

COUNCIL INSPECTIONS PRACTICE DIRECTION

→ STATE
PLANNING
REFORM

What We Have Heard



WHAT WE HAVE HEARD – COUNCIL INSPECTIONS PRACTICE DIRECTION

1.0 PURPOSE

The purpose of this document is to set out what the State Planning Commission (Commission) heard from the public consultation on the (Commission) draft Council Inspections Practice Direction.

Please note this document does not provide the Commission's final position on inspection policies as the Commission is now considering the feedback received and will set out its final decision on this matter soon.

The practice direction will soon be operational under the *Planning, Development and Infrastructure Act 2016* (Act) to ensure that councils undertake an adequate level of inspections of development in their respective areas.

The final practice direction will be published on the SA Planning Portal and will become operational for Phase 2 and 3 councils in line with the operationalisation of the Act.

2.0 INTRODUCTION

An eight week public consultation on the Council Inspections Practice Directions closed on 18 December 2019.

To support consultation, the draft policy was accompanied by a Background Paper to provide an overview of the development of the new policies and explain how the practice direction is intended to work.¹

A range of other activities also took place including briefings with the Local Government Association (LGA), the City of Adelaide, the Minister's Local Government Advisory Committee, and attendance at two meetings of council building surveyors, in Port Augusta and Woodside.

The purpose of this consultation was to provide councils and stakeholders the opportunity to provide their feedback on the draft inspection policy.²

In assessing the feedback received, the Commission is pleased that councils have expressed a strong interest in supporting the delivery of a high quality built environment for South Australians, including via council inspections covering a wider range of buildings.

Again – as was set out in the accompanying Background Paper – the Commission recognises that there are many parties involved in the delivery of this objective (designers, engineers, builders, etc.), a point that was reiterated in several submissions, and that councils should only play a specific, yet important, role in achieving Building Rules compliance.

The Commission also appreciates that – particularly in relation to commercial buildings (class 2-9) – that the policy does propose changes to how councils will operate, and appreciates councils taking the time to comprehend and provide advice on how to best make this work moving forward.

Overall the Commission notes that the new requirements will need to strike a balance between being effective in meeting the objects of the policy, while not being onerous or unmanageable, to ensure that the policy is effective.

It is also welcoming to see many councils consider the issues not just from their own council perspective, but the sector in general, including some metropolitan councils considering regional and rural perspectives.

This document sets out this feedback below under the 'Main Issues' section.

In addition, several of the issues raised during consultation are connected-to but outside the bounds of the Commission's control, for example resourcing and fees and charges. These are set out under 'Other Issues'.

The Commission will consider these issues and provide recommendations to the Minister for Planning as necessary, with a view to supporting the overall success of this policy and the building compliance system.

¹ *Background Paper on Inspection Policies* Background Paper, October 2019

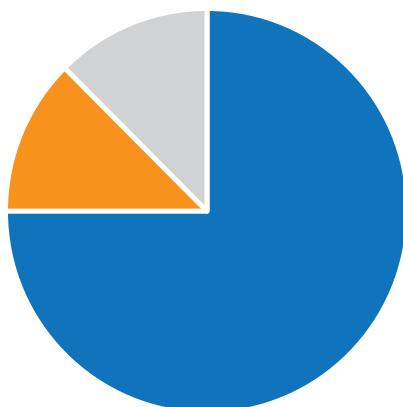
² For brevity, the term 'inspection policy' is used to describe the 'council inspections practice direction', which is its title in the Act.

3.0 SUMMARY OF FEEDBACK RECEIVED

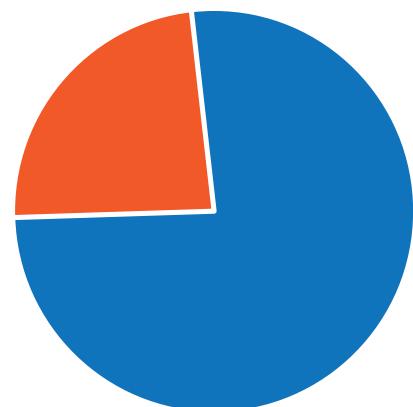
Twenty-eight (28) formal submissions were received over consultation period, in addition to informal feedback provided at the workshops described above. A breakdown of submissions received is as follows:

- 21 were from councils
- 3 were from peak bodies / industry bodies, and
- 4 were received from individuals.

SOURCE OF SUBMISSIONS



COUNCIL SUBMISSIONS



A full list of submissions is provided at **Appendix 1**.

