that the building work or other measures to achieve compliance with the relevant performance requirements must be addressed before the relevant authority will grant building consent; and
	18.6.2	in cases prescribed by the regulations - as a condition of the building consent that must be complied with within a prescribed period after the building work to which the application for consent relates is completed.
19.	**Cancellation of Development Authorisation**	
19.1	The power pursuant to Section 143(1) of the PDI Act to, on the application of a person who has the benefit of the authorisation, cancel a development authorisation previously given by the relevant authority.	
19.2	The power pursuant to Section 143(2) of the PDI Act to make a cancellation under Section 143(1) of the PDI Act subject to such conditions (if any) as the delegate thinks fit to impose.	
20.	**Professional Advice to be Obtained in Relation to Certain Matters**	
20.1	The power pursuant to Section 235(1) of the PDI Act, to, in the exercise of a prescribed function, rely on a certificate of a person with prescribed qualifications.	
20.2	The power pursuant to Section 235(2) of the PDI Act to seek and consider the advice of a person with prescribed qualifications, or a person approved by the Minister for that purpose, in relation to a matter arising under the PDI Act that is declared by regulation to be a matter on which such advice should be	

	sought.	
21.	**General Transitional Schemes for Panels**	
21.1	The power pursuant to Clause 12(7) of Schedule 8 of the PDI Act, to	
	21.1.1	adopt any findings or determinations of a council development assessment panel under the repealed Act that may be relevant to an application made before the relevant day under the repealed Act; and
	21.1.2	adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application made before the relevant day under the repealed Act; and
	21.1.3	deal with any matter that is subject to a reserved decision under the repealed Act before the relevant day; and
	21.1.4	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act; and
	21.1.5	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act.
	(Only applicable to assessment panels appointed by a council or a joint planning board)	
22.	**Regional Assessment Panels**	
22.1	The power pursuant to Clause 13(5) of Schedule 8 of the PDI Act to:	
	22.1.1	adopt any findings or determinations of a council development assessment panel or a regional development assessment panel under the repealed Act that may be relevant to an application made before the relevant day under the repealed Act; and
	22.1.2	adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application made before the relevant day under the repealed Act; and
	22.1.3	deal with any matter that is subject to a reserved decision under the repealed Act before the relevant day; and
	22.1.4	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant

	day under the repealed Act; and
22.1.5	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act.
	(Relevant to regional assessment panels only)
23.	**Continuation of Processes**
23.1	The power pursuant to Clause 18(2) of Schedule 8 of the PDI Act, to:
23.1.1	adopt any findings or determinations of a relevant authority under the repealed Act that may be relevant to an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and
23.1.2	adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and
23.1.3	deal with any matter that is subject to a reserved decision under the repealed Act before the designated day; and
23.1.4	deal with any requirement or grant any variation imposed or proposed in connection with an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and
23.1.5	take any other step or make any other determination authorised by the regulations, or that is reasonably necessary to promote or ensure a smooth transition on account of the transfer of functions, powers or duties under Clause 18 of Schedule 8 of the PDI Act.

PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017

24.	**Accredited Professionals**
24.1	The power pursuant to Regulation 25(7)(c) of the Planning, Development and Infrastructure (General) Regulations 2017 (**the General Regulations**) to form the opinion and be satisfied, on the basis of advice received from the accreditation authority under the Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019, a relevant professional association, or other relevant registration or accreditation authority, that a person has engineering or other qualifications that qualify the person to act as

	a technical expert under Regulation 25 of the General Regulations.
25.	**Verification of Application**
25.1	The power pursuant to Regulation 31(1) of the General Regulations, on the receipt of an application under Section 119 of the PDI Act, and in addition to any other requirement under the General Regulations, to, in order to ensure that an application has been correctly lodged and can be assessed in accordance with the PDI Act:
25.1.1	determine the nature of the development; and
25.1.2	if the application is for planning consent - determine:
25.1.2.1	whether the development involves 2 or more elements and, if so, identify each of those elements for the purposes of assessment against the provisions of the Planning and Design Code; and
25.1.2.2	the category or categories of development that apply for the purposes of development assessment; and
25.1.3	determine whether the relevant authority is the correct entity to assess the application under the PDI Act; and
25.1.4	if the relevant authority is the correct entity to assess the application (or any part of the application):
25.1.4.1	check that the appropriate documents and information have been lodged with the application; and
25.1.4.2	confirm the fees required to be paid at that point under the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*; and
25.1.4.3	provide an appropriate notice via the SA planning portal; and
25.1.5	if the relevant authority is not the correct entity to assess the application (or any part of the application):
25.1.5.1	provide the application (or any relevant part of the application), and any relevant plans, drawings, specifications and other documents and information in its possession, to the entity that the delegate considers to be the correct relevant authority in accordance with any

		practice direction; and
	25.1.5.2	provide an appropriate notice via the SA planning portal.
26.	**Application and Further Information**	
26.1	The power pursuant to Regulation 33(4) of the General Regulations to seek clarification about any document or information that has been provided by the applicant.	
27.	**Amended Applications**	
27.1	The power pursuant to Regulation 35(3) of the General Regulations if an application is varied following referral under Division 2 or giving of notice under Division 3, to, if the variations are not substantial, consider the application without the need to repeat an action otherwise required under Division 2 or Division 3.	
27.2	The power pursuant to Regulation 35(4) of the General Regulations if a variation would change the essential nature of a proposed development (as referred to in Section 119(9)(a) of the PDI Act), to agree with the applicant to proceed with the variation on the basis that the application (as so varied) will be treated as a new application under the General Regulations.	
28.	**Withdrawing/Lapsing Applications**	
28.1	The power pursuant to Regulation 38(1) of the General Regulations if an application is withdrawn by the applicant under Section 119(14) of the PDI Act, to notify:	
	28.1.1	any agency to which the application has been referred under Division 2 of the General Regulations; and
	28.1.2	any person who has made a representation in relation to the application under Division 3 of the General Regulations,
	of the withdrawal.	
28.2	The power pursuant to Regulation 38(3) of the General Regulations before taking action to lapse an application under Regulation 38(2) of the General Regulations, to:	
	28.2.1	take reasonable steps to notify the applicant of the action under consideration; and
	28.2.2	allow the applicant a reasonable opportunity to make submissions to the delegate (in a manner and form determined by the delegate)

		about the proposed course of action.
29.	**Court Proceedings**	
	29.1	The power pursuant to Regulation 40 of the General Regulations to, subject to Section 214(14) of the PDI Act, by notice in writing to the applicant, decline to deal with the application until any proceedings under the PDI Act have been concluded.
30.	**Additional Information or Amended Plans**	
	30.1	The power pursuant to Regulation 42(1) of the General Regulations if a delegate has referred an application to a prescribed body under Division 1 of the General Regulations and the relevant authority subsequently receives additional information, or an amended plan, drawing or specification, which is materially relevant to the referral, or to any report obtained as part of the referral process, to repeat the referral process.
31.	**Building Matters**	
	31.1	The power pursuant to Regulation 45(1) of the General Regulations to, if in assessing an application for building consent, the delegate considers that:
		31.1.1 a proposed performance solution within the meaning of the Building Code requires assessment against a performance requirement of the Building Code which provides for the intervention of a fire authority; or
		31.1.2 the proposed development is at variance with a performance requirement of the Building Code which provides for the intervention of a fire authority; or
		31.1.3 special problems for fire fighting could arise due to hazardous conditions of a kind described in Section E of the Building Code,
		refer the application to the relevant fire authority for comment and report unless the fire authority indicates to the delegate that a referral is not required.
	31.2	The power pursuant to Regulation 45(2) of the General Regulations, if a report is not received from the fire authority on a referral under Regulation 45(1) of the General Regulations within 20 business days, to presume that the fire authority does not desire to make a report.
	31.3	The power pursuant to Regulation 45(3) of the General Regulations to have regard to any report received from a fire authority under Regulation 45 of the

	General Regulations.	
31.4	The power pursuant to Regulation 45(4) of the General Regulations, if, in respect of an application referred to a fire authority under Regulation 45 of the General Regulations, the fire authority:	
	31.4.1	recommends against the granting of building consent; or
	31.4.2	concurs in the granting of consent on conditions specified in its report,
	but the delegate:	
	31.4.3	proposes to grant building consent despite a recommendation referred to in Regulation 45(4)(a) of the General Regulations; or
	31.4.4	does not propose to impose the conditions referred to in Regulation 45(b) of the General Regulations, or proposes to impose the conditions in varied form, on the grant of consent,
	to:	
	31.4.5	refer the application to the Commission; and
	31.4.6	not grant consent unless the Commission concurs in the granting of the consent.
31.5	The power pursuant to Regulation 45(5) of the General Regulations to provide to the Commission a copy of any report received from a fire authority under Regulation 45(1) of the General Regulations that relates to an application that is referred to the Commission under the PDI Act.	
32.	**Preliminary Advice and Agreement (Section 123)**	
32.1	The power pursuant to Regulation 46(6) of the General Regulations, if:	
	32.1.1	the delegate permits an applicant to vary an application under Section 119(9) of the PDI Act; and
	32.1.2	the delegate determines that the application no longer accords with the agreement indicated by the prescribed body,
	to refer the application (unless withdrawn) to the prescribed body:	
	32.1.3	to obtain a variation to the agreement under Section 123 of the PDI Act; or

	32.1.4	to obtain a response from the prescribed body for the purposes of Section 122 of the PDI Act.
32.2	The power pursuant to Regulation 46(7) of the General Regulations if:	
	32.2.1	an application is withdrawn by the applicant; and
	32.2.2	the applicant sought to rely on an agreement under Section 123 of the PDI Act in connection with the application,
	to notify relevant prescribed body of the withdrawal.	
32.3	The power pursuant to Regulation 46(8) of the General Regulations, if:	
	32.3.1	an application is lapsed by a relevant authority under Regulation 38 of the General Regulations; and
	32.3.2	the applicant sought to rely on an agreement under Section 123 of the PDI Act in connection with the application,
	to notify the relevant prescribed body of the lapsing.	
32.4	The power pursuant to Regulation 46(9) of the General Regulations, if:	
	32.4.1	an applicant seeks to rely on an agreement under Section 123 of the PDI Act in connection with the application; and
	32.4.2	a notice of a decision on the application is issued by the delegate under Regulation 57 of the General Regulations,
	to provide a copy of the notice to the prescribed body within 5 business days after the notice is given to the applicant under Regulation 57 of the General Regulations.	
33.	**Notification of Application of Tree-damaging Activity to Owner of Land**	
33.1	The power pursuant to Regulation 48 of the General Regulations, if an owner of land to which an application for a tree-damaging activity in relation to a regulated tree relates is not a party to the application, to:	
	33.1.1	give the owner notice of the application within 5 business days after the application is made; and
	33.1.2	give due consideration in the delegate's assessment of the application to any submission made by the owner within 10 business days after the giving of notice under Regulation 48 of the General

	Regulations.
34.	**Public Inspection of Applications**
34.1	The power pursuant to Regulation 49(3) of the General Regulations to request a person verify information in such manner as the delegate thinks fit.
35.	**Representations**
35.1	The power pursuant to Regulation 50(5) of the General Regulations to, if the delegate considers that it would assist the delegate in making a decision on the application, allow a person:
35.1.1	who has made a representation under Regulation 50(1) of the General Regulations in relation to development being assessed under Section 107 of the PDI Act; and
35.1.2	who has indicated an interest in appearing before the delegate,
	an opportunity (at a time determined by the delegate) to appear personally or by representative before the delegate to be heard in support of the representation that has been made under Regulation 50(1) of the General Regulations.
36.	**Response by Applicant**
36.1	The power pursuant to Regulation 51(1) of the General Regulations to allow a response to a representation by the applicant to be made within such longer period as the delegate may allow.
37.	**Notice of Decision (Section 126(1))**
37.1	The power pursuant to Regulation 57(4)(a) of the General Regulations to endorse a set of any approved plans and other relevant documentation with an appropriate form of authentication.
38.	**Consideration of Other Development Authorisations**
38.1	The power pursuant to Regulation 60 of the General Regulations, to, in deciding whether to grant a development authorisation, take into account any prior development authorisation that relates to the same proposed development under the PDI Act, and any conditions that apply in relation to that prior development authorisation.
39.	**Certificate of Independent Technical Expert in Certain Cases**
39.1	The power pursuant to Regulation 61(4)(c) of the General Regulations to form

		the opinion and be satisfied on the basis of advice received from the accreditation authority under the Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019, a relevant professional association, or another relevant registration or accreditation authority, that a person has engineering or other qualifications, qualify the person to act as a technical expert under this regulation.
40.	**Urgent Work**	
	40.1	The power pursuant to Regulation 63(1) of the General Regulations to,
		40.1.1 determine a telephone number determined for the purposes of Regulation 63(1)(a) of the General Regulations; and
		40.1.2 determine the email address for the purposes of Regulation 63(1)(b) of the General Regulations.
	40.2	The power pursuant to Regulation 63(2) of the General Regulations to, for the purposes of Section 135(2)(c) of the PDI Act, allow a longer period.
	40.3	The power pursuant to Regulation 63(3) of the General Regulations to, for the purposes of Section 135(2)(c) of the PDI Act, allow a longer period.
41.	**Variation of Authorisation (Section 128)**	
	41.1	The power pursuant to Regulation 65(1) of the General Regulations to, for the purposes of Section 128(2)(b) of the PDI Act, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) to form the opinion and be satisfied that the variation is minor in nature, and approve the variation.
42.	**Advice from Commission**	
	42.1	The power pursuant to Regulation 76(2) of the General Regulations, if a report is not received from the Commission within 20 business days from the day on which the application is lodged under Regulation 29 of the General Regulations or within such longer period as the Commission may require by notice to the relevant authority, to presume that the Commission does not desire to make a report.
43.	**Underground Mains Area**	
	43.1	The power pursuant to Regulation 78(3) of the General Regulations, if an application relates to a proposed development that involves the division of land within, or partly within, an underground mains area (even if the area is declared as such after the application is lodged with the relevant authority), to

	require, as a condition on its decision on the application, that any electricity mains be placed underground.
44.	**Plans for Residential Alterations, Additions and New Dwellings**
44.1	The power pursuant to Clause 2(d)(ii)(B) of Schedule 8 of the General Regulations to form the belief that the allotment is, or may have been, subject to site contamination as a result of a previous use of the land or a previous activity on the land or in the vicinity of the land.
44.2	The power pursuant to Clause 2(d)(ii)(D) of Schedule 8 of the General Regulations to be satisfied a site contamination audit report (within the meaning of the Environment Protection Act 1993) is not required.
45.	**Plans for Building Work**
45.1	The power pursuant to Clause 4(3) of Schedule 8 of the General Regulations, in relation to an application for building consent for development consisting of or involving an alteration to a building, if:
45.1.1	the applicant is applying for a change in the classification of the building to a classification other than Class 10 under the Building Code; or
45.1.2	the building was erected before 1 January 1974 and the applicant is applying for a classification other than Class 10 under the Building Code to be assigned to the building,
	to require the application to be accompanied by such details, particulars, plans, drawings, specifications and other documents (in addition to the other documents required to accompany the application) as the delegate reasonably requires to show that the entire building will, on completion of the building work, comply with the requirements of the PDI Act and the General Regulations for a building of the classification applied for or with so many of those requirements as will ensure that the building is safe and conforms to a proper structural standard.

PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS) REGULATIONS 2019

46.	**Calculation or Assessment of Fees**
46.1	The power pursuant to Regulation 5(1) of the PDI (Fees, Charges and Contributions) Regulations 2019 (**the Fees Regulations**) in relation to an application which is duly lodged with the council under a related set of

	regulations (including via the SA planning portal):	
	46.1.1	to require the applicant to provide such information as the delegate may reasonably require to calculate any fee payable under the Fees Regulations or a related set of regulations; and
	46.1.2	to make any other determination for the purposes of the Fees Regulations or a related set of regulations (even if the assessment panel is not a relevant authority).
46.2	The power pursuant to Regulation 5(2) of the Fees Regulations, if the delegate is acting under Regulation 5(1) of the Fees Regulations, or as the delegate of a relevant authority, believes that any information provided by an applicant is incomplete or inaccurate, to calculate any fee on the basis of estimates made by the delegate.	
46.3	The power pursuant to Regulation 5(3) of the Fees Regulations to, at any time, and despite an earlier calculation or acceptance of an amount in respect of the fee, reassess a fee payable under the Fees Regulations or a related set of regulations.	
47.	**Waiver or Refund of Fee**	
47.1	The power pursuant to Regulation 7 of the Fees Regulations to, as the delegate considers appropriate to do so:	
	47.1.1	waive the payment of the fee, or the payment of part of the fee; or
	47.1.2	refund the whole or a part of the fee.

PLANNING AND DESIGN CODE

48.	**Procedural Matter**
48.1	The power pursuant to and in accordance with the Planning and Design Code (**the PD Code**) to form the opinion development is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development and therefore is excluded from the operation of Sections 107(3) and (4) of the PDI Act.
49.	**Procedural Referrals**
49.1	The power pursuant to and in accordance with the PD Code to form the opinion development is minor in nature and would not warrant a referral when considering the purpose of the referral.

