



OFFICE OF THE LORD MAYOR

Mr Michael Lennon
State Planning Commission
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Sent via e-mail: admin@saplanningcommission.sa.gov.au

Dear Mr Lennon

Michael

Practice Direction X – Council Inspection Policies

The City of Adelaide values and appreciates the opportunity to provide feedback on the above draft Practice Direction and associated documents.

Occupant and public safety is of paramount important to the City of Adelaide and we therefore support the core objectives of the draft council inspection policies. In the spirit of the consultation on the policies, the City of Adelaide provides recommendations for your consideration which would strengthen them to better achieve the objectives and facilitate improved processes.

I note that the proposed policy will require the City of Adelaide to re-evaluate our resourcing of our Building Assessment and Compliance team capacity and capability. We request to be consulted with on the fees and charges associated with inspections as soon as possible so that this information can assist us with our resourcing, costs and, with as much notice as possible prior to 1 July 2020.

Please find attached our detailed feedback on Practice Direction X – Council Inspection Policies and associated documents which were endorsed by Council at its meeting on 10 December 2019.

We welcome any opportunity to discuss our feedback and suggestions with you and the State Planning Commission in more detail.

Please contact Shanti Ditter, Associate Director, Planning, Design and Development on [REDACTED] or [REDACTED] to arrange a mutually convenient time to discuss this further.

Yours sincerely

Sandy Verschoor
LORD MAYOR

17 December 2019

CC:
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DRAFT PRACTICE DIRECTION X – COUNCIL INSPECTION POLICIES

Overall purpose

1. Is the proposed purpose of the inspection policy easily understood? i.e. a focus on occupant and life safety, and to maintain confidence and integrity in the development control system?

Whilst it's clear, the focus of the practice direction is occupant and life safety.

The objects of the Practice Direction are very broad and not defined. To understand the objects, a review of the National Construction Code (NCC) was undertaken. There are 4 references to 'occupant safety' and 'life safety' in the NCC Volume 1; however, there is no definition. As such, the City of Adelaide is concerned that the object of the Practice Direction could be applied very broadly, and potentially taken out of context, or interpreted in different ways. We therefore recommend that the terms 'occupant and life safety' is defined.

Inspection levels and capacity

2. Are the proposed inspection requirements easily understood? 66% for Class 1a and 100% for Class 1b to 9?

The City of Adelaide would suggest that the application of the mandated 66% and 100% could be clarified in the Practice Direction. Tables 1, 2, 3 & 4 of the Practice Direction state the inspection requirements for 'building work' regarding the specified timing, number of inspections and portion of developments within the Council area. The Practice Direction provides that the term 'building work' has the same definition as within section 3(1) of the *Planning, Development and Infrastructure Act 2016* (SA) (PDI Act), which would essentially apply to all Building Consents. This will therefore include small fit outs, minor alterations etc. Is this the intent of the Practice Direction?

If so, the City of Adelaide foresees the possibility that some Councils could use this broad definition of 'building work' to apply the Practice Direction requirements predominately to low risk and minor alterations rather than larger, more complex new builds or alterations. This would allow Councils to achieve the required 66% of inspections (as per table 1); however, this would be contrary to the objects of the Practice Direction and should therefore be clarified. A recommended approach is to redefine 'building work' for the purpose of the Practice Direction to include new buildings only and to strengthen the additional inspection policies (section 3). To strengthen or make the additional inspection policies more workable, it is recommended that the State Planning Commission include a risk-based model for requesting additional inspections to set out industry expectations. This may be most appropriately drafted with reference to the different buildings within different Council areas. This approach is possible, in accordance with section 144(2) of the PDI Act.

3. For the main, the inspection requirements for Class 1a are largely unchanged while Class 1b – 9 buildings will require one inspection – do you think this is realistic and achievable for Councils?

The City of Adelaide understands and appreciates that meeting the requirements of the inspection policy is pivotal to achieving the objects of the Practice Direction. We understand that it will be the Council's responsibility to provide appropriate resources to meet the requirements of the Practice Direction. Whilst Council supports the inspection requirements, we do not think it is appropriate to set a policy position based on existing Council resources, but it will be essential for Council to understand the resourcing implications of the policy in order to prepare for the implementation of the policy by 1 July 2020.

Section 144 of the PDI Act requires the State Planning Commission to consider 'the financial and other resources of councils when drafting the Practice Direction. This has not occurred, and the City of Adelaide requests the State Planning Commission consults with Council on the proposed fees and charges schedule to ensure that this section of the PDI Act has been met. Without a fees and charges schedule, it is extremely difficult to fully appreciate how we will ensure that we are appropriately resourced to meet the inspection requirements. Given the tight timeframes, Council would appreciate that this consultation occurs as soon as reasonably possible, so that we can continue our analysis and have adequate time to ensure we are appropriately resourced by 1 July 2020. A transitional provision within the Practice Direction may be appropriate to allow councils adequate time to implement the changes. This time sensitive matter is particularly important given the potential liabilities councils could face for failing to undertake an inspection.