The Background Paper also provided 12 questions which were used by many respondents. These questions are reproduced at **Appendix 2**.

Two key submissions – from the Local Government Association (LGA) and Australian Institute of Building Surveyors (AIBS) – are also highlighted throughout this report which were considered of particular value.



Clarifications on several items are provided in these blue boxes. Please note however, these do not constitute legal advice and councils should seek their own counsel if necessary.

4.0 MAIN ISSUES RAISED

This section captures the key issues related directly to the content of the policy – for example, inspection levels. Across the 28 submissions the following themes emerged:

4.1 The purpose or object of the practice direction is clear

Firstly, there is broad general support for the need for inspections.

While noting that the policy is a requirement of the Act³, no council or stakeholder questioned the need for inspections, with broad acknowledgement of the need for councils to inspect some proportion of developments.

“There are few mechanisms other than inspections that are as effective at driving high rates of compliance of building and construction work ... inspections can be performed relatively quickly and with minimal disruption to the construction process.” – AIBS

As set out in the accompany Background Paper, the Commission is keen to focus the object of the policy onto two central objectives, these being to:

- (a) provide for occupant and public safety; and
- (b) maintain confidence and integrity in the development control system.

This focused objective is well understood and many councils supported the need for point in time council inspections, which carry inherent limitations, to focus on critical building elements, rather than audit general building quality.

“Occupant and public safety is of paramount importance to the City of Adelaide and we support the core objectives of the draft policies.” – City of Adelaide

This feedback is welcomed, given that the Commission is again keen to hone the focus of inspections onto the objectives above.

4.2 The practice direction needs to be clearer on what's captured

Queries were raised over exactly what ‘building work’ is intended to be captured by the policy.

This is considered an important issue raised as the policy needs to provide clarity to councils on what councils need to inspect, particularly whether this should be based on developments approved, building work commenced, or notifications received.

“The City of West Torrens seeks clarification of whether the proportion of developments to be inspected to achieve compliance with the Draft Practice Direction is a proportion of notifications received, consents issued, developments commenced or developments completed.” – City of West Torrens

! The practice direction will be clarified to ensure that the correct building work is captured, with this likely to be – subject to final advice – based on a proportion (for example, 66%) of building work commenced. The issue of multiple buildings within one development will also be addressed.

³ Section 144

LGA SUBMISSION

The Local Government Association of South Australia (LGA) provided an extensive submission to the consultation, which sought to summarise the collective thoughts of councils on the draft policy.

Key issues raised included that:

- That the LGA supports the overall ‘need for well-defined and robust inspection policies for council and the communities’, and that ‘feedback from members supports the proposed purpose of the inspection policy ... namely a focus on public and occupant safety’.
- The LGA did express though that it felt the draft practice direction ‘did not adequately consider the challenges experienced in rural South Australia, particularly the limited availability of experienced resources and the large geographic areas of many regional councils’ – this is an issue discussed below.
- Their submission stated that ‘the development of good policy must also include the obligations and responsibilities not only of local government but of private certifiers (accredited professionals, builders, owners, and owner builders). This is a statement the Commission strongly agrees with, as was set out in the associated Background Paper.
- The LGA noted – correctly at the time of consultation – that there are no prescribed fees associated with building inspections under the PDI Act, and that there is a ‘significant concern amongst councils regarding the cost implications of resourcing the anticipated inspection regime’.
- The LGA submission made 14 recommendations to the Commission for it consider in forming the final practice direction. This included a request for the LGA to be consulted on fees, advice on wording of the policy, an extension of the timeframe for inspections, and for the involvement of design professionals in the inspection process.

4.3 General support on the need for commercial building inspections

A pleasing aspect was the recognised acceptance from councils and other stakeholders on the general need for proactive inspections of commercial (class 2-9) buildings, to expand from the current regime focused largely on detached dwellings and swimming pools (class 1 and 10b).

This was one of the key elements that came through the initial consultation process from early 2019 set out in the Background Paper, and it is good to see a general support from a broad range of councils and other bodies for commercial inspections.

“The Mount Barker District Council is supportive of a more proactive approach in achieving compliance / building safety for commercial buildings by including these within a mandatory policy.” – Mount Barker District Council

Further feedback was received about who should inspect, what they should encompass, and at what level they should be done, but overall there was sound in-principle support for commercial inspections.

Some councils did request that commercial inspections be phased-in. While not considered likely at this stage, given the overall need to start inspections for class 2-9 buildings, consideration may be given to the proportion (%) of developments to inspect given the feedback received.