	49.2	The power pursuant to and in accordance with the PD Code to form the opinion and deem:
		49.2.1 alteration to an existing access or public road junction;
		49.2.2 development that changes the nature of vehicular movements or increases the number or frequency of movements through an existing access,
		to be minor.
	49.3	The power pursuant to and in accordance with the PD Code to form the opinion an alteration or extension of an existing dwelling is minor.
	49.4	The power pursuant to and in accordance with the PD Code to form the opinion development is minor in nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral.
50.	**Referral Body: Minister Responsible for the Administration of the Aquaculture Act 2001**	
	50.1	The power pursuant to and in accordance with Part 9.4 of the PD Code to form the opinion that aquaculture development which involves an alteration to an existing or approved development is minor in nature.

STATE PLANNING COMMISSION PRACTICE DIRECTION 3 (NOTIFICATION OF PERFORMANCE ASSESSED DEVELOPMENT APPLICATIONS) 2019

51.	**Responsibility to Undertake Notification**	
	51.1	The power pursuant to clause 6(4) of the State Planning Commission Practice Direction 3 (Notification of Performance Assessed Development Applications) 2019 (**PD3**), should the applicant request the relevant authority to place the notice on the land and pay the relevant fee, to (either personally or by engagement of a contractor) give notice of the application to members of the public by notice placed on the relevant land in accordance with Section 107(3)(a)(ii) of the PDI Act.
52.	**Preparing for Notification**	
	52.1	The power pursuant to clause 8 of PD3, if the applicant has confirmed they accept responsibility to place a notice on the land as per clause 6(3)(a) of PD3, to, at least 4 business days prior to the commencement of the notification period:
		52.1.1 give notice of the anticipated commencement date and of the

		notification period to the applicant; and
	52.1.2	provide the applicant with a copy of the content of the notice to be placed on the relevant land in PDF format; and
	52.1.3	advise the applicant of the position and number of notice(s) to be erected on the land in accordance with clause 10 of PD3.
53.	**Notice on Land**	
	53.1	The power pursuant to clause 10(2) of PD3, in relation to clause 10(2) of PD3, to determine the most appropriate position for the notice on the land in order to provide for maximum visibility from a public road, and in cases where the relevant land has more than 1 frontage to a public road, to determine that more than 1 notice must be erected on each of the public road frontages to ensure that notice of the development is reasonably apparent to members of the public.

STATE PLANNING COMMISSION PRACTICE DIRECTION (APPOINTMENT OF ADDITIONAL MEMBERS TO ASSESSMENT PANEL) 2019

54.	**Qualifications and Experience of Additional members**	
	54.1	The power pursuant to clause 4(6) of the State Planning Commission Practice Direction (Appointment of Additional Members to Assessment Panel) 2019 (**PD5**) where the delegate forms the view that additional expert advice is required for an application which requires assessment of a matter listed in Column 1 of PD5, to engage an additional assessment panel member provided that person maintains both the minimum experience detailed in Column 2 of PD5, as well as the minimum qualification listed in Column 3 of PD5.
	54.2	The power pursuant to clause 4(7) of PD5 to be satisfied of the minimum experience and qualifications of an additional assessment panel member.

STATE PLANNING COMMISSION PRACTICE DIRECTION (SCHEME TO AVOID CONFLICTING REGIMENS) 2019

55.	**Scheme Provisions**	
	55.1	The power pursuant to clause 5(1) of the State Planning Commission Practice Direction (Scheme to Avoid Conflicting Regimens) 2019 (**PD6**), to in undertaking a planning assessment or imposing controls, including through the imposition of conditions of planning consent, ensure that such assessment or controls do not conflict or duplicate matters dealt with or

	addressed under licencing or regulatory regimens under another Act.
55.2	The power pursuant to clause 5(3) of PD6 to, where the delegate is uncertain whether a matter conflicts with, or duplicates a matter dealt with under a licencing or regulatory regime under another Act, to seek the advice of that authority or agency.

INSTRUMENT C
INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONSOF POWERS OF AN ASSESSMENT PANEL

SCHEDULE OF CONDITIONS

CONDITIONS OR LIMITATIONS APPLICABLE TO DELEGATIONS CONTAINED IN THIS INSTRUMENT

[Instructions for use: any conditions or limitations which apply to delegations under this Act should be inserted here – DELETE this note once conditions/limitations are entered. If no conditions apply insert 'NIL']

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations
Nil	Nil

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Information Sheet

PDI Delegations – Summary of Changes (July 2020)

In collaboration with the LGA, Norman Waterhouse has amended the 4 instruments of delegation under the *Planning, Development and Infrastructure Act 2016* and its Regulations to incorporate:

- Recent amendments to the *Planning, Development and Infrastructure (General) Regulations 2017* (**General Regs**). These have been incorporated into the existing delegations in each of Instruments A to D under the General Regs;
- The Planning and Design Code (**Code**). New delegations have been incorporated into Instruments C and D, located below the delegations under the Regulations; and
- Practice Directions 2, 3, 5, 6, 9 and 10 issued by the State Planning Commission. New delegations have been incorporated into Instruments A, C and D, located after the new Code delegations (for Instruments C and D), or after the Regulations (for Instrument A).

These amendments are avaialbe in both 'clean' and 'track changed' versions.

Summary of amendments

Instrument A: **Delegations of a Council as a Council, Designated Authority and Designated Entity**

Changes to delegations under the General Regs:

- Changes to Item 11 relating to amendments to the Code;
- New delegations relating to rights of indemnity for CAP and RAP members and Assessment Managers;
- New delegations relating to the setting of fees to place public notification signs on land;
- Minor changes to language in item 76.2; and
- New delegation relating to the power to determine that building work will be inspected.

Practice Directions – a new section delegating the Council's powers and functions under:

- Practice Direction 2 – Preparation and amendment of designated instruments;
- Practice Direction 3 – Notification of performance assessed development;
- Practice Direction 9 – Council inspections; and
- Practice Direction 10 – Staged occupation of multi-storey buildings.

Instrument B: Delegations of a Council as a relevant authority (for building consent and development approval)

One minor amendment has been made to amend the 'old' language of "Building Rules consent" to the 'new' language of "building consent".

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Instrument C: Delegations of a CAP or RAP

Changes to delegations under the General Regs:

- A minor amendment to amend the 'old' language of "Building Rules consent" to the 'new' language of "building consent".
- An minor amendment to the regulation reference in Item 42.1;

The Code – a new section delegating the forming of opinions regarding:

- whether an application for performance assessed development is 'minor' and does not require notification; and
- whether the application requires referral.

Practice Directions – a new section delegating the CAP/RAP's powers and functions under:

- Practice Direction 3 – Notification of performance assessed development;
- Practice Direction 5 – Appointment of additional panel members; and
- Practice Direction 6 – Scheme to avoid conflicting regimens.

Instrument D: Delegations of an Assessment Manager

Changes to delegations under the General Regs:

- New delegation relating to the power for an Assessment Manager to act as a relevant authority in prescribed circumstances (relating to notification of performance assessed development);
- A minor amendment to the regulation reference in Item 37.1;

The Code – a new section delegating the forming of opinions regarding:

- whether an application for performance assessed development is 'minor' and does not require notification (this is related to the new power in new Item 22); and
- whether the application requires referral.

Practice Directions – a new section delegating the Assessment Manager's powers and functions under Practice Direction 6 – Scheme to avoid conflicting regimens.

Recommendations

In relation to deemed planning consents, Norman Waterhouse have advised that they have identified an important limitation or exclusion which they strongly encourage all Panels (instrument C) and Assessment Managers (Instrument D) to consider adopting to enable delegates to issue a consent (subject to conditions developed by them, rather than the standard conditions in PD 11) within 10 business days after a deemed consent notice is received. Below, an explanation of this, as well as recommended text is provided below.

Instruments C and D - Important limitations and exceptions to the power to grant planning consent – deemed planning consents

The power to grant planning consent pursuant to Section 102(1)(a)(i) of the PDI Act is found in:

- item 5.1.1.1 of Instrument C (CAP); and

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- item 4.1.1.1 of Instrument D (Assessment Manager).

It is anticipated that many Panels and some Assessment Managers may wish to delegate this power in *part only* - i.e. for a Panel, it may be that the delegation is limited to applications in relation to which:

- No valid representations are received; or
- All valid representations are withdrawn; or
- No representor wishes to be heard.

This is an entirely appropriate course of action. However, unless an *exception* is made to these limitations, delegates will not be able to 'deal with' deemed approvals.

To recap the concept of deemed approvals, pursuant to Section 125 of the PDI Act, if a relevant authority fails to determine an application within the time stipulated in Regulation 53 of the PDI (General) Regulations, the applicant can choose to serve a "deemed consent notice" on the relevant authority. Upon service of a deemed consent notice, the application is taken to have been granted planning consent. The relevant authority can then:

- Take no action, in which case the development authorisation will remain, subject to standard conditions set out in Practice Direction 11;
- Within 10 business days, issue its own planning consent, including with its own conditions; or
- Appeal the deemed consent notice.

In relation to the standard conditions in PD 11, due to the difficult nature of drafting conditions to 'cover the field' for all possible development types, it is likely that the conditions in this practice direction may prove inadequate in some circumstances, and that enforceability may prove difficult down the track. Accordingly, in situations in which a relevant authority does not intend to appeal a deemed consent notice, it may be preferable to issue their own consent, subject to their own conditions.

However, this power (which is not a specific power under Section 125, but part of the 'ordinary' power to grant a planning consent under Section 102(1)(a) of the Act (as reflected in Item 5.1.1.1 of Instrument C and 4.1.1.1 of Instrument D) must be exercised within 10 business days.

Accordingly, it will be important for Panels in particular (should they wish to avoid special meetings being convened from time to time), that the power to grant planning consent to applications which are subject to a deemed consent notice is delegated, even where the application itself would not otherwise have been delegated (i.e. where a representation had been received; a representor did wish to be heard, etc).

To achieve this, we recommend that Panels in particular consider:

- where the power in Section 102(1)(a) (as reflected in Item 5.1.1.1 of Instrument C and 4.1.1.1 of Instrument D) is being delegated with limitations, that the following exception be included following the limitation:

  Except in cases where a deemed consent notice has been served on the [CAP/RAP/Assessment Manager], in which case the limitation does not apply, and the [insert position – for CAP/RAP this may be the Assessment Manager] is

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delegated the power pursuant to Section 102(1)(a)(i) of the PDI Act to grant consent in respect of the relevant provisions of the Planning Rules without limitation.

- Where the power in Section 102(1)(a) is not proposed to be delegated at all in normal circumstances, the panel nonetheless delegates the power in Section 102(1)(a) with the following limitation:

  The delegation of the power to grant or refuse planning consent pursuant to Section 102(1)(a)(i) of the Act is limited to applications in relation to which a deemed consent notice has been served on the [CAP/RAP/Assessment Manager]

Should you need advice in working through these delegations it is recommended that you contact Norman Waterhouse for advice.

It is also strongly recommended that, wherever possible, all Phase 2 Councils, CAPs, RAPs and Assessment Managers revoke their existing delegations under the PDI Act and Regulations and consider and adopt these amended delegations **before 31 July 2020**. This may require a special meeting be convened.

Should this not be possible, it is strongly recommended that a meeting of the Council, CAP or RAP occur at the earliest opportunity **after 31 July 2020**, and that all staff are cognisant of any powers or functions not yet the subject of a delegation until this occurs.

Further Information

Contact Stephen Smith, Planning Reform Partner, LGA
Email: stephen.smith@lga.sa.gov.au
Telephone: 0409 286 734

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Frequently Asked Questions

Implementation of the Planning, Development and Infrastructure Act 2016 and Planning and Design Code

1. If a relevant authority makes a decision based on information provided through the eplanning system can it introduce additional policies, overlays etc if it considers that the eplanning system has not identified all relevant policies?

The short answer is "no". However, "no" is provided in the following context:

Nature of development

When an applicant lodges an application through the eplanning system, they will be required to describe the nature of the development. The relevant authority with whom the application is lodged (or their delegate) will not be bound to accept the applicant's description as correct and can determine the nature of development for themselves.

To this end, if a relevant authority considers the eplanning system has gotten the nature of development 'wrong', the relevant authority is not bound by the policies attaching to that description, because the description can be amended by the relevant authority.

Classification tables

Once the nature of development has been verified by the relevant authority (or delegate), if it is performance assessed (the rough equivalent of merit development) the applicable Zone's classification table (Table 3) will identify what are described as the "applicable" assessment provisions for that development type. We understand that a list of these applicable policies will be generated by the eplanning system (rather than the relevant authority having to consult the classification table).

When assessing a performance assessed development, on a bare reading of the *Planning, Development and Infrastructure Act 2016* (**PDI Act**), a relevant authority would not appear to be bound to consider *only* those provisions identified in Table 3, as Section 102(1)(a) requires the relevant authority to consider *"the relevant provisions of the Planning Rules"*.

However, Part 1 of the Code (Rules of Interpretation) provides that:

> *The policies specified in Table 3 constitute the policies applicable to the particular class of development within the zone to the exclusion of all other policies within the Code, and no other policies are applicable*

The effect of this rule is to restrict a relevant authority to only consider those provisions identified within the Table, and to not take any other provisions into consideration.

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We consider it likely that this rule will be challenged in due course (i.e. a challenge as to whether the Code can determine the manner in which Section 102(a) operates). However, we consider it more likely than not that such a challenge would be unsuccessful, and the rule upheld.

On this basis, our advice is that a relevant authority cannot introduce additional policies into their assessment if they consider that the eplanning system has not identified all relevant policies. In this circumstance, the proper recourse would be to attempt to amend the Code to have the additional policies included in the classification table going forward.

2. If the eplanning system does not identify a policy or overlay which it should have and the relevant authorities makes its decision without considering the 'missed' policy or overlay, what action can the applicant or a third party take, who will the action be against the relevant authority or the State Planning Commission.

How the policy is 'missed'

We note that there are two ways a policy can be 'missed' in the eplanning system

A. where, as above, a relevant authority (or delegate) considers a particular policy ought to apply, but the policy is not included in the applicable classification table; or
B. where a particular policy is included in the applicable classification table but, for whatever reason, is not picked up when a list of provisions is generated for the relevant authority.

Appeal against 'missed' policy – Applicant

If an applicant believed a relevant authority had missed an applicable provision within the Code (based on either A or B above), they would have two possible courses of action:

- they could appeal the decision in the 'ordinary' way to the ERD Court and simply argue before the ERD Court that the 'missed' policy should apply to the ERD Court's assessment of the application; or
- they could commence judicial review proceedings in the Supreme Court arguing the decision of the relevant authority was made in error; in that they failed to consider a relevant consideration – the 'missed' policy provision.

Both of these appeals would be against the relevant authority (and we note that to be successful in relation to an appeal based on point A, the appellant would need to convince the Court to read down or effectively ignore the rule of interpretation identified above within the Code which provides that a policy not identified in Table 3 is not applicable).

Appeal against 'missed' policy – Third party

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If a third party believed a relevant authority had missed an applicable provision within the Code (based on either point A or B above), they would have only one option to appeal: to commence judicial review proceedings in the Supreme Court arguing the decision of the relevant authority was made in error; in that they failed to consider a relevant consideration – the 'missed' policy provision

This appeal would also be against the relevant authority (and again, to be successful in relation to an appeal based on point A, the appellant would need to convince the Court to read down or effectively ignore the rule of interpretation identified above within the Code which provides that a policy not identified in Table 3 is not applicable).

3. If we are unable to establish a RAP or CAP prior to the designated date what should we do?

Upon the commencement of development assessment under the PDI Act, all councils must either have established a CAP or become a member of a RAP.

If any council has been unable to do this, they should contact DPTI to seek assistance and direction.

Why must every council have a CAP or RAP?

Under the *Development Act 1993* (**D Act**), the Council is the relevant authority for Development Plan consent, but must delegate this power to either staff or an assessment panel. Accordingly, if the Minister exempted a council from the requirement to establish or be a member of a panel, this was workable, as the Council could still delegate to staff.

However, under the PDI Act, the Council is no longer the relevant authority for planning consent. Rather, relevant authorities for planning consent are (among others) an Assessment Manager and an assessment panel. An Assessment Manager is appointed *to* an assessment panel, so without an assessment panel, a council will also not have an Assessment Manger.

The Code and *Planning, Development and Infrastructure (General) Regulations 2017* determine who will be the relevant authority for each application, so there is no ability for a council to direct applications to another person or body for assessment.

Accordingly, if a council does not have a CAP or is not a member of a RAP by the time development assessment commences under the PDI Act, there will be certain applications (those for which an assessment a manager and assessment panel are the relevant authority) which will not be able to be determined. There are also situations in which an assessment panel is the relevant authority for building consent, which is another reason each council must be connected with an assessment panel.

If there are any councils in the situation of not having a CAP or being a member of a RAP, we encourage them to make contact with DPTI as a matter of priority for clarification and assistance. Two options would be for:

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- the Council to swiftly establish a CAP (but bearing in mind that its members, other than current or former Elected Members, will be required to be accredited at Planning Level 2) and the Council's CEO to swiftly appoint an Assessment Manager (who need not be a member of staff, but who will be required to be accredited at Planning – Level 1); or
- the Minister to step in and constitute a Local Assessment Panel to operate within the council's area pursuant to Clause 12(3) of Schedule 8 of the PDI Act. In this circumstance, an Assessment Manager would be appointed by the Chief Executive of DPTI.

4. Can we grant an extended Development Plan Consent for additions to a shopping centre, allowing 2 years to commence and 5 years to complete. Normally we'd be ok to do this, but we're unsure of the implications of the transition to the new system under the PDI Act and P & D Code.

Yes.