Certificate of Occupancy for Class 1a buildings

Currently, Regulation 83A of the *Development Regulations 2008* (SA) requires that a person must not occupy a Class 1a building under the Building Code (or an addition to a Class 1a building) that has not been fully completed in accordance with a Development Authorisation insofar as it relates to the performance of building work unless –

- (a) the building is structurally sound and weatherproof; and
- (b) the building work that has been carried out on the building is in accordance with the relevant approval (disregarding any variation of a minor nature which has no adverse effect on the safety of the building, or on the health of the occupants of the building, or any variation undertaken with the written consent of the council); and
- (c) the building includes all items specified in Clause P2.4.3 of the Housing Provisions of the Building Code for Class 1a buildings under that Code; and
- (d) all connections relating to the supply of water from all sources, and for the disposal of water and effluent, have been made (although if the approved documentation provides for 2 or more connections for the disposal of water or effluent, it is sufficient for the purposes of that aspect of this paragraph that 1 such connection is made); and
- (e) if the building is in a bushfire prone area under regulation 78, the building complies with Clause P2.3.4 of the Housing Provisions of the Building Code and any relevant requirements of Minister's Specification SA 78; and
- (f) all smoke alarms required under Clause P2.3.2 of the Housing Provisions of the Building Code have been installed and tested.

One of the key elements of Regulation 83A is the requirement for all items (specified in Clause P2.4.3 of the Housing Provisions of the Building Code for Class 1a buildings) to be present prior to occupancy, namely:

- (a) Suitable sanitary facilities for personal hygiene must be provided in a convenient location within or associated with a building, appropriate to its function or use.
- (b) *****
- (c) Laundering facilities or space for laundering facilities and the means for sanitary disposal of waste water must be provided in a convenient location within or associated with a building, appropriate to its function or use.
- (d) A food preparation facility must be provided which includes—
 - (i) a means for food rinsing, utensil washing and the sanitary disposal of associated waste water; and
 - (ii) a means for cooking food; and
 - (iii) a space for food preparation.
- (e) A sanitary compartment must be constructed with sufficient space or other means to enable an unconscious occupant to be removed from the compartment

Regulation 83A has not been carried over in to the *Planning, Development and Infrastructure (General) Regulations 2017 (SA)*. Instead, the legislation relies solely on the provision of a Statement of Compliance being submitted to the Relevant Authority.

This raises concern in that the current Statement of Compliance, noting the new prescribed form is yet to be released, does not require certification of the completion of the items under P2.4.3 of the Housing Provisions of the Building Code and there is potential that Certificates of Occupancy may be issued for buildings that have not been fully completed and may not be suitable for occupation. This would come as a result of a Statement of Compliance being signed before the items under P.2.4.3 are satisfied.

We suggest that either the *Planning, Development & Infrastructure (General) Regulations 2017 (SA)* is amended to include the previous Regulation 83A of the *Development Regulations 2008 (SA)* maintaining the Practice Directions flexibility in Council's choosing when to inspect. Alternatively, the Practice Direction should be amended to mandate a final inspection of Class 1a buildings prior to issue of a Certificate of Occupancy to ensure said items are satisfied.

4. If you answered no to question 3, what level would be achievable? If answering from Council, do you think this is static or could this be increased over time?

As discussed under question 3, the matter relating to resourcing to deliver the inspection policy is something that Council will need to consider and ensure appropriate skills and resources are available. Analysis of resourcing requirements is currently difficult with the fees and charges being available. A transitional provision within the Practice Direction may be necessary to allow councils adequate time to recruit. This time sensitive matter is particularly important given the potential liabilities councils face for failing to undertake an inspection.

Additionally, Council will likely need to be review its resourcing requirements should the number of applications increase.

5. The practice direction provides a list of circumstances when councils may wish to undertake inspections in addition to the mandatory requirements. Would you suggest any change to this list?

It appears this list is overarching and covers the majority of the NCC and repeats part 2, clause 2 in more general terms – adding accessibility, energy efficiency, and specific targeting of owner-builders.

However, the City of Adelaide suggests that if particular building elements are considered of critical importance, the Practice Direction should mandate these inspections.

6. While not in the s144 practice direction, is the potential removal of the 8/20 two week/two month percentage split for pool inspections, to instead require that all pools to be inspected within two weeks of completion supported?

Yes, the City of Adelaide supports the requirement that all swimming pools and safety barriers be inspected within two weeks of receipt of the completion notification, and that the 80/20 split be removed.

Who may inspect?