INSPECTIONS OF COMPLEX COMMERCIAL BUILDINGS

- Capturing of all commercial buildings (class 2-9) will require councils to undertake inspection – should development occur – of large commercial buildings, such as apartment towers, or a shopping centre.
- Submissions from both LGA and City of Adelaide (CoA) included similar feedback on inspecting these types of buildings.
- Specifically, in looking to support effective inspections of these types of buildings, the feedback provided stated that certifiers should be compelled to set inspection points, and that any mandatory inspections ‘should be undertaken by the relevant design professionals at all critical stages’ and that ‘an authorised officer should [also] attend .. to provide necessary regulatory oversight’.
- The Commission acknowledges that for an inspection of a large commercial building to be effective then it may require the involvement of a ‘design professional’ such a structural engineer who understands the building design well, and how construction should be taking place.
- Lastly, putting a compulsion – rather than providing an option – to the certifier to specify notification points is a regulatory matter outside of the Commission’s remit, but the point is noted, and discussed in more detail below.
- The Commission appreciates both the LGA and CoA’s feedback in this regard, noting that supporting improved compliance for large commercial buildings, particularly apartments, is a key national issue.

4.4 Mixed responses on how much the inspection process should work

The draft policy placed on consultation had a deliberate logic which sought to:

1. Set the objective for inspections (**what to focus on**)
2. Identify those elements which councils should inspect for (**what elements to inspect**)
3. Provide councils flexibility on when they might inspect (**when to inspect**)
4. Set the level of inspection required (**how many buildings to inspect**)

Both support for and concerns with this approach were noted, with some councils supporting the proposed approach to provide flexibility around when to inspect, while other submissions argued that a more consistent approach – similar to existing requirements with roof framing – would be more predictable and better support compliance.

As inspections are driven by notifications, some councils such as Mid Murray Council noted:

“A uniform and consistent approach is required by councils when nominating inspections for the building industry and owner builders. To have councils determine what inspection/s will be undertaken per development approval will provide confusion in the industry.” – Mid Murray Council

Others supported the proposed approach:

“By not requiring mandatory inspection stages this will allow councils the flexibility to direct inspections towards target areas as required.” – City of Marion

4.5 General support for the scope of elements captured

General support was provided for the scope or range of building elements to inspect, with acknowledgement that the policy had captured those key aspects that should be subject to inspection (e.g. primary structural elements, bushfire protection systems, etc.)

AIBS's submission argued that some elements were missing that '*could reasonably be included in the scope of an inspection such as energy efficiency, condensation management, water proofing of wet areas, lighting and ventilation, ceiling heights ...' etc.*

! Consideration may be given to expanding the list of elements captured by the policy. Councils are reminded though that they will, subject to the final approval, be able to do additional inspections if they think they may be warranted against the objects of the policy.

4.6 General support for the level of inspection proposed, with some key exceptions

Considerable feedback was received on the inspection levels proposed, with some submissions supporting the proposed inspection levels and some pushing back, at least for the policy's initial introduction.

The LGA, for example, has requested that the Commission consider a transitional approach, to allow councils to adapt to new arrangements.

As highlighted above, sound support was provided on the overall need for councils to be inspecting a broader range of new buildings on a more consistent basis.

Feedback on range of classes captured is summarised below:

DETACHED RESIDENTIAL (CLASS 1A) – PROPOSED: 66% AND 1 INSPECTION

General support was provided for the proposed requirement that 66% of Class 1a buildings receive an inspection, either during construction or at completion.

"Mount Barker District Council is supportive of the policy requiring a minimum of 66% of all domestic dwellings requiring at least one inspection." – Mount Barker District Council

Some councils stated that this level was too low – the City of Onkaparinga noted that the Building Confidence report had recommended that there should be four inspections for these buildings, and recommended that for an initial two-year period 100% of dwellings should be inspected at least once.⁴

The City of Charles Sturt also stated that 'one inspection during the construction work process is not enough'.

Overall however, 66% minimum and one inspection was supported, with some councils noting, such as the City of Salisbury, that this may be a transitional step towards 100%.

COMMERCIAL BUILDINGS (CLASS 2-9) – PROPOSED: 100% AND 1 INSPECTION

Noting that mandatory inspections of commercial (class 2-9) buildings would create a higher workload, good support was provided for these inspections levels.

"Given the nature and use by high volumes of people who are not familiar with the buildings, Playford Council is generally in support of mandated inspection of commercial developments." – City of Playford

⁴ Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia, February 2018

“Council has welcomed the addition of mandatory inspections for all commercial buildings.” – City of Onkaparinga

Some reticence was expressed on the 100% requirement, with several councils noting that even one missed inspection would technically lead to non-compliance with the policy, but generally support for all commercial buildings to be inspected once was strong.