Generally speaking, there would be nothing improper in granting a development authorisation with extended commencement and completion dates, provided the extensions were being granted based on reasonable considerations, such as the scope of the project, etc, and not because of, or to get around, the impending commencement of the new regime (i.e. an extension should not be used to circumvent the new planning regime under the PDI Act). Provided 'legitimate' reasons are provided, we see no general reason why extended commencement and completion periods should not be granted. We note that the equivalent provision in the D Act enabling a relevant authority to extend the time within which an application must be commenced and completed is also found in the PDI Act (s 126(3)), so it remains a concept which is contemplated under the PDI Act regime.

Having said that, for completeness, we do note that in different circumstances, the commencement of the new PDI Act regime will be a relevant consideration when considering applications to extend the operative life of development authorisations.

5. With the appointment of the Assessment Manager for a Council Assessment Panel by the CEO of the Council, does there have to be an actual end date?

There is no requirement that there be an end date for the appointment of an assessment manager (though, on balance, it is our preferred approach). This could be, for example, an appointment for the same term as the Panel's appointment.

On either approach, but particularly if the appointment is not for a fixed period, we recommend that the CEO make the appointment with the following conditions:

1. The Assessment Manager can be removed at any time for any reason
2. If the Assessment Manager is a member of Council staff, that the appointment is automatically terminated if they cease to be an employee of the Council

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6. In making assessment panel agendas available as required by the PDI Act, what should be made available, the agenda only, agenda and officer reports or all information including attachments?

- The position of the PDI Act is the same as D Act
- S83(f) of PDI Act enables panels to adopt procedures which comply with requirements prescribed in regulation.
- PDI general regulation 14(3) applies – members of the public are entitled to reasonable access to the agenda for meetings of assessment panel.
- The minimum prescribed requirement is access to the agenda pages themselves, not to any attachments.
- For practical purposes and transparency in decision-making, would suggest at a minimum the Officer report be made available. The inclusion of the report and attachments is a matter for the panel and its meeting procedures. In some circumstances, other matters such as copyright may need to be considered when deciding whether to make attachments available.

7. If there is an appeal against the Assessment Mangers decision will this/should be held in public or in confidence?

- Process outlined in PDI Act s202/203 – flexible approach.
- There is no prescription as to whether the hearings are held in public or private
- Regulation 13(2)(b) of the PDI General Regs does enable the "discussion or determination" relating to such hearings to be in private, if that is the decision taken by the Panel.
- LGA has prepared policy template for process, up to CAPs to adopt and/or amend – panel discretion.
- Suggest for the purposes of transparency to have open meeting.
- Panels might consider aligning their procedures regarding when they go into confidence for reviews with when they go into confidence for DAs.

8. Can a CAP still exclude members of the public from its meeting after it has heard representations etc and made its decision in confidence, what section of the Act applies?

- Starting point is PDI Act s83(1)(f) – Procedures of Assessment Panel, must comply with requirements of regulations.
- Part 3 of PDI General regs prescribes specific matters and enables procedures to be adopted.
- Reg 13(2)(b) – an assessment panel may exclude the public from attendance at a meeting during so much of the meeting that consists of discussion or determination of any application or other matter that falls to be determined by the assessment panel.
- Would ensure meeting procedures include provision to exclude the public if that is what the CAP determines.

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9. What details should council include on the authorization stamp to be used when approving plans, either electronically or in hard copy? Are the plans required to be signed given that we will be in an electronic environment? Who should sign the plans the Assessment Officer or delegate?

The PDI (General) Regulations simply require plans to be endorsed with an "*appropriate form of authentication*" (Regulation 57(4)). No further guidance is provided as to what might constitute "appropriate" authentication. There is no requirement that the endorsement take the form of a physical stamp (though it may).

It would appear that each relevant authority can determine for themselves what is "appropriate". At a minimum, it is recommend the endorsement include:

- the authorisation granted (i.e. planning consent, development approval, etc);
- the DA number; and
- the date of the authorisation.

There is no requirement that the endorsement include a signature (be it a delegate or relevant authority), but a relevant authority could choose to include this, if they so choose.

Councils/relevant authorities might also consider including other details, such as identifying the relevant authority (Assessment Panel, Assessment Manager, Council, etc) or identifying the council in whose area the development will proceed. However, such details are not required.

10. What is happening with conditions? Can we keep using our standard conditions for approvals under the PDI Act?

The short answer is, after a review for consistency with the Code, yes.

Section 127 of the PDI Act deals with conditions. It is more expansive than its equivalent section in the Development Act, giving 'new' powers to the State Planning Commission to:

- specify conditions in a practice direction which must be imposed by a relevant authority (S 127(1)(b));
- prohibit certain conditions or classes of conditions from being imposed by a relevant authority; and
- issue guidelines with which all conditions imposed by a relevant authority must be consistent .

(See Section 127(1)(a) and (2)(a)).

The Commission recently issued such a practice direction – known as Practice Direction 12 (**PD 12**). However, it does not fundamentally shift our understanding (or use) of conditions in any way.

Firstly, PD 12 only sets out 4 situations in which a relevant authority must impose a specific condition, none of which are controversial. They relate to regulated trees, division of land in Environment & Food Production Areas, fortifications and prescribed classes of essential infrastructure or Crown development.

The second part of PD 12 does relate to prohibited conditions or classes of conditions, but in reality, what is provided is simply a common-sense list of condition-drafting "dont's". They

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don't impose any new obligations on relevant authorities and are consistent with the current common law 'rules' around the imposition of conditions (which have developed over time through case law).

This means that there is no need, on account of PD 12, for condition-drafters to fundamentally change their practices, and that they won't fall into error by continuing to follow the existing common law 'rules' around conditions.

However, this does not mean that councils can simply continue to apply their existing suite of standard conditions to development authorisations granted following an assessment against the Code. This is because the common law rule that a condition must have a planning purpose will remain. Currently, a condition will have a planning purpose if it is supported by one or more relevant provisions of the Development Plan.

For development authorisations granted after assessment against the Code, for the condition to have a planning purpose, it must be supported by one or more relevant and applicable provisions of the Code.

Accordingly, all councils' standard conditions will need to be reviewed, either on a case-by-case basis where they come to be used, or (where time and resourcing permits) *en masse*, to ensure that they either remain valid (i.e. there is an equivalent or near-equivalent provision in the Code), or that they are amended to reflect new or changed policy between the Development Plan and the Code.

11. Use of email addresses for the purposes of public notice under the PDI Act

Section 107(3)(a)(i) requires that notice of an application must be given in accordance with the regulations, to an owner or occupier of each piece of adjacent land.

Regulation 47(1)(a) requires that a notice under s 107(3)(a)(i) must be "in writing sent to the address of the land (or to another address used by the owner or occupier known to the relevant authority)".

Further, r 117(1) provides that a document which is required to be given or served on a person may be so given in various ways including:

"(g) by sending it by using an email address known to be used by the person (in which case the notice or document will be taken to have been given or served at the time of transmission".

Therefore, if a particular person is known by the council to use an email address (because, for example, the person has indicated they are happy to receive rates notices by email and the council knows that rates notices have been received via email (because the rates have subsequently been paid for example)) – then the council may validly send notices under r 47(1) via email.

In this scenario, service is deemed to have occurred at the time of transmission i.e. unless otherwise agreed between the sender and receiver, when the email leaves the Council's email system: see s 13(1) of the *Electronic Communications Act 2000*). If, having left the Council's email system, the email is subsequently detained by a protective (spam) filter in the recipient's system, it is still taken to have been given.

Practice Direction 3, clause 9(1)(b) confirms that position, advising that notices will be sent either by post, or "(b) by email if the owner or occupier has given specific consent to receive correspondence from the relevant council via email." (our underlining). Use of the phrase "has given specific consent" is unfortunate, because it seems to introduce a more onerous test than r 117(1)(g) (i.e. the giving of specific consent by a person, as opposed to knowledge that a person uses a particular address). To avoid confusion, the Commission ought to revisit the wording of clause 9(1)(b). In any case, the Act provides that a Practice Direction does not give rise to any right, expectation, duty or obligation that would not otherwise be available to a person: s 42(5). Therefore, in our view, it will be sufficient if the email address is known to be used by the person.

In practical terms, it will be important for councils to put some structure around how such knowledge may be obtained. Merely receiving an email from a person is probably not sufficient, because an email address may be temporary, borrowed, superseded etc. However, if the email address has been supplied by a person in response to a formal request from the Council (via a rates notice, or other similar communication), then that should be adequate.

12. Staged applications during the transition period

As per the Information Sheet on transitional arrangements for phase 2 councils, if an application for development plan consent (DPC) has been validly received under the Development Act (requiring payment of at least the base lodgement fee – see *Conservation Council SA v DAC & Tuna Boat Owners Association of SA* [1999] SA ERDC 63), then assessment will continue under that Act.

If, subsequently, an application for building rules consent (BRC) is lodged after commencement of the PDI Act, then the BRC application will be assessed (and relevant fees paid) under the PDI Act. A technical issue has been identified, in so far as it is reported that the eplanning system has not been built to accommodate an application for BRC only, in circumstances where DPC is under assessment, or has already been granted, under the D Act. This is unfortunate, and it will need to be fixed to ensure that the eplanning system is consistent with the transitional provisions.

Another scenario (raised by Fiona Barr) is where an application is received for DPC, or DPC and BRC, under the D Act, in circumstances where (for whatever reason) the Council doesn't expect to any fees to be paid until the end of the process (i.e. just prior to the issue of DPC, or final development approval in some cases). In that case, if the base lodgement fee has not been paid prior to the new system going live, then the application won't be a valid application under the D Act. This means it will need to be treated and processed as a new application under the PDI Act. If councils and/or applicants want to avoid that situation – and if they want the application to be assessed against the Development Plan rather than the Code – they must ensure that at least the relevant base lodgement fee is paid prior to the new assessment system going live.

13. Non-specified fees

Where new fees or charges are required to be set by the council (as opposed to a relevant authority), those fees will need to be determined by the council elected members, or a delegate of the council. Such fees will be paid to the council.

At this stage, we have only identified 2 fees which fall into that category. One is the fee for placing a sign on the land – new r 47(4)(d). The second is an encroachment fee for encroachments on, over or under public land. Typically, where public land is a road or council reserve, the council is the "entity that has the care, control and management of the public land" which sets the relevant encroachment fee: s 102(11).

At this stage, we are not aware that any thinking has gone into how encroachment consents under s 102(e) are to be assessed or determined, or in relation to the relevant fee structure. In one sense, this only becomes an issue if the proposed amendments to s221 get turned on; conversely, if s 221 remains as it is, then councils will retain the ability to set and recover fees under that section.

14. What is the formal mechanism to activate the Code? Will it require proclamation/Gazettal?

Yes, for development assessment under the Code to be 'activated' for Phase 2 councils, the Minister must, by notice in the Gazette, revoke those councils' Development Plans.

The mechanism by which the 'switch' from development assessment under the Development Act and Development Plans to the PDI Act and the Code will occur via Clause 9(7) of Schedule 8 of the PDI Act and Regulation 10 of the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017* (**Transitional Regs**).

Clause 9(7) of Schedule 8 of the PDI Act enables the Minister to, by notice in the Gazette, revoke a Development Plan if or when the Minister considers that it is no longer required or appropriate for the purposes of the PDI Act (so far, the Minister has only Gazetted the revocation of the Development Plans relating to Land Not Within a Council Area).

This interacts with Regulation 10 of the Transitional Regs, which provide that on and after the commencement of Part 7 of the PDI Act (which has occurred) (Part 7 being the Part relating to development assessment), when the Minister revokes a Development Plan, development within the area of the State to which the Development Plan related will be assessed in all respects under the PDI Act.

The effect of these provisions is that the mechanism for Phase 2 councils to 'switch' to development assessment under the Code will be the date on which the revocation of their Development Plan takes effect (which must occur by a notice in the Gazette).

15. We are still unclear with s7 notices, we will have to manually write in the new zones?

(DPTI response)

There will be an ability to run a section 7 from the ePlanning system that will present Zoning information and relevant applications and conditions from applications within the system. This is exported in a pdf format for attaching to the Council Section 7 information.

16. Can an existing Council Assessment Panel, make decisions on what it will delegate even though it is not the relevant authority currently?

- There is no issue with a CAP making delegations in respect of powers which it anticipates receiving in the near future. In this scenario, the delegation will simply sit as an 'empty vessel' until the relevant power is received by the CAP;

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- As long as the CAP is validly constituted at the time the delegations are made, then the delegations will be valid, and will remain valid notwithstanding a subsequent change in membership in the CAP (in the same way that council delegations remain valid after a change in membership following council election);
- In the near future, the CAP will need to be differently constituted i.e. with accredited professionals. Should that not occur (i.e. should the CAP remain constituted with members who are not accredited professionals), decisions made by the CAP may be at risk of being declared invalid (although, on that, PDI (General) Regulation 17 which provides that a proceeding of an assessment panel (and any decision made by an assessment panel) is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member. Whether this would extend to a situation where existing, unaccredited members remain as sitting members is an interesting question, which would need to be considered further).
- the differently constituted CAP may decide to retain the existing delegations, or it may decide to revoke or amend those delegations and substitute new ones.

17. I logged into the PIA webinar today and there was the general discussion and it they advised that LMA's would be on the new planning portal.

Questions being:

1. **Certificate of Titles are NO longer a required document for lodgement so how is council going to confirm if there are any registered easements.**
2. **If we go into SAILIS to confirm, who pays the costs?**
3. **If it's not a required document how can I charge a resident? BUT;**
4. **I need a title to verify if they can build where they want?**
5. **If I don't request a title and then I approve on the information solely provided to me does this put the Council at risk?**

- A Certificate of Title is not a prescribed document to be supplied with an application – see s119, Regulation 30 & Schedule 8.
- An application must include any information reasonably required by the relevant authority – see s119(1)(c).
- There is scope where appropriate for a relevant authority to request that a title search be provided pursuant to s119(3)(a) where the relevant authority reasonably requires it to assess the application. This opportunity is limited by the provisions of s119(4) & Regulation 33 whereby additional information cannot be requested for DTS development that comprises the construction of one or more dwellings, an alteration/addition to an existing dwelling or the construction of an outbuilding, garage, verandah, pergola or swimming pool associated with residential development.
- If relevant & the above limitation does not apply a relevant authority could potentially request a title search pursuant to a RFI under s 119(3)(a) of the Act.
- If the relevant authority orders this through SAILIS then is at its cost. A resident could not be charged without their consent.
- Council is potentially at risk if an approval is granted in circumstances where it should not have been (or should have been in a different form) due to land tenure issues; although ultimate responsibility rests with the applicant for consent who would be presumed to be aware of relevant land titling issues.

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18. Do Elected Members on the Assessment Panel have to complete the Ordinary Return (as per attached) under the PDI Regulations 2017? Normally we would just have them complete the Ordinary Return under the LG Act 1999. Or do they need to complete both?

Elected Members must also complete a return under the PDI Regulations.

19. Regarding the review of an Assessment Managers decision by an Assessment Panel, if an Assessment Manager has delegated a decision to another party and the applicant seeks a review of the decision, can the AM review and amend the decision made by the delegate before it is reviewed by the Panel?

Where the delegate of an Assessment Manager makes a decision the Assessment Manager cannot review & amend that decision as it is effectively a decision that he/she has already made via their delegate. Any review will be by the Panel or by way of appeal to the ERD Court.

20. What happens if on 31 July not all members of the Assessment Panel have received their accreditation, can the panel operate only with those with the accreditation? (For example, panel of 5, including Elected Member, can it operate with 3 one being the Elected Member)

Non accredited professionals (for Phase 2 Councils; other than an Elected Member) as at 31 July 2020 cannot sit on a Panel. Provided there is a quorum, a Panel can still operate with those accredited & an Elected Member. For example; a Panel of 5 could operate with 2 accredited independents & an Elected Member.

21. As a Building Surveyor if I am accredited under the PDI Act do I still need to retain my accreditations under the DAct?

- As a Building Surveyor, you can rely on your accreditation under the PDI Act for the purpose of decision-making under the D Act (but bearing in mind that if you did not achieve the same (or higher) level of accreditation through the PDI Act accreditation scheme as you held under your AIBS or RICS accreditation, you may be limited in the kinds of applications you can assess under the D Act if you do not also continue to retain your AIBS or RICS accreditation).
- The relevant provisions of the *Development Regulations 2008* (D Regs) with respect to qualifications in building and qualifications to act as a private certifier are Regulations 87 and 91. Each of these Regulations refers to prescribed qualifications issued by an "*approved building industry accreditation authority*". Regulations 87(6) and 91(2) define this to be an accreditation body recognised by the Minister.
- DPTI have confirmed that an accreditation gained under the PDI Act scheme is recognised for the purposes of Regulation 87(6) and 91(2) of the D Regs.
- This means that for building officers who are continuing to assess applications lodged under the Development Act the "designated day" (31 July 2020 for Phase 2 Councils), they can rely on their PDI Act scheme accreditation, but if their PDI accreditation is at a lower level than their AIBS or RICS accreditation, this may limit the applications for which

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they are qualified to assess (we note that we are not aware of any situations of building officers' accreditation being 'lowered' under the PDI accreditation scheme, but are aware of occurrences for private certifiers, relating to the amount of insurance held by them).

22. State Planning Commission Consultation with Councils

When the SPC is the relevant authority for an application (Reg23,2(b)), they must give the CEO of a Council opportunity to make a report within 15 business days. There does not appear to be a delegation for this to be done by staff (Planners)? Should there be or is this a duty? The team have flagged concern around the timeframe, noting that 15 days is not enough time to organise all the comments needed and then getting the CEO to sign off on it.