7. As long as an authorised officer is appointed under r112 of the General Regulations, the draft policy allows the council to decide which officer to allocate to an inspection (from level 1 – 4) – do you support this approach?

Yes, however, it is requested that the State Planning Commission provide clarification around this, including examples of what is and is not acceptable. The background paper states (pg. 16):

'In the draft direction the Commission has determined that councils should be provided with, again as long as an authorised officer is correctly appointed under regulation 112, a degree of flexibility in how they assign authorised officers to an inspection. In taking this position, it is recognised that the officer that attends the site may be assisted in the overall inspection by another, potentially more qualified officer, either prior to or on their return from the inspection itself, so this approach is intended to enable councils to consider the overall inspection abilities of their staff and appointed officers, and manage resources while also inspecting properly.'

This has been interpreted in two ways; firstly, that Council can request an accredited professional level 3 to undertake the inspection of a large commercial building (as per table 4) on behalf of the required level 1, if Council considered this staff member has the appropriate abilities. The alternate interpretation based on the background paper is that the level 1 accredited professional would need to attend the inspection but could take a level 3 with them and on return to the office, the level 3 could write up the inspection notes. This is based on the above wording *'either prior to or on their return from the inspection itself'*. The first interpretation is preferred; however, it is considered that this requires clarification.

We support utilising the varying skillsets of individuals within the building surveying and construction sectors, without tying an individual's ability to inspect exclusively to their level of building surveying accreditation.

However, we are conscious of the legal challenges associated with the use of persons inspecting buildings who do not hold the necessary accreditation. Clarification is required around Council's need to create our own risk-based internal policy to assist with this, with clear rationale as to why the person was deemed appropriate to undertake the inspection. It would be helpful if the Practice Direction outlined how this will impact upon councils' liability.

8. Regulation 112 currently allows councils to potentially appoint an accredited professional who is not a council employee to undertake an inspection (e.g. a private building certifier) to enable recruitment of private sector expertise. Do you support this?

Yes, as there would be significant challenges for many council areas in meeting the proposed requirements without recruitment of the private sector.

Statements

9. While not a specific part of this consultation, would you support the reintroduction of a statement requirement for roof trusses, and for this to potentially be expanded to the entire frame?

We support the reintroduction of a statement requirement for roof trusses, and for it to encompass all timber or light steel framing. If the statements were reintroduced, we request that the standard pro forma is reviewed, and that the supervisor is required to state that the frame complies rather than it has been checked.

As there is a 66% requirement for inspections of class 1a and framing inspections are not mandatory in the proposed practice direction, we foresee that there may be buildings where the framing has not been inspected in detail by the supervisor or Council.

Statements specific to individual elements (such as framing) supplement the final statement of compliance and ensure that at the very least, the individual element has been checked by an appropriately qualified person.

10. Would you support the introduction of statements for other matters, for example, footings or wet areas?

Yes, statements for other matters are supported, including, footings, wet areas and framing.

Process

11. Having read the background paper, do you have a good understanding on how the inspection process will work? i.e. setting notifications via decision notice, receiving notifications, undertaking inspections, etc.? Are there any areas you are unsure of that could benefit from further explanatory material?

Yes, we understand that a council and the relevant authority for building rules consent can require additional notifications under regulations 57 and 93 (*Planning, Development and Infrastructure (General) Regulations 2017 (SA)*) (PDI Regs), and that they are communicated to the applicant through the Decision Notification Form (DNF).

Large commercial buildings (table 4)

We are concerned that the process for commercial buildings as defined in Appendix 2 (specifically large multi-storey construction) will not meet the objects of the proposed Practice Direction for the following reasons:

1. The terminology used in Regulation 57(7), by the use of the word 'may', means that it is optional for the relevant authority (council or private certifier) issuing building rules consent to specify notifications at critical stages. Where Council is not the relevant authority, and it remains optional, we are concerned that a relevant authority may not issue additional notifications. This would instead leave it up to council officers who have no knowledge of the design or critical elements of the application to set necessary and essential, mandatory inspection stages to meet the objects of the Practice Direction. Further, this does not align with recommendation 18 of the Shergold Weir report which suggested a requirement for the building surveyor (relevant authority) to set the inspections required at the time of the initial approval and to consult with engineers about appropriate inspection points. Council agrees with this recommendation.

As currently drafted, we are concerned that the ability for Council to 'choose' which stage we inspect on a large-scale development will ultimately lead to the path of least resistance being taken. For example, Council may elect to undertake a final inspection only; however, this won't allow appropriate visibility of the construction methods to ensure compliance and/or public safety. This combined with the likely requirement of Council having to bear the cost of engaging an engineer with the required skillset to undertake a primary element inspection, may lead to Council opting to not undertake inspections at these stages. We do not consider it realistic or practicable to engage and adequately brief a suitably qualified engineer and conduct an inspection on a large commercial building within the 24-hour period.