- The short answer is that there is no express ability for the CEO to delegate this power/function.
- The power of delegation in the PDI Act (s 100) is limited to the delegation of powers and functions of "relevant authorities". The CEO is not a "relevant authority" in this regard, so ability to delegate under Section 100 does not extend to reg 23(2)(b) .
- While Council CEOs do have a general power of delegation under the Local Government Act 1999, that power is limited to the power to delegate powers & functions under that Act.
- Accordingly, there is no provision anywhere through which the CEO can delegate the power in reg 23(2)(b). While the report could be prepared by staff, it does appear that the Act contemplates it being signed off by the CEO.

23. I'm trying to set the public notification signage fee and Hard Copy lodgment fee, there is some confusion as to if I need to put it to Council for adoption or the CAP?

- The public notification fee is a decision of the Council, but is included as a delegation in Instrument A of the LGA delegation templates (delegation 92). We recommend it be delegated to the CEO, and sub-delegated from there (if at all) depending on councils' current practices around fee setting. As long as the delegation is made, the fee won't need to be taken to Council.

- Regarding the hard copy lodgement fee, we understand this has been set at $80 in the *PDI (Fees, Charges and Contributions) Regulations 2019.* It appears that this is a fee associated with the "relevant authority". This would mean that if the application is for planning consent, the decision as to whether to charge (or waive or refund) would be a decision of the CAP (or RAP). If it was for building rules consent or development approval, it would appear to be a decision of the Council. However, in both cases, it too can be delegated, and these delegations are currently set out in Instruments A and C (general delegations under the Fees & Charges Regulations). This means that as long as the CAP and Council decide to delegate their fee waiver powers, these decisions won't need to be taken by the CAP or Council. In terms of the Council, this power can be delegated to the CEO (and sub-delegated from there if the decision is ordinarily sub-delegated to certain positions within staff). In relation to the CAP, the fee waiver power can either be delegated to the Assessment Manager (in which case it will be for the AM to decide whether to sub-delegate it to whichever position(s) within the council would ordinarily decide applications for fee waiver or refund), or could be delegated directly to the position(s) within the council who would ordinarily decide these applications.

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24. Building compliance fees

If it is by a private professional - how are the fees for compliance transferred to the Council assuming they are charged by the private professional? what if they elect not to charge them? can the RA add them at a DA stage?

Does the clock stop for payment of a compliance fee at Development Approval stage? (Regs - Div 4, Part 53 (5))

I am trying to understand how we will regulate payment of this fee and still meet required processing times. We know not all applicants will pay online and therefore it they pay direct to a private certifier the certifier would be required to forward fees payable to Council, to the Council, which is unlikely to occur.

- Question raises issues which should be clarified with DPTI for the below reasons ie there is no obvious straightforward answer.
- I'm not convinced in the situation outlined that the Council could charge the compliance fee (ie where the private AP does not) as the compliance fee is payable on an application for building consent – see clause 10 of Part 2 to Schedule 1 of the Fees, Charges & Contributions Regulations 2019.
    - The process appears to be as follows –
        a. s119(1)(d) requires an application to be accompanied by the appropriate fee
        b. The fees payable are those set out in Schedule 1 to the Fees Regulations (see Regulation 4 of the Fees Regulations)
        c. On an application for building consent this will include the compliance fee (see clause 10 of Part 2 to Schedule 1)
        d. The clock or time period is suspended if a fee is not paid (see Regulation 6 of the Fees Regulations)
        e. Regulation 7 provides that an authority, which would include a private AP, can waive fees in whole or in part.
        f. Varied Regulation 13 generally suggests that fees set out in Parts 2 & 3 of Schedule 1 are not payable if the relevant authority is an accredited professional (!)
        g. Distribution of fees will be as per a scheme established by the CE of DPTI for the purposes of Regulation 18 of the Fees Regulations
- In terms of the actual question – the clock wouldn't stop for payment of the compliance fee at Development Approval stage as such (General Regulation 53(5)). The only provision that might be relevant (in different circumstances) is Fees Regulation 6 which provides that where any period between the date of a request for fee payment by an authority entitled to receive payment of the fee & the date of the actual payment will not be taken into account for the purposes of any time limit or period.

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25. Practice Direction for Public Notification

The Practice Direction for public notification advises:

12 – Confirmation of public notification
The entity responsible for erecting the notice on the relevant land shall ensure the following information is uploaded to the relevant application record on the SA Planning Portal:
(a) Within 1 business day after erecting the notice on the land, a photograph clearly displaying the notice on the land, with details of the location, date and time the photograph was taken; and
(b) Within 2 business days of the end of the notification period, a written statement confirming that the notice on the relevant land was undertaken in accordance with the relevant requirements of the Act, Regulations and this practice direction.

An earlier Practice Direction included the following which has now been removed:
Within 2 business days of the end of the notification period, a photograph clearly displaying the notice on the relevant land on the day the public notification period ended, with details of the location, date and time the photograph was taken;

What happens if 12(b) isn't able to occur, say because the sign was removed or tampered with during notification? Would notification need to reoccur and if Council had been engaged to undertake the notification, what does that mean for timeframes?

Version 2 of Practice Direction 3 has removed the requirement that the person who places a notice on land (be they applicant or a council employee or agent) take a photo of the notice on the final day of notification and upload it to the Portal.

However, Version 2 still requires (in Clause 12(b)) that the relevant person upload a written statement to the Portal within 2 business days of the end of the notification period confirming "that the notice on the relevant land was undertaken in accordance with the relevant requirements of the Act, Regulations and this Practice Direction".

This requirement is poorly drafted and, for the reasons below, should be amended by the Commission or clarified by the Department. However, in the meantime, we recommend the written statement confirm not only that the notice was properly erected (in accordance with the Act, Regulations and PD 3) but whether it was observed to still be present on the land on the next business day after notification (or the day of).

Written Statement – Clause 12(b)

Clause 12(b), and in particular, the words "the notice …was undertaken" is poorly drafted. It is unclear whether:

- the person must simply confirm that the notice was placed on the land in accordance with the Act, Regulations and PD3; or
- the person must confirm that notification, as a process, occurred in accordance with the Act, Regulations and PD 3 - i.e. that the notice was not only properly erected but remained on the land for the duration of the notification period (in which case, it is unclear why the Commission would have removed the requirement to take a photograph of the notice on the final day).

If the latter, then this places the person making the statement in a difficult position:

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- Even if they observed the notice to be present on the land on the final day, they cannot attest to it having remained on the land for the duration of the notification period (i.e. it could have been removed on day 2 and replaced on day 13); and
- Technically speaking, if the person returns on the final day and finds the sign has been removed, he or she can't provide a written notice in the form required in Clause 12(b), which requires that the notice confirm "that" notice was properly undertaken, not "whether" it was properly undertaken.

This uncertainty could be clarified either by the Commission amending Clause 12, or by the Department providing a template written statement setting out precisely which matters must be confirmed. We did not identify any such template on our search of the Portal.

Until such clarification is obtained, we recommend council officers include in their written statements:

- that the sign was placed on the land in accordance with the Act, Regulations and PD 3; and
- whether they observed it to be still present on the land on the next business day after the final day (or on the final day).

We also note that there is no clarity in the Act, Regulations or PD 3 as to whether the entity which places the sign on the land is also responsible for its removal at the end of the notification period. Absent clarification to the contrary, we prefer the view that such a requirement exits, as an implicit element of the requirement to erect the sign. This would mean that the person who erected the sign would be required to attend the land after the final day of notification to remove it in any event, such that including whether or not it was observed to be present in their written statement would not require any additional resources (and why we recommend the statement refer to an observation made on the next business day *after* notification ends).

What if the sign isn't present?

If the person returns on or after the final day, and the sign is no longer present, there is no guidance in the Act, Regulations or Practice Directions as to the consequences of this.

However, there is no mechanism in the Act or Regulations to stop the 'clock' (the time within which the relevant authority is required to determine the application) to repeat public notification. This means that if a relevant authority was to repeat notification, the time within which they were required to determine the application might expire, leaving open the possibility of the applicant serving a deemed consent notice on them.

In these circumstances, our advice is that even if a council officers observes on or after the final day of notification that the sign is no longer present on the land, the relevant authority should continue to determine the application without repeating public notification.

A person who was denied the opportunity to make a representation because the notice was not present on the land might seek to take legal action to challenge the decision of the relevant authority, on the basis that the process erred. This would likely be by way of judicial review commenced in the Supreme Court. Given the competing interests of a decision being made within time (such that a deemed planning consent cannot be served), and protecting the rights of interested parties to make representations, it is unclear how the Court might decide such a review.

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When is the notice to be erected and removed?

Neither the Act, Regulations or PD 3 specify whether the notice must be erected *on* or *before* the first day of the notification period. To avoid all doubt (and legal challenge), we consider it would be prudent for the sign to be erected the day before notification is due to commence, so that it is present on the land for the whole of the first day of notification. Similarly, we recommend the sign be removed on the day *after* the final day, to avoid any criticism (or legal challenge) that it was taken down early.

This may pose a difficulty, in that a council officer would be returning to the land on the next business day *after* notification ends, not on the final day of notification, to observe whether the notice remains on the land. However, we consider the practicality of this approach outweighs any challenge to the contrary (i.e. it would be a nonsense for a person to be required to observe the sign present on the final day of notification (which was the requirement for the taking of the 2nd photo) only to return the next day to remove it). If a template written statement was created by the Department, this could clarify that an observation made on the next business day after notification would suffice in this regard.

26. Can a shipping container can be described as a form of 'outbuilding'.

By way of context, it seems that in many residential-type zones, an 'outbuilding' associated with an existing dwelling is (subject to meeting various conditions with regard to siting and dimensions) an accepted form of development, which does not require planning consent. Whereas, in commercial and industrial-type zones, outbuildings may be performance assessed, requiring public notification.

Outbuilding

Part 7 of the Code contains Land Use definitions.

The term 'outbuilding' is defined in Part 7 in the following terms:

Land Use Term (Column A)	Definition (Column B)	Includes (Column C)	Excludes (Column D)
Outbuilding	Means a non-habitable detached building on the same site as a main building which is ancillary and subordinate to the main building and has a use and function which relates to the main building.		Private bushfire shelter.

This definition largely reflects the meaning of the term, as derived from previous case law.

To our way of thinking, the Code definition applies equally to a shipping container which is proposed to be used for domestic purposes (such as storage of household items and effects), as to a shed, garage and other more traditional forms of residential

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'outbuilding'. On the basis of previous caselaw, we also think there isn't any basis on which it can be argued that a shipping container is not a 'building' (see *Rampling v Holdfast Bay* [2010] SAERDC 44).

Of course, a shipping container won't meet the definition of 'outbuilding' if it is (or is proposed to be):

- placed on vacant land (given that the definition relies on a connection with a "main building");
- 'habitable', in the sense that it is used, or has been converted, into a place in which human occupation is the primary purpose, rather than storage;
- used in a way which is not ancillary and subordinate (e.g. operation of a business on residential land, where the business does not meet the home activity test).

To the extent that this interpretation may produce odd results (as described above), this would be a matter for DIT to consider in terms of amendments to various zones and/or the definitions table. For example, if the broad policy objective is to treat shipping containers differently from other forms of outbuildings, the term 'shipping container" could be added to Column D as a further exclusion to the definition. Alternatively, relevant zone provisions may be amended on a case by case basis to ensure that shipping containers are appropriately dealt with in each zone.

27. Variation to the PDI (Swimming Pool Safety) Regulations

Our Team Leader of Building has written to DPTI in reference to a recent variation to the PDI (Swimming Pool Safety) Regulations that was Gazetted on 18 June 2020- a response is yet to be received. This concern is around temporary pool fencing and is highlighted as follows:

> The PDI (Swimming Pool Safety) Regulations initially required construction of designed safety features to be completed within 2 months of the completion of the construction of the swimming pool however it has been amended that the designed safety features are to be completed **on or before** the first of the following dates:
> *(c) the date that falls 2 months after completion of the construction of the swimming pool;*
> *(d) the date on which the pool is filled with water.*
>
> This minor change to the wording appears to have affected the ability for the owner/applicant to have a temporary fence in place for up to 2 months, prior to the permanent fencing. This arrangement was previously allowed in the Development Regulations 2008 and was outlined in Building Advisory Notice 07/13. This advisory notice stipulates in part *"that council will not be required to inspect temporary barriers as it is recognised that the council or private certifier would not have conducted an assessment of the temporary barrier. In consultation with the industry it has been determined that two months is a reasonable amount of time for the permanent approved barrier to be established".*

If this change is as we suspect, this is going to have an effect on the swimming pool inspection timeframes. At the moment council is notified that the pool is ready for inspection, the assumption is that the permanent safety barrier is in place. Can it be confirmed that the interpretation is correct and that the following will need to occur:

- No temporary swimming pool fencing, or
- an empty swimming pool is still required to be fenced within 2 months.

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As there is no mention of temporary fencing, this appears to be the case (that no temporary pool fencing is allowed) and the 2nd dot point above may be the intent however as the wording is inconsistent, it needs to be clarified.

The repeal of s71AA of the Development Act & associated regulations has given rise to a level of complexity.

Previous relevant provisions that dealt with swimming pool safety included Development Regulations 76D; 76E (which required the construction of all relevant safety fences & barriers to be completed withing 2 months of completion of construction of the swimming pool) & Regulation 83B (which only permitted the filling of a pool if it was protected with a barrier that complied with the stated Building Code requirements which could presumably include a so called "temporary" barrier (although we note that it is only GP1.2 - Volume 1 and P2.5.3 - Volume 2 which Regulation 83B refers to, and none of those provisions reference AS 1926.1 which is quoted in the December 2013 Building Advisory Notice).

The new regime is established by s156 of the PDI Act, the PDI (Swimming Pool Safety) Regulations & Practice Direction 8 (Swimming Pool Inspection Policy).

The question below relates to the timing requirement to construct swimming pool designated safety features (which include a fence & barriers) in light of Regulation 7 of the PDI (Swimming Pool Safety) Regulations.

Prior to the 18 June 2020 amendment to Regulation 7, the timing of the obligation to ensure completion of the construction of a permanent barrier was simply within 2 months of completion of the construction of the swimming pool whether it was filled with water or not. The effect of the amendment is that Regulation 7 now requires completion of the permanent barrier on or before the earlier of the date on which the pool is filled or within 2 months of completion of the construction of the swimming pool.

Therefore, if the pool is to be filled with water, the effect of Regulation 7 in its amended form is that the approved permanent barrier will first need to be in place (i.e. on or before the filling occurs) & that an empty swimming pool will still be required to be permanently fenced within 2 months (which was always the case in any event).

We do not understand the above to effect swimming pool inspection timeframes whereby the inspection levels are governed by Part 2 of Practice Direction 8 insofar as the notification with respect to pools which require the construction of a safety fence will be triggered by the completion of the construction of the permanent safety barrier.

28.Use of an 'acting' assessment manager.

We are close to finalising a contractual arrangement with a firm that has a level 1 accredited planner who will able to fill the role of Assessment Manager when I am on leave for a period of one week or longer. I understand the CE of the Attorney General's department would need to appoint that person as Assessment Manager for those applicable times. Would this appointment process need to be followed every time I am on leave, and would my existing appointment as Assessment Manager need to be revoked when the other person is acting in the role and then reinstated once I return. Also, at present I have delegated a number of powers and functions to staff and consultants engaged by the Councils within our RAP to

carry out day to day assessment functions. Would the delegations that I have put in place only be valid when I am appointed in the role and would the acting assessment manager need to put in place new delegations for when they are acting in the role? I'm concerned this is going to be a significant amount of work to undertake and then repeat every time I am on leave. Would the simpler process be to provide our acting AM with delegations for the full suite of powers and functions of an Assessment Manager subject to certain limitations than only enables them to only exercise those powers during prescribed times?

In summary – the much simpler & recommended action is for the Assessment Manager of the RAP to delegate the full suite of their powers & functions to the Level 1 accredited professional which can be subject to the limitation that they only be exercised during prescribed periods (ie when the AM is on leave).

The alternative involves the CE of the Attorney Generals Department appointing an alternate AM to act during relevant applicable times. There can only be one Assessment Manager for each Panel. On one view an appointment for a person to "act" in that role may be required for each applicable period of leave albeit we don't think that the existing AM appointment would need to be revoked & then reinstated or new delegations put in place by an acting AM. Such an approach however would be overly complex, resource intensive & lead to a level of administrative uncertainty. We are unsure that it would even be supported by the Attorney General's Department. The far preferable position is that the AM delegate her powers & functions to the contractor.

29. Certificates of Occupancy for additions and alterations for Class 1a buildings

The PDI Act S152 (2) states "A certificate of occupancy will be issued by a council", however the departments recent advisory refers (link below) to council and Building Certifies. This advisory note implies that both Council and Private Building Certifies would be responsible for issuing of a Certificate of Occupancy, does this align with the Act? I anticipate that Division 4 which relates to S151-S154 enables Certifiers to act in the same capacity as a Council (similar to Development Act) and therefore have the capacity to issue Certificates of Occupancy where nominated by the applicant within the e-planning portal.

https://plan.sa.gov.au/__data/assets/pdf_file/0008/719450/Advisory_Notice_Building_06_20_-_Certificates_of_Occupancy_for_class_1a_buildings.pdf

A building certifier may issue a Certificate of Occupancy (ie exercise the powers of a council) in relation to a building where the certifier has issued a building consent for that building – see s154(1)(b). Therefore, while s152(2) references a council issuing a Certificate; that is to be read subject to s154(2) such that references to a council will be taken to include a reference to a building certifier acting under s154(1). The Advisory Notice should ideally make it clear that this can only occur where the certifier has issued the building consent.

Further, PDI (General) Regulation 103 which deals with Certificates of Occupancy at Regulation 103 (10) states that a reference in that regulation to a council will be taken to include a reference to a building certifier acting pursuant to s154 of the PDI Act.

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30. Is silo art development?

The assumption is that the nature of the painting is in the form of an artistic mural.

The general answer is no - provided there is no associated building work involved & the silos are not a State or local heritage place & are not in an area where the external painting of a building is prescribed for the purposes of paragraph (faa) of the definition of "development" in s4 of the Act (see Regulation 6C external painting in prescribed areas –presently relates to Gawler).

I do not think it can be claimed that the painting of itself is a change in use of the land – although the end result may be that they become somewhat of a tourist attraction.

Apart from the above, the only other basis that the work could constitute "development" having regard to Regulation 6 & Schedule 2 would be if the art was considered to constitute the commencement of the display of an advertisement. An "advertisement" is defined in the Act to mean an advertisement or sign that is visible from a street road or public place or by passengers carried on any form of public transport. I do not think a general artistic mural would be considered an advertisement as such; unless perhaps it contained words, a symbol or a message. Equally I do not think it would be a sign unless it displayed some other form of information.

31. The PDI Act S152 (2) states "A certificate of occupancy will be issued by a council", however the departments has provided a recent advisory (link below) to council and Building Certifiers.

This advisory note implies that both Council and Private Building Certifies would be responsible for issuing of a Certificate of Occupancy, does this align with the Act?

I anticipate that Division 4 which relates to S151-S154 enables Certifiers to act in the same capacity as a Council (similar to Development Act) and therefore have the capacity to issue Certificates of Occupancy where nominated by the applicant within the e-planning portal.

https://plan.sa.gov.au/__data/assets/pdf_file/0008/719450/Advisory_Notice_Building_06_20_-_Certificates_of_Occupancy_for_class_1a_buildings.pdf

A building certifier may issue a Certificate of Occupancy (ie exercise the powers of a council) in relation to a building where the certifier has issued a building consent for that building – see s154(1)(b). Therefore, while s152(2) references a council issuing a Certificate; that is to be read subject to s154(2) such that references to a council will be taken to include a reference to a building certifier acting under s154(1). The Advisory Notice should ideally make it clear that this can only occur where the certifier has issued the building consent.

Further, PDI (General) Regulation 103 which deals with Certificates of Occupancy at Regulation 103 (10) states that a reference in that regulation to a council will be taken to include a reference to a building certifier acting pursuant to s154 of the PDI Act.

Building Branch Response

There are circumstances where a building certifier can issue a certificate of occupancy for a building they haven't certified, but this only relates to Crown buildings, so we will look to amend the advisory notice in that regard.

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32. We recently received an application which was determined to be restricted. The application was subsequently referred to SCAP.

As part of the restricted process, SCAP has provided Council with an opportunity to provide a report in response to the application - pursuant to *Regulation 23, 2(b) of the PDI Regulations 2017*.

On review of clause 2(b) and our delegations suite, we are of the opinion that a delegation is not required for a response to be provided.

The referral report opportunity where the Commission is the relevant authority under the new regime & development is proposed in the area of a council (as set out in Regulation 23(2)(b) of the PDI (General) Regulations 2017) is no longer by way of notice to the relevant council. Rather, the Commission must give the CEO of the council for the area in which the development is to be undertaken a reasonable opportunity to provide the Commission with a report (on behalf of the council) on the matters specified in Regulation 23(3) (ie limited to essentially infrastructure type issues such as any impacts at a local level on infrastructure, traffic, waste management, stormwater, public open space, any local heritage place or any other specified matter).

As the referral is now to the Council CEO there is no requirement for a Council delegation as the power being exercised is that of the CEO himself or herself ie the response is from the CEO in their own right. The CEO will have 15 business days to respond or such longer period as the Commission may allow. If a response is not received within that time the Commission may presume that the CEO does not wish to provide a report.

33. We have received a new DA on the portal for two frost fans (agricultural buildings). It is noted that the DA proposes development across two allotments which are both under the same ownership, however not contiguous. For your reference, please see a screenshot below:

Can it be clarified whether an applicant can legally lodge for development across multiple sites which are not contiguous or adjoining/adjacent land?

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What is proposed in this single development application is two proposed developments ie two discrete independent proposals.

While from an administrative perspective it is desirable & preferable that they therefore should be the subject of separate applications eg for commencement/completion dates/assessment pathways/ notification requirements etc; there is no legal prohibition in applying for two proposed developments on non-contiguous land in a single development application.

The Supreme Court in Fiora v DAC (2017) 127 SASR 52 had cause to consider a single development application proposing various land divisions across non-contiguous allotments. The application was formulated on the basis that it comprised one single development in an attempt to avoid a non- complying trigger – the creation of an additional allotment in the relevant zone (the proposal involving amalgamations & the creation of differently configured allotments so that the total allotment number remained the same). The Court found that the proposal was properly characterised as one for 2 separate developments (one where an additional allotment was to be created) although contained in the one application. There was no objection taken to the fact that the two developments over non-contiguous parcels were the subject of a single development application comment in relation.

34. There is some doubt about whether the permanent barrier has to be in place on notification of completion of the pool. Under the Development Act/Regulations requirement there was a period of two months to complete the barrier providing a temporary barrier was in place

If the pool is filled with water then the permanent barrier must now be in place. There is no longer the option of having a filled pool with a temporary barrier for 2 months. If not filled then the permanent barrier must be in place in any event withing 2 months after completion of the construction of the swimming pool.

The question needs some clarification. Notification requirements are a different consideration to those in the Swimming Pool Regulations regarding when a barrier needs to be in place.

Notifications during building work are dealt with in s146 & General Regulation 93. Completion of building work is a mandatory notification stage. The barrier need not be in place upon completion of the pool if it is not filled with water. The completion notice under Regulation 93 will relate to the completion of the relevant stage of building work. A completion notice could just relate to the completion of the swimming pool itself or to both the pool & barrier. I don't believe that the permanent barrier needs to necessarily be in place on notification of completion of the pool itself. The notice should make it clear however as to what stage of the building work it relates to.

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35. Can you please clarify the following questions for me in relation to the CAP Model Terms of Reference .

Clause 1.1 – is this the date the CAP was first appointed or the start date of each term of the Panel?

Clause 2.10 provides that Council will call for expressions of interest for appointment of CAP Members. Notwithstanding this clause, can Council decide to extend the term of the existing members or does it need to first change the TOR?

Yes. This the date on which the CAP was first established. Establishment only occurs once. Thereafter, the CAP (as a body) continues in perpetuity, while its constitution (membership) will change over time.

While existing members are obviously eligible for re-appointment (see clause 2.19), you are correct in so far as clause 2.10 contemplates that the Council will call for expressions whenever there is a vacancy. This is so that the Council always has the best available candidates to choose from. Having said that, if (for administrative convenience for example) the Council wants the ability to reappoint an existing member without calling for expressions, clause 2.10 may be varied to say something like:

> *"2.10 Subject to 2.10A, the Council will call for expressions of interest for appointment for CAP Members.*
>
> *2.10A The Council may reappoint an existing member for a subsequent term without calling for expressions of interest."*

If 2.10A is to be limited to a second term only (such that expressions must be called where an incumbent seeks a third term or more), the word 'subsequent' may be replaced with 'second'.

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36. Regarding 57 (9) (c) of the PDI Regs and notification of DNF to Owners

Just need some advice regarding the owners details., As the applicants are now free to enter whatever details they like as opposed to previously our individual Council's software automating the process from our property records we are getting lots of interesting variations.

As shown below some are making things up or are putting owners names but very few are providing correct email addresses for the owner and instead are providing their own.

Just looking to find out what legally are our responsibilities are in regard to this.

The DNF is sent only to the Primary Contact and the Owner if the email address is different.

Then given the obvious errors should we be manually checking every single application land owner details against our own records and updating

In regard to sec 57 (9)© of the PDI Regs that has carried over from the Dev Regs the requirement to provide and owner who is not a party to the application a copy of the DNF I know most Councils sent copies of all DNF's to the owners previously as trying determine if they were a party to the application would be impossible this obviously isn't happening now via the DAP system and just being sent to the same place often

Are we required to be sending out hard copies of these approvals to owners if provided with an address and no email and I guess the same question in regard to email's if we do have to update the owners details after lodgement can we use emails provided for rates notices?

Where a non-owner applicant provides an obviously incorrect owner email address (or their own) the relevant authority would be entitled to request that a correct email address be provided. If it is not then communications with the owner would need to be via post.

In the event that a correct email address is not provided then the relevant authority should check each application land owner details against its own records & update (if it does not wish to send notification via the post).

The owner will not be a "party to the application" if he/she is not listed as an applicant & therefore the obligation in Regulation 57(9)(c) to provide notice to the owner arises. The options with respect to the "vehicle" for providing notice are set out in Regulation 117. Amongst these are via the post (posting in an envelope addressed to the person at his or her usual or last known place of residence or business, or at any address for the service of documents or notices) or email (sending it by using an email address known to be used by the person – in which case the notice or document will be taken to have been given or served at the time of transmission). If the council has no email address then notice would be given via a hard copy in the post. If emails are being updated by the council then the email address provided for rates notices could be used provided that this address was known to be that of the owner of the subject land.

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In regard to the upcoming P & D Code consultation once that starts in early November should we be indicating on our Section 7 Searches that there is a current DPA released for consultation by the Minister?

Answer

As to any s7 search notification of potential amendments to the Planning & Design Code (these will arise in any event from the amendments to incorporate the phase 3 provisions & not necessarily out of the foreshadowed further consultation in November) we recommend that the LGA advice previously given should continue to be adopted ie to the effect that the Planning Commission is proposing the further amendment of the Planning & Design Code which could affect the subject land. Enquiries should be directed to the Planning & Land Use Services section within the Department of Infrastructure & Transport.

Further Information

Contact Stephen Smith, Planning Reform Partner, LGA
Email: stephen.smith@lga.sa.gov.au
Telephone: 0409 286 734

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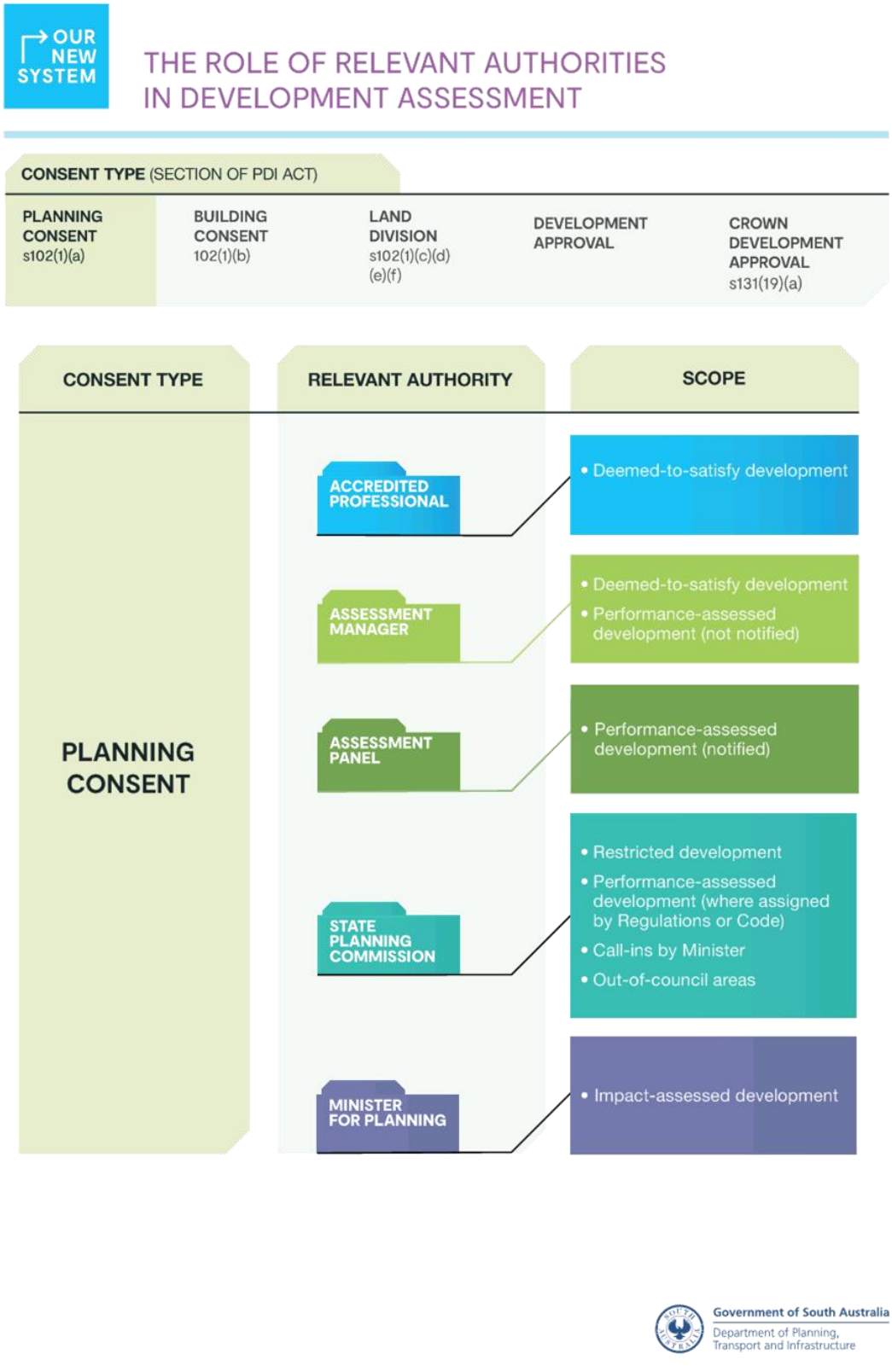
OUR NEW SYSTEM
THE ROLE OF RELEVANT AUTHORITIES IN DEVELOPMENT ASSESSMENT
CONSENT TYPE (SECTION OF PDI ACT)
PLANNING CONSENT s102(1)(a)
BUILDING CONSENT 102(1)(b)
LAND DIVISION s102(1)(c)(d)(e)(f)
DEVELOPMENT APPROVAL
CROWN DEVELOPMENT APPROVAL s131(19)(a)
CONSENT TYPE
RELEVANT AUTHORITY
SCOPE
PLANNING CONSENT
ACCREDITED PROFESSIONAL
• Deemed-to-satisfy development
ASSESSMENT MANAGER
• Deemed-to-satisfy development
• Performance-assessed development (not notified)
ASSESSMENT PANEL
• Performance-assessed development (notified)
STATE PLANNING COMMISSION
• Restricted development
• Performance-assessed development (where assigned by Regulations or Code)
• Call-ins by Minister
• Out-of-council areas
MINISTER FOR PLANNING
• Impact-assessed development
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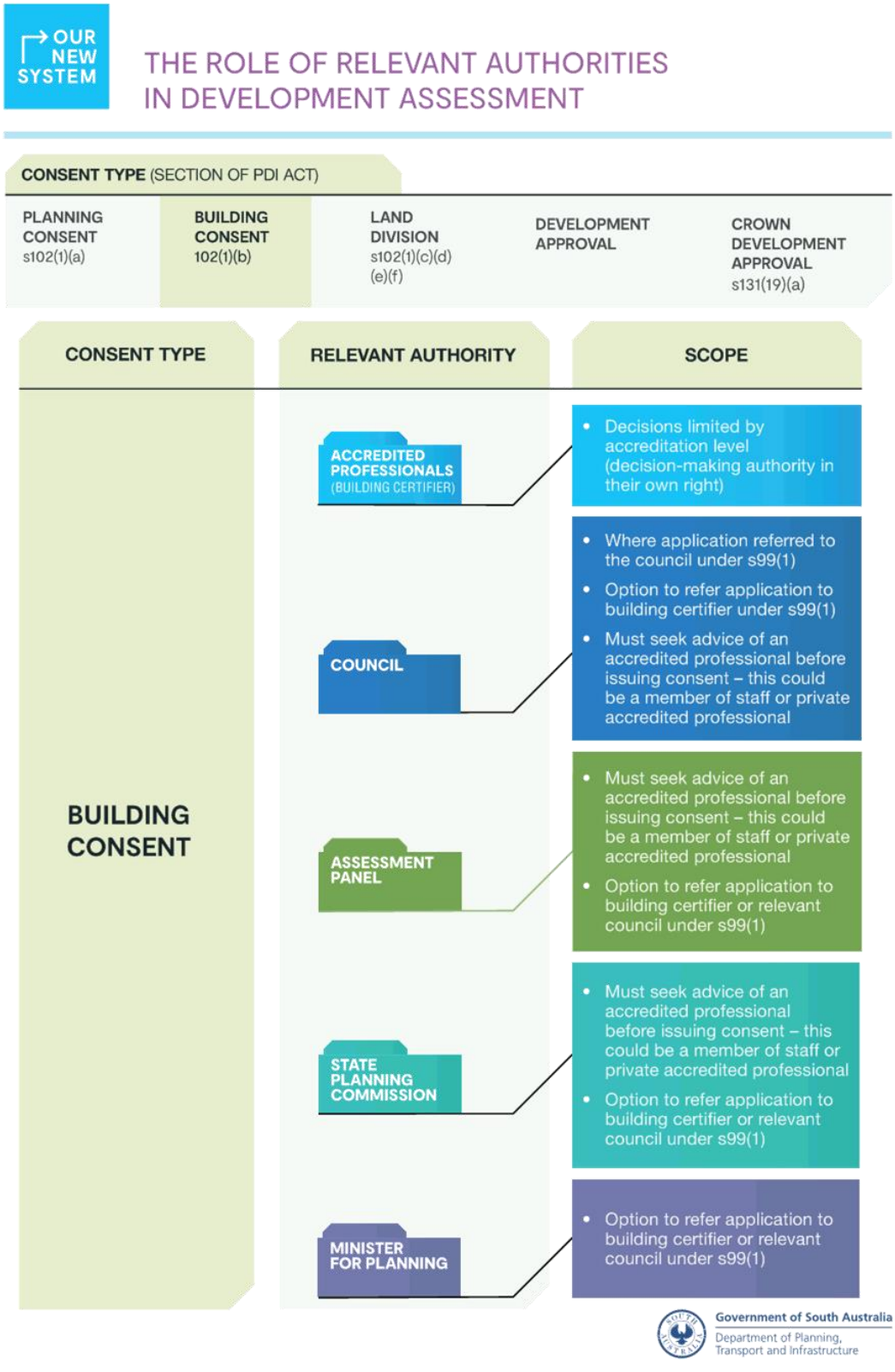
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LAND DIVISION s102(1)(c)(d)(e)(f)
DEVELOPMENT APPROVAL
CROWN DEVELOPMENT APPROVAL s131(19)(a)
CONSENT TYPE
RELEVANT AUTHORITY
SCOPE
BUILDING CONSENT
ACCREDITED PROFESSIONALS (BUILDING CERTIFIER)
Decisions limited by accreditation level (decision-making authority in their own right)
COUNCIL
Where application referred to the council under s99(1)
Option to refer application to building certifier under s99(1)
Must seek advice of an accredited professional before issuing consent – this could be a member of staff or private accredited professional
ASSESSMENT PANEL
Must seek advice of an accredited professional before issuing consent – this could be a member of staff or private accredited professional
Option to refer application to building certifier or relevant council under s99(1)
STATE PLANNING COMMISSION
Must seek advice of an accredited professional before issuing consent – this could be a member of staff or private accredited professional
Option to refer application to building certifier or relevant council under s99(1)
MINISTER FOR PLANNING
Option to refer application to building certifier or relevant council under s99(1)
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OUR NEW SYSTEM