We therefore recommend that Regulation 57(7) of the *Planning, Development and Infrastructure (General) Regulations 2017* (SA) is amended from 'may' to 'should'. It is also considered that the practice direction should further clarify what is meant by 'large commercial buildings' and refer to the definition provided for Type A buildings as defined in the NCC. These amendments would require the relevant authority for building rules consents on 'large commercial buildings' to specify mandatory notifications at the critical stages, determined by the relevant design professionals (see below discussion on this point). If there are no critical stages, this should be stated on the building rules consent DNF. The ability for Council to apply additional notifications should be retained and can be used for targeted inspections which would be attended by an Authorised Officer and any consultants considered necessary.

2. We do not support the practice of utilising stop work orders to gain time to undertake a mandatory inspection of a large commercial building, as the costs incurred by the builder or developer are likely to be substantial, and there will be a flow-on effect to the largely casual workforce. Whilst the ultimate object of the Practice Direction is to ensure public safety, the impacts of issuing a stop work order to a multi-million-dollar build will create economic impacts that is not the intent of the Practice Direction. A stop work order should only be utilised (if necessary) in an instance where an inspection has an unsatisfactory result requiring remediation, or where a breach of the Act has occurred.
3. The Practice Direction acknowledges that there are certain stages of construction that require additional skillsets to undertake a compliance inspection (e.g. large-scale structural framing). There is an opportunity to require targeted critical stage inspections and for these to be undertaken by an Authorised Officer in conjunction with the design engineer who has the most detailed knowledge of the relevant design. This opportunity has been missed and should be reconsidered.

We believe that an inspection process for large commercial buildings that is collaborative which involves an Authorised Officer, the relevant design professionals, and the builder, will have the highest likelihood of achieving an increase in occupant and public safety and maintaining confidence and integrity in the development control system. Therefore, to achieve the objects of the Practice Direction, this approach should be adopted.

To adopt this approach, the Practice Direction should further define 'large commercial buildings' as Type A buildings as defined in the NCC. The PDI Regs should require mandatory inspections to be set by the relevant authority on the building rules consent DNF, to be determined in collaboration with the relevant design professional. 'Relevant Design Professional' should also be defined, and should be a broad definition to apply to all appropriately qualified engineers.

Mandatory inspections should be undertaken by the relevant design professionals at all critical stages and evidence of the inspection (such as a certificate from an engineer) be recorded on the SA Planning Portal, with notification given to Council. An Authorised Officer should attend in accordance with the proposed inspection policy to provide necessary regulatory oversight. The Practice Direction will need to be amended slightly to encompass this recommendation.

4. We note that in South Australia, engineering designs must either be assessed by the relevant authority or an independent technical expert prior to building rules consent being issued, and that unlike other States, self-certification is not permitted. We consider that this alleviates many concerns relating to conflict and liability associated with design professionals being involved in the inspection process.

Other matters

12. Are there any other matters you would like to raise at this point?

Environmental Performance

Should the Practice Direction include details of the role of building inspections and compliance in supporting environmental performance outcomes of development? We appreciate that this may be difficult to define in the short term, but we recommend that the State Planning Commission consider including this matter.

The PDI Act places great emphasis on achieving sustainability. Whilst this has been included within the State Planning Policies and some principles included in the draft Planning and Design Code, to ensure the PDI Act achieves this intent, it should be considered in the end-to-end process of the development assessment system. Whilst environmental performance can be key considerations during the planning stage and are looked at during building assessment, whether these solutions are ultimately constructed and met is information lacking in the development system currently.

ePlanning

Part 4, section 1 of the Practice Direction states that records must be maintained in a central register and made available for inspection upon 7 days' notice from the Commission. This central register should be the SA Planning Portal. As such, there isn't a need to provide 7 days' notice for inspection by the Commission, as it should all be available via the centralised Portal.

RESPONSE TO DRAFT PRACTICE DIRECTION X – COUNCIL INSPECTION POLICIES

City of Adelaide

We understand that notifications of completion of a building stage for a mandatory inspection will predominately take place through the Portal (as per Regulation 93(2) of the PDI Regs); however, the inspection process will also need to occur within Council systems. This is not an ideal solution from the ePlanning solution and should be included within the scope of generation 1 of the ePlanning solution. This will remove possible duplication of work. We also consider it to be necessary as some councils may need to outsource their inspections to private accredited professionals. By centralising the process, will simplify the process for all parties involved.

Additionally, as outlined in the consultation documentation, follow up inspections will not go towards the required 66% or 100% count; however, this provides important information on the number of inspections councils are undertaking. It will also assist with keeping account of trends in the number of follow up inspections required based on the different criteria. It would be a useful performance indicator to be able to analyse this data across multiple councils and further emphasise why the inspection processed should be included within the centralised ePlanning solution.