THE ROLE OF RELEVANT AUTHORITIES IN DEVELOPMENT ASSESSMENT

CONSENT TYPE (SECTION OF PDI ACT)

PLANNING CONSENT	BUILDING CONSENT	LAND DIVISION	DEVELOPMENT APPROVAL	CROWN DEVELOPMENT APPROVAL
s102(1)(a)	102(1)(b)	s102(1)(c)(d)(e)(f)		s131(19)(a)

CONSENT TYPE	RELEVANT AUTHORITY	SCOPE
LAND DIVISION	ASSESSMENT MANAGER*	• Except where the State Planning Commission/Minister for Planning is the authority
	STATE PLANNING COMMISSION*	• Restricted development • Performance-assessed development (where assigned by Regulations or Code) • Call-ins by Minister for Planning • Out-of-council areas
	MINISTER FOR PLANNING*	• Impact-assessed development

*State Planning Commission provides 'Statement of Requirements', including consultation with the relevant council where new public roads/reserves are proposed.

CONSENT TYPE	RELEVANT AUTHORITY	SCOPE
DEVELOPMENT APPROVAL	COUNCIL	• Ensure all consents have been granted and are consistent
	STATE PLANNING COMMISSION	• Where development not within a council area • Ensure all consents have been granted and are consistent

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THE ROLE OF RELEVANT AUTHORITIES IN DEVELOPMENT ASSESSMENT

CONSENT TYPE (SECTION OF PDI ACT)

PLANNING CONSENT	BUILDING CONSENT	LAND DIVISION	DEVELOPMENT APPROVAL	CROWN DEVELOPMENT APPROVAL
s102(1)(a)	102(1)(b)	s102(1)(c)(d)(e)(f)		s131(19)(a)

CONSENT TYPE	RELEVANT AUTHORITY	SCOPE
CROWN DEVELOPMENT APPROVAL	MINISTER FOR PLANNING	• State agency development and essential infrastructure development initiated or supported by a state agency • Assessed by the State Planning Commission - report to the Minister for Planning • Proponent responsible for ensuring building work is certified before building work is undertaken • No consents under s102 required

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Department of Planning, Transport and Infrastructure

Part 2 - Zones and Sub Zones

Table 5 - Procedural Matters (PM) - Notification

Planning and Design Code	Development Plan
General Neighbourhood Zone	(Residential Zone)
Hills Neighbourhood Zone	(Residential Hills Zone)
Suburban Neighbourhood Zone	(Policy Area 18 and Burton Area, Residential Zone)
Housing Diversity Neighbourhood Zone	(Policy Area 22 Residential Zone – Mawson lakes)
Urban Activity Centre Zone	(Salisbury Urban Core & Mawson Lakes Main Shopping Policy Area)
Urban Neighbourhood Zone	(Urban Core Zone, Mawson Lakes)
Suburban Activity Centre Zone	(Neighborhood & District Centre)
Local Activity Centre Zone	(Local Centre Zone)
Strategic Employment Zone	(Urban Employment Zone & Industry Zone)
Employment Zone	(Commercial Zone & Mixed Use Zone)
Strategic Innovation Zone	(Urban Core – Technology Park & University area)
Suburban Business Zone	(Business Policy Area, Urban Corridor Zone)
Rural Zone	(Primary Production Zone)
Rural Horticulture Zone	(Horticulture Precinct, Primary Production Zone)
Rural Living Zone	(Rural living Zone)
Rural Settlement Zone	(Coastal Settlement Zone)

General Neighbourhood Zone (Residential Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
2. All development undertaken by: 1. the South Australian Housing Trust either individually or jointly with other persons or bodies or 2. a provider registered under the Community Housing National Law participating in a program relating to the renewal of housing endorsed by the South Australian Housing Trust.	Except (where relevant): 1. residential flat building or buildings of 3 or more building levels 2. demolition of a State or Local Heritage Place.
3. Subject to (1) and (2) any of the following: 1. classes of development listed in General Neighbourhood Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in General Neighbourhood Zone Table 2 - Deemed-to-	Except (where relevant): 1. development that is unable to satisfy General Neighbourhood Zone DTS/DPF 1.4, 1.5 or 1.6 2. development that is unable to satisfy General Neighbourhood Zone DTS/DPF 4.1 3. demolition of a State or Local Heritage Place.

Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. ancillary accommodation 4. carport 5. consulting room 6. deck 7. demolition 8. dwelling 9. fence 10. land division 11. office 12. outbuilding 13. pergola (not excluded in other zones) 14. recreation area 15. residential flat building 16. retaining wall 17. retirement facility 18. shop 19. student accommodation 20. supported accommodation 21. tree-damaging activity 22. verandah	DTS/DPF 1.4 A consulting room, office or shop (or any combination thereof) in conjunction with a dwelling where: (a) it involves a change in the use of an existing building lawfully used as one or any combination of these land uses and there is no increase in the total floor area used for such purposes or (b) it is a new land use and the total floor area (individually or combined, in a single building) to be used for such purposes does not exceed 50m^2. DTS/DPF 1.5 A shop, consulting room or office (or any combination thereof) that satisfies one of the following: (a) does not exceed 100m^2 gross leasable floor area (individually or combined, in a single building) where located more than 500m from an Activity Centre (b) does not exceed 200m^2 gross leasable floor area (individually or combined, in a single building) where located more than 500m from an Activity Centre and where located on a site with a primary frontage to a State Maintained Road or (c) reinstates a former shop, consulting room or office. DTS/DPF 1.6 A shop, consulting room or office does not exceed 200m^2 gross leasable floor area (individually or combined, in a single building) where the primary street boundary adjoins an Activity Centre (including where the site would adjoin if not separated by a public road). DTS/DPF 4.1 Building height (excluding garages, carports and outbuildings) no greater than: (a) 2 building levels and 9m and (b) wall height that is no greater than 7m except in the case of a gable end.
4. Subject to (1) and (2), alteration of or addition to any of the following: 1. community facility 2. educational establishment 3. pre-school	Except where development is unable to satisfy General Neighbourhood Zone DTS/DPF 1.7 DTS/DPF 1.7 Alteration of or addition to existing educational establishments, community facilities or pre-schools where: (a) set back at least 3m from any boundary shared with a residential land use (b) building height not exceeding 1 building level (c) the total floor area of the building not exceeding 150% of the total floor area prior to the addition/alteration (d) off-street vehicular parking exists or will be provided in accordance with the rate(s) specified in Transport, Access and Parking Table 1 - General Off-Street Car Parking Requirements or Table 2 - Off-Street Car Parking Requirements in Designated Areas to the nearest whole number.
Placement of Notices - Exemptions fo	
None specified.	
Placement of Notices - Exempti	
None specified.	

Hills Neighbourhood Zone (Residential Hills Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016*, classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
1. All development undertaken by: 1. the South Australian Housing Trust either individually or jointly with other persons or bodies or 2. a provider registered under the Community Housing National Law participating in a program relating to the renewal of housing endorsed by the South Australian Housing Trust.	Except (where relevant): 1. residential flat building or buildings of 3 or more building levels 2. demolition of a State or Local Heritage Place.
2. Subject to (1) and (2), any of the following: 1. classes of development listed in Hills Neighbourhood Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Hills Neighbourhood Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. ancillary accommodation 4. carport 5. consulting room 6. deck 7. demolition 8. dwelling 9. fence 10. land division 11. office	Except (where relevant): 1. development that does not satisfy Hills Neighbourhood Zone DTS/DPF 1.2, 1.3 or 1.4 2. development that does not satisfy Hills Neighbourhood Zone DTS/DPF 4.1 3. development that does not satisfy Hills Neighbourhood Zone DTS/DPF 11.3 4. demolition of a State or Local Heritage Place.

12. outbuilding 13. recreation area 14. residential flat building 15. retaining wall 16. shop 17. tree damaging activity 18. verandah	

Placement of Notices - Exemptions for Performance Assessed Development

None specified.

Placement of Notices - Exemptions for Restricted Development

None specified.

DTS/DPF 1.2

A consulting room, office or shop (or any combination thereof):

(a) comprises a change in the use of an existing building that is lawfully used a one or any combination of these land uses

or

(b) is ancillary to and located on the same allotment as a dwelling and does nc exceed 50m^2 gross leasable floor area (individually or combined, in a singl building).

DTS/DPF 1.3

A shop, consulting room or office (or any combination thereof):

(a) does not exceed 100m^2 gross leasable floor area (individually or combinec in a single building) where located more than 500m from an Activity Centre

(b) does not exceed 200m^2 gross leasable floor area (individually or combine in a single building) where located more than 500m from an Activity Centre and where located on a site with a primary frontage to a State Maintained Road

or

(c) reinstates a former shop, consulting room or office.

DTS/DPF 1.4

A shop, consulting room or office does not exceed 200m^2 gross leasable floor area (individually or combined, in a single building) where the primary street boundary adjoins an Activity Centre (including where the site would adjoin if not separated by a public road).

DTS/DPF 4.1

Building height (excluding garages, carports and outbuildings) is no greater than:

(a) the following:

Maximum Building Height (Metres)
Maximum building height is 6m
Maximum building height is 8m
Maximum building height is 8.5m
Maximum building height is 9m
Maximum Building Height (Levels)
Maximum building height is 1 level
Maximum building height is 2 levels

(b) in all other cases (i.e. there are blank fields for both maximum building height (metres) and maximum building height (levels)) - 2 building levels up to a height of 9m.

In relation to DTS/DPF 4.1, in instances where:

(c) more than one value is returned in the same field, refer to the *Maximum building Height (Levels) Technical and Numeric Variation* layer or *Maximum Building Height (Meters) Technical and Numeric Variation* layer in the SA planning database to determine the applicable value relevant to the site of the proposed development.

(d) only one value is returned for DTS/DPF 4.1(a) (i.e. there is one blank field), then the relevant height in metres or building levels applies with no criteria for the other.

DTS/DPF 11.3

Retaining walls:

(a) do not retain more than 1.5 metres in height
or

(b) where more than 1.5 metres is to be retained in total, are stepped in a series of low walls each not exceeding 1m in height and separated by at least 700mm.

Suburban Neighbourhood Zone (Policy Area 18 and Burton Area, Residential Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
2. All development undertaken by: 1. the South Australian Housing Trust either individually or jointly with other persons or bodies or 2. a provider registered under the Community Housing National Law participating in a program relating to the renewal of housing endorsed by the South Australian Housing Trust.	Except (where relevant): 1. residential flat building or buildings of 3 or more building levels 2. demolition of a State or Local Heritage Place.
3. Subject to (1) and (2), any of the following: 1. classes of development listed in Suburban Neighbourhood Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Suburban Neighbourhood	Except (where relevant): 1. development that is unable to satisfy Suburban Neighbourhood Zone DTS/DPF 1.2, 1.3 or 1.4 (same as GNZ) 2. development that is unable to satisfy Suburban Neighbourhood Zone DTS/DPF 4.1 3. demolition of a State or Local Heritage Place.

Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. ancillary accommodation 4. carport 5. consulting room 6. deck 7. demolition 8. dwelling 9. fence 10. land division 11. office 12. outbuilding 13. pergola 14. recreation area 15. residential flat building 16. retaining wall 17. shop 18. supported accommodation 19. tree damaging activity 20. verandah.	DTS/DPF 4.1 Building height (excluding garages, carports and outbuildings) is no greater than: (a) the following: Maximum Building Height (Metres) Maximum building height is 6m Maximum building height is 8m Maximum building height is 8.5m Maximum building height is 9m Maximum building height is 12m (b) in all other cases (i.e. there are blank fields for both maximum building height (metres) and maximum building height (levels)) - 2 building levels up to a height of 9m. In relation to DTS/DPF 4.1, in instances where: (c) more than one value is returned in the same field, refer to the *Maximum Building Height (Levels) Technical and Numeric Variation layer* or *Maximum Building Height (Meters) Technical and Numeric Variation layer* in the SA planning database to determine the applicable value relevant to the site of the proposed development (d) only one value is returned for DTS/DPF 4.1(a) (i.e. there is one blank field), then the relevant height in metres or building levels applies with no criteria for the other.
1. Subject to (1) and (2), alteration of or addition to any of the following: 1. community facility 2. educational establishment 3. pre-school	Except where development is unable to satisfy Suburban Neighbourhood Zone DTS/DPF 1.6 (same as GNZ)

Placement of Notices - Exemptions for Performance Assessed Development
None specified.

Placement of Notices - Exemptions for Restricted Development
None specified.

Housing Diversity Neighbourhood Zone (Policy Area 22 Residential Zone – Mawson lakes)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
1. All development undertaken by: 1. the South Australian Housing Trust either individually or jointly with other persons or bodies or 2. a provider registered under the Community Housing National Law participating in a program relating to the renewal of housing endorsed by the South Australian Housing Trust.	Except (where relevant): 1. residential flat building or buildings of 3 storeys or greater 2. demolition of a State or Local Heritage Place.
1. Subject to (1) and (2) any of the following: 1. classes of development listed in Housing Diversity Neighbourhood Zone Table 1 - Accepted Development Classification where the proposed development is	Except (where relevant): 1. development that is unable to satisfy Housing Diversity Neighbourhood Zone DTS/DPF 1.2, 1.3 and 1.4 (same as GNZ) 2. development that is unable to satisfy Housing Diversity Neighbourhood Zone DTS/DPF 3.1(same as GNZ) 3. demolition of a State or Local Heritage

unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Housing Diversity Neighbourhood Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. ancillary accommodation 4. carport 5. consulting room 6. deck 7. demolition 8. dwelling 9. fence 10. land division 11. office 12. outbuilding 13. recreation area 14. residential flat building 15. retaining wall 16. retirement facility 17. shop 18. student accommodation 19. supported accommodation 20. tree-damaging activity 21. verandah.	Place.
1. Subject to (1) and (2), alteration of or addition to any of the following: 1. community facility 2. educational establishment 3. pre-school.	Except where development is unable to satisfy Housing Diversity Neighbourhood Zone DTS/DPF 1.6 (same as GNZ)
Placement of Notices - Exemptions for Performance Assessed Development	
None specified.	
Placement of Notices - Exemptions for Restricted Development	

None specified.

Urban Activity Centre Zone (Salisbury Urban Core & Mawson Lakes Main Shopping Policy Area)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
1. Any kind of development that is **not** located adjacent to a site used for residential purposes in a neighbourhood-type zone	Except the demolition of a State or Local Heritage Place.
1. Subject to (a) and (b), any of the following: 1. classes of development listed in Urban Activity Centre Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Urban Activity Centre Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 1. consulting room 2. demolition 3. dwelling 4. hotel 5. licensed premises 6. office 7. pre-school	Except (where relevant): 1. development that is unable to satisfy Urban Activity Centre Zone DTS/DPF 1.6 2. development that exceeds the maximum building height specified in Urban Activity Centre Zone DTS/DPF 3.1 3. development that is unable to satisfy Urban Activity Centre Zone DTS/DPF 3.2 or 3.3 4. demolition of a State or Local Heritage Place.

8. residential flat building
9. shop
10. student accommodation
11. supported accommodation

Placement of Notices - Exemptions for Performance Assessed Development

None specified.

Placement of Notices - Exemptions for Restricted Development

None specified.

DTS/DPF 1.6

Any of the following:

(a) shop, other than a bulky goods outlet with a gross leasable floor area more than 500m^2
(b) cinema
(c) hotel
(d) licensed premises.

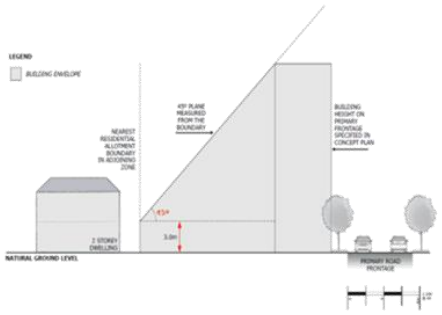
DTS/DPF 3.1

Building Height not greater than max :…. Height / …. Levels
And no less than ….. levels (see TNV)…

If only one value if returned, that value applies.
If no values are returned, then no max height is applicable & cannot be DTS. No min building height applicable.

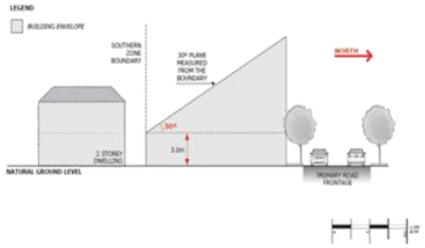
DTS/DPF 3.2

Buildings constructed within a building envelope provided by a 45 degree plane measured from a height of 3 metres above natural ground level at the boundary of an allotment used for residential purposes within a neighbourhood-type zone as shown in the following diagram (except where this boundary is a southern boundary or where this boundary is the primary street boundary):



DTS/DPF 3.3

Buildings on sites with a southern boundary adjoining an allotment used for residential purposes within a neighbourhood-type zone are constructed within a building envelope provided by a 30 degree plane grading north measured from a height of 3m above natural ground level at the southern boundary, as shown in the following diagram:



Urban Neighbourhood Zone (Urban Core Zone, Mawson Lakes)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016*, classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
1. Any kind of development that is not located adjacent to a site used for residential purposes in a neighbourhood-type zone.	Except the demolition of a State or Local Heritage Place
3. Subject to (1) and (2) any of the following: 1. classes of development listed in Urban Neighbourhood Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Urban Neighbourhood Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. consulting room 4. demolition 5. dwelling	Except (where relevant): 1. development that is unable to satisfy Urban Neighbourhood DTS/DPF 1.6 2. development that is unable to satisfy Urban Neighbourhood DTS/DPF 2.2 3. development that is unable to satisfy Urban Neighbourhood DTS/DPF 3.1 or 3.2 (same as UAC Zone) 4. demolition of a State or Local Heritage Place.

6. office 7. pre-school 8. residential flat building 9. retirement facility 10. shop 11. student accommodation 12. supported accommodation 13. Tourist accommodation	

Placement of Notices - Exemptions for Performance Assessed Development
None specified.
Placement of Notices - Exemptions for Restricted Development
None specified.

DTS/DPF 1.6

Except where a Main Street Subzone or Urban Neighbourhood Retail Subzone applies, shops, offices or consulting room uses not exceeding a maximum gross leasable floor area of 500m^2 for individual tenancies and 1000m^2 in a single building.

DTS/DPF 2.2

Building Height not greater than max :…. Height / …. Levels
And no less than ….. levels (see TNV)…

If multiple values returned, refer to TNV.
If only one value if returned, that value applies.
In no value is returned, none are applicable and cannot be DTS.

Suburban Activity Centre Zone (Neighborhood & District Centre)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
2. Any kind of development that is **not** located adjacent to a site used for residential purposes in a neighbourhood-type zone.	Except the demolition of a State or Local Heritage Place.
3. Subject to (1) and (2), any of the following: 1. classes of development listed in Suburban Activity Centre Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Suburban Activity Centre Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. cinema 4. community facility 5. consulting room 6. demolition	Except (where relevant): 1. development that exceeds the maximum building height specified in Suburban Activity Centre Zone DTS/DPF 3.1 2. development that is unable to satisfy Suburban Activity Centre Zone DTS/DPF 3.2 3. demolition of a State or Local Heritage Place.

7. dwelling above ground level 8. indoor recreation facility 9. land division 10. library 11. office 12. place of worship 13. pre-school 14. recreation area 15. retaining wall 16. service trade premises 17. shop 18. tourist accommodation 19. tree damaging activity 20. verandah.	

Placement of Notices - Exemptions for Performance Assessed Development

None specified.

Placement of Notices - Exemptions for Restricted Development

None specified.

DTS/DPF 3.1

Building Height not greater than max :….
Height / …. Levels
And no less than ….. levels (see TNV)

Height is 3 levels and up to 12m in all other cases.

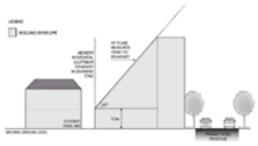
If multiple values returned, refer to TNV.
If only one value if returned, that value applies.
In no value is returned, none are applicable and cannot be DTS.

DTS/DPF 3.2

Interface Height

Buildings constructed within a building envelope provided by a:

(a) 45 degree plane measured from a height of 3 metres above natural ground level at the boundary of an allotment used for residential purposes within a neighbourhood-type zone as shown in the following diagram (except where this boundary is a southern boundary):



(a) in relation to a southern boundary, 30 degree plane grading north, measured from a height of 3m above natural ground at the boundary of an allotment used for residential purposes within a neighbourhood-type zone as shown in the following diagram:

Local Activity Centre Zone (Local Centre Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None.
2. Any kind of development that is **not** located adjacent to a site used for residential purposes in a neighbourhood-type zone	Except the demolition of a State or Local Heritage Place.
3. Subject to (1) and (2) any of the following: 1. classes of development listed in Local Activity Centre Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Local Activity Centre Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. advertisement 4. community facility 5. consulting room 6. deck 7. demolition	Except (where relevant): 1. development that exceeds the maximum building height specified in Local Activity Centre Zone DTS/DPF 3.1 2. development that is unable to satisfy Local Activity Centre Zone DTS/DPF 3.2 or 3.3 (same as UAC Zone) 3. demolition of a State or Local Heritage Place.

8. dwelling 9. fence 10. land division 11. office 12. retaining wall 13. Shop 14. tree damaging activity 15. verandah.	

Placement of Notices - Exemptions for Performance Assessed Development
None specified.

Placement of Notices - Exemptions for Restricted Development
None specified.

DTS/DPF 3.1

Building Height not greater than max :….
Height / …. Levels
And no less than ….. levels (see TNV)

Height is 2 levels and up to 8m in any other case.

If multiple values returned, refer to TNV.
If only one value if returned, that value applies.

[In no value is returned, none are applicable and cannot be DTS]. clause not included.

Strategic Employment Zone (Urban Employment Zone & Industry Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
2. Subject to (1) any of the following: 1. classes of development listed in Strategic Employment Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Strategic Employment Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. advertisement 4. consulting room 5. demolition 6. fence 7. land division 8. light industry 9. office 10. outbuilding 11. retaining wall 12. shop 13. store 14. telecommunications facility 15. tree damaging activity.	Except (where relevant): 1. development that is unable to satisfy Strategic Employment Zone DTS/DPF 1.3, 1.5, 4.1, 4.2 (same as UAC Zone) 2. demolition of a State or Local Heritage Place.
3. Subject to (1) any of the following: 1. general industry 2. motor repair station 3. retail fuel outlet	Except where the site of the development is located adjacent to a dwelling in a neighbourhood-type zone.

4. warehouse.	

Placement of Notices - Exemptions for Performance Assessed Development
None specified.

Placement of Notices - Exemptions for Restricted Development
None specified.

DTS/DPF 1.3

Shop where one of the following applies:

(a) with a gross leasable floor area up to 250m^2
(b) is a bulky goods outlet
(c) is a restaurant
(d) is ancillary to and located on the same allotment as an industry.

DTS/DPF 1.5

Telecommunications facility in the form of a monopole:

(a) up to a height of 30m
(b) no closer than 50m to neighbourhood-type zone.

Employment Zone (Commercial Zone & Mixed Use Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
2. Subject to (1) any of the following: 1. classes of development listed in Employment Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Employment Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. advertisement 4. consulting room 5. demolition 6. land division 7. light industry 8. office 9. outbuilding 10. retaining wall 11. shop 12. store 13. telecommunications facility 14. tree damaging activity.	Except (where relevant): 1. development that is unable to satisfy Employment Zone DTS/DPF 1.2 other than where located in the following: 1. Retail Activity Centre Subzone 2. Roadside Service Centre Subzone 2. telecommunications facility that is unable to satisfy Employment Zone DTS/DPF 1.3 3. development that is unable to satisfy Employment Zone DTS/DPF 3.5, 3.6, or 3.7 (same as UAC Zone) 4. demolition of a State or Local Heritage Place.

3. Subject to (1) any of the following: 1. motor repair station 2. retail fuel outlet 3. warehouse.	Except where the site of the development is located adjacent to an allotment used for residential purposes in a neighbourhood-type zone.

Placement of Notices - Exemptions for Performance Assessed Development

None specified.

Placement of Notices - Exemptions for Restricted Development

None specified.

DTS/DPF 1.2

Shop where one of the following applies:

(a) with a gross leasable floor area up to 100m^2
(b) is a bulky goods outlet
(c) is a restaurant
(d) is ancillary to and located on the same allotment as an industry and primarily involves the sale by retail of goods manufactured by the industry.

DTS/DPF 1.3

Telecommunications facility in the form of a monopole:

(a) up to a height of 30m
(b) no closer than 50m to a neighbourhood-type zone.

DTS/DPF 3.5

Building Height not greater than max :….
Height / …. Levels (see TNV)

Height is 2 levels and up to 9m in any other case.

If multiple values returned, refer to TNV.
If only one value if returned, that value applies.

[In no value is returned, none are applicable and cannot be DTS]. clause not included.

Strategic Innovation Zone (Urban Core – Technology Park & University area)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016*, classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
2. All development undertaken by: 1. the South Australian Housing Trust either individually or jointly with other persons or bodies or 2. a provider registered under the Community Housing National Law participating in a program relating to the renewal of housing endorsed by the South Australian Housing Trust.	Except (where relevant): 1. development that exceeds the building height specified in Strategic Innovation Zone DTS/DPF 3.1 2. development that is unable to satisfy Strategic Innovation Zone DTS/DPF 3.2 3. demolition of a State or Local Heritage Place.
1. Any kind of development that is not located adjacent to a site used for residential purposes in a neighborhood-type zone	Except the demolition of a State or Local Heritage Place.
3. Subject to (1) and (2), any of the following: 1. classes of development listed in Strategic Innovation Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Strategic Innovation Zone Table 2 - Deemed-to-Satisfy	Except (where relevant): 1. development that is unable to satisfy Strategic Innovation Zone DTS/DPF 1.4 2. development that exceeds the maximum building height specified in Strategic Innovation Zone DTS/DPF 3.1 3. development that is unable to satisfy Strategic Innovation Zone DTS/DPF 3.2 **[field is blank]** 4. demolition of a State or Local Heritage Place.

Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. advertisement 4. carport 5. community facility 6. consulting room 7. demolition 8. dwelling 9. educational establishment 10. land division 11. library 12. office 13. outbuilding 14. place of worship 15. pre-school, other than where located in the Repatriation Subzone 16. recreation area 17. residential flat building 18. retaining wall 19. shop, other than a restaurant located in the Repatriation Subzone 20. student accommodation 21. tourist accommodation 22. tree damaging activity 23. verandah.	DTS/DPF 1.4 Shops, offices or consulting room gross leasable floor area does not exceed 250m^2. DTS/DPF 3.1 Building Height not greater than max :…. Height / …. Levels (see TNV) If multiple values returned, refer to TNV. If only one value if returned, that value applies. In no value is returned, none are applicable and cannot be DTS. (excludes garages, carports, outbuildings)
Placement of Notices - Exemptions for Performance Assessed Development	
None specified.	
Placement of Notices - Exemptions for Restricted Development	
None specified.	

Suburban Business Zone (Business Policy Area, Urban Corridor Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	
2. Any kind of development that is not located adjacent to a site used for residential purposes in a neighbourhood-type zone.	Except the demolition of a State or Local Heritage Place.
3. Subject to (1) and (2) any of the following: 1. classes of development listed in Suburban Business and Innovation Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Suburban Business and Innovation Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. advertisement 4. carport 5. community facility	Except (where relevant): 1. development that is unable to satisfy Suburban Business Zone DTS/DPF 1.2 2. development that exceeds the building height specified in Suburban Business Zone DTS/DPF 3.1 3. development that is not contained within the building envelope specified in Suburban Business Zone DTS/DPF 3.2 or DTS/DPF 3.3 (same as UAC Zone) 4. demolition of a State or Local Heritage Place. DTS/DPF 1.2 Shops, offices and consulting rooms do not exceed 500m^2 in gross leasable floor area.

6. consulting room 7. demolition 8. dwelling 9. land division 10. office 11. outbuilding 12. residential flat building 13. shop 14. student accommodation 15. tree damaging activity 16. verandah.	DTS/DPF 3.1 Building height does not exceed: (a) 2 building levels or 9 metres where the development is located adjoining a different zone that primarily envisages residential development or (b) 3 building levels or 12 metres in all other cases.

Placement of Notices - Exemptions for Performance Assessed Development
None specified.

Placement of Notices - Exemptions for Restricted Development
None specified.

Rural Zone (Primary Production Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
2. Subject to (1) any of the following: 1. classes of development listed in Rural Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Rural Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. carport 4. demolition 5. dwelling 6. farming 7. function centre 8. horticulture 9. industry 10. land division 11. outbuilding 12. retaining wall 13. shop 14. store 15. tourist accommodation	Except (where relevant): 1. demolition of a State or Local Heritage Place 2. function centre that is unable to satisfy Rural Zone DTS/DPF 6.6 3. horticulture that is unable to satisfy Rural Zone DTS/DPF 3.1(d) or (e) 4. industry, store or warehouse that is unable to satisfy any of the following: 1. the total floor area limit expressed in Rural Zone DTS/DPF 4.1 2. Rural Zone DTS/DPF 4.3 5. shop that is unable to satisfy any of the following: 1. the gross leasable floor area limit expressed in Rural Zone DTS/DPF 6.1 2. Rural Zone DTS DPF 6.2 6. tourist accommodation that is unable to satisfy Rural Zone DTS/DPF 6.4.

DTS/DPF 6.4

Tourist accommodation in new buildings:

(a) is set back from all allotment boundaries by at least 40m

(b) has a building height that does not exceed 7m above natural ground level.

16. tree damaging activity 17. verandah 18. warehouse.	

Placement of Notices - Exemptions for Performance Assessed Development
Pursuant to regulation 47(6)(c) of the Planning, Development and Infrastructure (General) Regulations 2017, the requirement to place a notice on the relevant land under section 107(3)(a)(ii) of the *Planning, Development and Infrastructure Act 2016* **does not apply** in the Rural Zone.

Placement of Notices - Exemptions for Restricted Development
Pursuant to regulation 47(6)(c) of the Planning, Development and Infrastructure (General) Regulations 2017, the requirement to place a notice on the relevant land under section 110(2)(a)(iv) of *the Planning, Development and Infrastructure Act 2016* does not apply in the Rural Zone.

DTS/DPF 6.6

Function centres:

(a) are located on an allotment having an area of at least 5ha
(b) are set back from all property boundaries by at least 40m
(c) are not sited within 100m of a sensitive receiver in other ownershi
(d) have a building height that does not exceed 9m above natural ground level.

DTS/DPF 4.1

Industries, storage, warehousing, produce grading and packing and transport distribution activities and similar activities (or any combination thereof):

(a) are directly related and ancillary to a primary production use on the same or adjoining allotment
(b) are located on an allotment not less than 20ha in area
(c) have a total floor area not exceeding 500m^2.

DTS/DPF 3.1

Horticultural activities:

(a) are conducted on an allotment with an area of at least 1ha
(b) are sited on land with a slope not greater than 10% (1-in-10)
(c) are not conducted within 50m of a watercourse or native vegetation
(d) are not conducted within 100m of a sensitive receiver in other ownership
(e) provide for a headland area between plantings and property boundaries of at least 10m in width
(f) where carried out in an enclosed building such as a greenhouse, the building has a total floor area not greater than 250m^2
(g) where in the form of olive growing are not located within 500 metres of a conservation or national park.

DTS/DPF 4.3

Buildings and associated activities:

(a) are set back at least 100m from all road and allotment boundaries
(b) are not sited within 200m of a sensitive receiver in other ownersh
(c) have a building height not greater than 10m above natural ground level
(d) incorporate the loading and unloading of vehicles within the confines of the allotment.

DTS/DPF 6.1

Shops:

(a) are ancillary to and located on the same allotment or an adjoining allotment used for primary production or primary production related value adding industries
(b) offer for sale or consumption produce or goods that are primarily sourced, produced or manufactured on the same allotment or adjoining allotments
(c) have a gross leasable floor area not exceeding 100m^2
(d) have an area for the display of produce or goods external to a building not exceeding 25m^2.

DTS/DPF 6.2

Shops in new buildings:

(a) are set back from all allotment boundaries by at least 40m
(b) are not sited within 100m of a sensitive receiver in other ownership
(c) have a building height that does not exceed 9m above natural ground level.

Rural Horticulture Zone (Horticulture Precinct, Primary Production Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
2. Subject to (1) any of the following: 1. classes of development listed in Rural Horticulture Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Rural Horticulture Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. carport 4. demolition 5. dwelling 6. farming 7. industry 8. land division 9. outbuilding 10. retaining wall	Except (where relevant): 1. demolition of a State or Local Heritage Place 2. horticulture that is unable to satisfy Rural Horticulture Zone DTS/DPF 3.1(d) or (e) (same as Rural Zone) 3. industry, store or warehouse that is unable to satisfy any of the following: 1. the total floor area limit expressed in Rural Horticulture Zone DTS/DPF 4.1 2. Rural Horticulture Zone DTS/DPF 4.3 4. shop that is unable to satisfy any of the following: 1. the gross leasable floor area limit expressed in Rural Horticulture Zone DTS/DPF 6.1 2. Rural Horticulture Zone DTS DPF 6.2.

11. shop 12. store 13. tree-damaging activity 14. verandah 15. warehouse.	

Placement of Notices - Exemptions for Performance Assessed Development
Pursuant to regulation 47(6)(c) of the Planning, Development and Infrastructure (General) Regulations 2017, the requirement to place a notice on the relevant land under section 107(3)(a)(ii) of the *Planning, Development and Infrastructure Act 2016* does not apply in the Rural Horticulture Zone.

Placement of Notices - Exemptions for Restricted Development
Pursuant to regulation 47(6)(c) of the Planning, Development and Infrastructure (General) Regulations 2017, the requirement to place a notice on the relevant land under section 110(2)(a)(iv) of *the Planning, Development and Infrastructure Act 2016* does not apply in the Rural Horticulture Zone.

DTS/DPF 4.1

Industries, storage, warehousing, produce grading and packing and transport distribution activities and similar activities (or any combination thereof):

(a) are directly related and ancillary to a primary production use on the same or adjoining allotment
(b) are located on an allotment not less than 2ha in area
(c) have a total floor area not exceeding 350m^2.

DTS/DPF 4.3

Buildings and associated activities:

(a) are setback at least 50m from all road and allotment boundaries
(b) are not sited within 100m of a sensitive receiver in other ownership
(c) have a building height not greater than 10m above natural ground level
(d) incorporate the loading and unloading of vehicles within the confines of the allotment.

DTS/DPF 6.1

Shops:

(a) are ancillary to and located on the same allotment or adjoining allotment used for primary production or primary production related value-adding industries
(b) offer for sale or consumption produce or goods that are primarily sourced, produced or manufactured on the same allotment or adjoining allotments
(c) have a gross leasable floor area not exceeding 100m^2
(d) have an area for the display of produce or goods external to a building not exceeding 25m^2.

DTS/DPF 6.2

Shops in new buildings:

(a) are set back from all property boundaries by at least 20m
(b) are not sited within 100m of a sensitive receiver in other ownership
(c) have a building height that does not exceed 9m above natural ground level.

Rural Living Zone (Rural living Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None
2. Subject to (1) any of the following: 1. classes of development listed in Rural Living Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Rural Living Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. agricultural building 4. carport 5. demolition 6. consulting room 7. retaining wall 8. land division 9. office 10. outbuilding 11. retaining wall 12. shop 13. tree damaging activity 14. verandah.	Except (where relevant): 1. development that is unable to satisfy Rural Living Zone DTS/DPF 1.5 2. development that is unable to satisfy Rural Living Zone DTS/DPF 2.1(b) 3. demolition of a State or Local Heritage Place

DTS/DPF 1.5

Development accords with the following:

(a) shops, offices and consulting rooms (or any combination thereof) do not exceed 100m^2 in gross leasable floor area

(b) light industry does not exceed 100m^2 in total floor area.

DTS/DPF 2.1

Dwellings:

(a) are setback as follows:

(i) for allotments with an area of 1ha or more - at least 20m from all boundaries

(ii) for allotments with an area less than 1ha:

A. 20m from the primary street and rear boundaries

B. 10m from side and secondary street boundaries

(b) have a building height that is no greater than 2 building levels and 9 metres

(c) have a wall height is no greater than 6 metres.

Placement of Notices - Exemptions for Performance Assessed Development
None specified.
Placement of Notices - Exemptions for Restricted Development
None specified.

Rural Settlement Zone (Coastal Settlement Zone)

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016,* classes of performance assessed development that are excluded from notification, subject to any 'Exceptions'. The table also identifies any exemptions to the placement of notices when notification is required.

Class of Development	Exceptions
1. A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None.
2. Subject to (1) any of the following: 1. classes of development listed in Rural Settlement Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 2. classes of development listed in Rural Settlement Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table 3. buildings not exceeding 2 building levels or over 9 metres in height 4. carport 5. consulting room 6. demolition 7. development involving the creation of less than 4 additional dwellings or allotments 8. farming 9. land division	Except (where relevant): 1. development that is unable to satisfy Rural Settlement Zone DTS/DPF 1.2 2. development that is unable to satisfy Rural Settlement Zone DTS/DPF 1.3 3. development that is unable to satisfy Rural Settlement Zone DTS/DPF 2.6 **[No DTD/DPF 2.6]** 4. demolition of a State or Local Heritage Place

DTS/DPF 1.2

Shops, offices and consulting rooms (or any combination thereof) do not exceed 150m^2 in gross leasable floor area.

DTS/DPF 1.3

The total floor area of a building plus any outdoor space used for a light industry, store or warehouse (or any combination thereof) does not exceed 80m^2.

DTS/DPF 3.1

Building Height not greater than max :…. Height / …. Levels (see TNV)

Height is all other cases is 2 levels and 9m.

If multiple values returned, refer to TNV.
If only one value if returned, that value applies.

[In no value is returned, none are applicable and cannot be DTS]. clause not included.

10. light industry 11. office 12. outbuilding 13. shop 14. store 15. retaining wall 16. verandah 17. warehouse.	

Placement of Notices - Exemptions for Performance Assessed Development
None specified
Placement of Notices - Exemptions for Restricted Development
None specified

Publicly Notified Development Applications

Comparison between Development Act 1993 and Planning, Development and Infrastructure Act 2016

The number of applications that underwent public notification under the *Development Act 1993* are shown in black text. The changes to public notification under the PDI Act scenario shown in red text.

Note that under the PDI Act there is no equivalent Category 3 Development.

2019/20

Category 2		Category 3	
Major Environmental Significance	2	Undefined uses - Commercial Zone	4
Tree damaging activity by Council	62 0	Road transport terminals / Service Trades Premises / athletic track / entertainment facility - Industry Zone	5
Adjoining different zone	7	School additions - Residential Zone	2 1
Two storey dwelling	2 0	Two storey dwelling	2 0
Development Plan	1	Retaining wall	2 1
Development Act Total [89]	**74**		**15**
PDI Act Total (estimate) [21]	**10**		**11**

2018/19

Category 2		Category 3	
Major Environmental Significance	4	Undefined uses , hotel additions, consulting room, telecommunications facility - Commercial Zone	5 3
Tree damaging activity by Council	59 0	Place of worship, road transport terminals / Service Trade Premises / Service Station - Industry Zone	5
Adjoining different zone	4 3	Place of worship, non-complying, child care centre, truck parking, funeral parlour, shop, school additions - Residential Zone	9 6
Land Division – change the nature or function of an existing road.	4 0	Gel basting, shop – Primary Production Zone	2
Two storey dwelling	2 0	Three storey dwelling	1
Development Plan	4	Retaining walls	3
Development Act Total [102]	**77**		**25**
PDI Act Total (estimate) [31]	**11**		**20**

1

Discussion of key Changes.

Council Significant / Regulated Trees

The change to public notification that is most significant are those development applications involving tree damaging activity by Council. These applications will no longer be required to undergo public notification. This will result in a significant reduction in publicly notified applications.

Shop, consulting room, office in residential zones

A significant change in the Code is the introduction of an exemption from notification for a shop, consulting room or office up to prescribed floor areas in neighbourhood (residential type) zones. There has not been historically many of these application types as the Development Plan policy generally limits non-residential uses in the residential zones. This may lead to an increase in public notification if the policy incentivises an increase in non-residential developments.

Adjoining Zones

The concept of notifying adjoining land owners / occupiers when the adjoining zone is different is continued in the Code, with some adjustments.

- In Activity type zones, a development that adjoins a neighbourhood (residential type) zone and is used for residential purposes will undergo public notification.
- In the Employment Zone, the trigger for notification applies to prescribed uses such as motor repair station, retail fuel outlet and warehouse when adjacent a neighbourhood zone. A general industry will be subject to public notification in all instances unless the development is deemed to be minor.
- In the Strategic Employment Zone, the trigger for notification applies to prescribed uses such as general industry, motor repair station, retail fuel outlet and warehouse when adjacent a neighbourhood zone.
- Public notification is required for buildings in an activity and employment type zone that do not meet a building envelope 45 degree or 30 degree (southern boundary) when adjoining a neighbourhood zone.

Other Classes of notification

The other changes to public notification do not appear to make a significant change to the overall number of applications that will be required to undergo public notification. The public notification requirements include developments which are:

- A Major Environmental Significance.
- Undefined uses within the zone or exceed a prescribed floor area. E.g. shop exceeding 250m2 in the Strategic Employment Zone.
- Buildings exceeding prescribed heights. Generally 2 storeys in neighbourhood type zones & employment type zones. As per prescribed height in the TNV for activity and urban type zones.

- The new Hills Neighbourhood zone has a public notification trigger for retaining walls exceeding more than 1.5 metres. In all other residential type zone, retaining walls are exempt from notification regardless of height.
- There are also a number of changes to public notification in rural type zones. There has not been historically many of these application types within the City of Salisbury and it is therefore uncertain how this policy may influence new development.

Development of a minor nature excluded from notification

The relevant authority is able also exclude from public notification … *A kind of development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development*.

Accepted and Deemed to Satisfy Development excluded from notification

In addition the following classes of development exempt from public notification

- classes of development listed in General Neighbourhood Zone Table 1 - Accepted Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table
- classes of development listed in General Neighbourhood Zone Table 2 - Deemed-to-Satisfy Development Classification where the proposed development is unable to satisfy the relevant criteria set out in that table

ITEM	5.2.4
	COUNCIL ASSESSMENT PANEL
DATE	24 November 2020
HEADING	Procedure for Appeals
AUTHOR	Chris Zafiropoulos, Manager Development Services, City Development
CITY PLAN LINKS	4.4 We plan effectively to address community needs and identify new opportunities
SUMMARY	This report seeks the Panel's decision on the mechanism for assigning authority to progress and resolve appeals under the *Planning, Development and Infrastructure Act 2016*.

RECOMMENDATION

1. That the Council Assessment Panel adopts the *Procedure for Appeals* in Attachment 2 for inclusion in the General Operating Procedures.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Local Government Assoctaion Advice for Progressing and Resolving Appeals
2. Procedure for Appeals

1. BACKGROUND

1.1 The *Planning Development and Infrastructure Act 2016* (the Act) introduces changes to the planning and development system. The changes include some statutory functions of Council Assessment Panels.

1.2 The Panel has been assigned a relevant authority in its own right under the Act. The implication of this change is that the Panel will be the respondent to appeals against their decisions, rather than the Council. The Council will however be responsible for funding the cost of the appeals.

1.3 The Local Government Association (LGA) has provided advice for Panels to consider assigning authority to progress and resolve appeals under the Planning, Development and Infrastructure Act 2016. Refer to Attachment 1.

2. REPORT

2.1 The advice provide by the LGA is that all relevant authorities should consider how they will either:

2.1.1 Consult with relevant council staff before decisions as to the conduct or resolution of appeals are made; or

2.1.2 Assign their decision-making powers to relevant staff.

2.2 At a minimum, it is recommended that Panels:

2.2.1 Authorise their Assessment Manager or a member of council staff (i.e. the CEO) to make decisions as to the conduct of appeals, so that they can proceed in a timely manner.

2.2.2 Require updates be provided to the Panel, and for the Panel to be consulted before an appeal is resolved by way of compromise (unless a decision must be made urgently).

2.3 A draft procedure for the Panel's consideration may include the following key elements:

2.3.1 Authorises the Assessment Manager to make decisions as to the conduct of appeals subject to consulting with the Presiding Member.

2.3.2 Requires any compromise arising from an appeal to be presented to the Panel for decision.

2.3.3 In the event of an urgent matter, that the Panel may determine the matter by electronic meeting in accordance with its General Operating Procedures.

2.4 In considering this procedure, it should be noted that the Assessment Manager is bound by conditions of appointment and financial delegations by the Chief Executive Officer.

2.5 The General Operating Procedures will be presented to the Panel for consideration and its next meeting and will incorporate the proposed clauses to reflect this procedure.

3. CONCLUSION / PROPOSAL

3.1 That the Panel consider the proposed mechanism for assigning authority to progress and resolve appeals under the *Planning, Development and Infrastructure Act 2016*.

CO-ORDINATION

Officer: GMCiD
Date: 12.11.2020

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Information Sheet

What should be the mechanism by which Panels and Assessment Managers assign authority for determining how to progress and resolve appeals?

Under the PDI Act, both Panels and Assessment Managers are relevant authorities in their own right, rather than delegates of the council. One consequence of this new arrangement is that Panels and Assessment managers will be the respondent to appeals against their decisions, rather than the respondent being the council.

This raises interesting questions about decision-making around appeals, as the body funding the appeal is not the decision-maker. As set out below, often the council will be the body responsible for funding the appeal (either directly or indirectly):

- For councils with CAPs, the council is directly responsible for the costs associated with appeals, as it is responsible for all costs and other liabilities associated with the activities of both its Assessment Manager and its CAP (Sections 83(1)(h)(ii) and 87(f)).
- For councils who are members of RAPs:
    - The Gazette notice constituting the panel will set out how the costs associated with the activities of the panel (which should include appeals against decisions of the panel) are to be shared between the member councils (Section 84(1)(i)).
    - Section 87(f) provides that the costs and liabilities of the Assessment Manager are to be borne by the *Minister*, as the designated authority who appointed the RAP. It is understood that the Minister intends to establish a scheme in the case of each RAP by which these costs and liabilities will be borne by the constituent councils to the RAP pursuant to Section 84(1)(i) of the Act.
- For councils who have entered into planning agreements under which joint planning boards have been established:
    - The joint planning board is responsible for all costs and other liabilities associated with the activities of its panel and its Assessment Manager (Sections 83(1)(h) and 87(f)), but the member councils are responsible for the costs and liabilities of the board (as agreed to in the planning agreement: Section 35(3)(e)). It is noted that boards may also receive some development assessment fees under the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*.

As the relevant council will, ultimately, be responsible for funding court proceedings, all relevant authorities should consider how they will either consult with relevant council staff (CEO, managers, etc) before decisions as to the conduct or resolution of appeals are made, or how they will assign certain of their decision-making powers to relevant staff.

For example, out of administrative necessity, assessment panels will need to authorise their Assessment Manager or a member of council staff (i.e. the CEO) to make decisions as to the conduct of appeals, so that they can proceed in a timely manner. It is recommended such authorisations be made to the CEO and be subject to limitations requiring regular updates be

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provided to the panel, and for the panel to be consulted before an appeal is resolved by way of compromise (unless a decision must be made urgently).

In the case of appeals against decisions of Assessment Managers, it is anticipated that most Assessment Managers would, as a matter of course, consult relevant staff (be it the CEO and/or a relevant manager) regarding financial decisions around the conduct of appeals (including the engagement of legal representation and expert witnesses, and whether to resolve the appeal by compromise, or proceed to a hearing). Such informal processes could continue. In the event of an Assessment Manger being absent, and/or should Assessment Managers desire more formal decision-making processes around the funding of appeals, Assessment Managers may also choose to authorise other member(s) of staff (i.e. the CEO) to make decisions on their behalf regarding the conduct and settling of appeals. A more formal process might be appropriate, for example, in the case of an Assessment Manager who is not a member of the relevant council's staff.

In these situations, it is recommended that the Assessment Manager authorise the CEO to make all necessary decisions regarding the conduct and resolution of appeals, but with the limitation that the CEO will consult with the Assessment Manager before agreeing to settle an appeal by way of compromise.

A similar process should also be followed regarding decisions to commence appeals against deemed consent notices under Section 125(6) of the Act (as only the relevant authority may commence such an appeal).

Finally, it is recommended that councils review their financial delegations, to ensure that delegations have been made to necessary relevant authorities (Assessment Manager, CAP, etc; noting that a delegation to the Manager of Planning is not a delegation to the assessment Manager, even if the same individual occupies both roles) and that the financial limit on such delegations reflects the role and functions of that relevant authority under the PDI Act.

Advice provided to the LGA by Norman Waterhouse Lawyers on 3 March 2020.

Further Information
Contact: Stephen Smith, Planning Reform Partner, LGA
Email: Stephen.smith@lga.sa.gov.au
Telephone: mobile 0409 286 734

March 2020

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Appeals

1. The Assessment Manager / GMCiD/ CEO is authorised to make decisions as to the conduct of appeals, subject to consulting with the Presiding Member.
2. Any compromise arising from an appeal shall be presented to the Panel for decision.
3. In the event of an urgent matter, that the Panel may determine the matter by electronic meeting in accordance with its General Operating Procedures.