Some councils – such as the City of Marion and City of Mitcham – queried whether inspection levels (%) for lower risk commercial building work (i.e. shop fit-outs) could be reduced, with resources potentially directed elsewhere.

Others, such as the City of Port Adelaide and Enfield, suggested between 50 and 75% would be appropriate.

Noting that councils would take time to adapt to this change, the City of Playford argued that class 1b-9 requirements should be reduced to 80% for the first two years, and increased to 100% after that.

Rural councils in particular raised resourcing concerns, particularly on the ability to inspect more complex commercial buildings as these developments occur periodically.

“Adequate resourcing is a very real concern in order to achieve 100% inspections of class 1b-9 buildings.” – Alexandrina Council

FARM BUILDINGS & FARM SHEDS (VARIOUS CLASSES) – PROPOSED: 100% AND 1 INSPECTION

In contrast to general support for residential and commercial inspections to be at 66% or 100% respectively, stronger concerns were raised with the proposal for 100% of all farm buildings and farm sheds to be inspected once.

Several regional and rural councils – while acknowledging the need to provide services for the local communities – stated that a 100% level for these types of buildings would be very difficult, particularly owing to large distances and lower resourcing.

“MDBC has identified that by far the most significant impact .. is associated with the inspection of farm buildings and farm sheds.” – Mount Barker District Council

This council argued that there are ‘substantive OH&S and financial risk to council associated with having mandatory inspections for farm buildings which are structures clearly identified as being low risk.’

Yorke Peninsula Council questioned the need for 100% inspections of these types of buildings, instead recommending that requirements be reduced to 66% to reduce the issue of travel time for rural councils.

While not against the proposal to inspect farm buildings per se, several councils pointed out their ability to undertake these inspections will depend on adequate resourcing and fees.

This feedback will be considered by the Commission as it considers formulation of the first generation of the policy, noting that issues such as fees remain a decision of Government.

AIBS SUBMISSION

- The Australian Institute of Building Surveyors (AIBS) also provided a comprehensive submission to the consultation process.
- Noting that '*the draft practice direction is written within the confines of the legislative scheme*', AIBS nonetheless stated that the issue of inspections raises related to funding, resourcing and capacity and the certificate of occupancy process.
- Overall, AIBS stated that '*the practice direction represents an appropriate approach to enhanced levels of inspection in South Australia however believes that introduction of the practice direction should not occur until several revisions are made to the practice direction itself and also to the legislative environment supporting it*'.
- AIBS also made the important point that by their very nature, inspections are linked to the performance of the building sector, and that linkages should be drawn between building issues and licencing authority (Consumer and Business Services).
- The issues raised by AIBS will be considered with other submissions during formation of the final policy, noting that issues raised specific to regulation, such as fees, certificate of occupancy, enforcement do not form part of the practice direction itself.

4.7 Need to clarify additional inspection requirements

Councils were welcoming of the policy setting to enable 'additional inspections' to be undertaken in addition to mandatory requirements set to support the key objects of the policy, and to receive guidance and flexibility on when it may be suitable to go beyond the mandatory requirements.

Some councils however, were keen for greater clarity in the wording of the policy to set out whether these additional inspections are mandatory or optional to undertake.

"The practice direction should be amended to clearly outline which inspections are mandatory and the specific expectations of councils to undertake additional inspections." – City of Prospect

Some councils pointed out that while this section is welcome, it is unlikely that councils will do more than the mandatory requirements unless they are appropriately resourced to do so.

4.8 Strong feedback in relation to the proposed 1 day timeframe

Strong feedback was received from many councils that the proposed 1 day timeframe for an inspection to be undertaken upon receipt of a notification is not practical or tenable, particularly from regional councils.

"This requirement is unachievable and unsustainable, and the one day notification fails to recognise the practical realities faced by councils." – Light Regional Council

In response, councils requested that this timeframe be expanded – two days was requested by many – to better reflect resourcing demands in council, for example the many functions undertaken by building officers beyond inspections and other logistical issues, such as travel distances.

Consideration will be given to this issue by the Commission, noting that this demand needs to be balanced with the need to ensure construction is not unduly hindered by the time taken by council to inspect.

! Councils should note that the PDI Act or regulations contains no requirements on how soon an inspection must be undertaken following receipt of a notification, with timeframes only provided on how far *prior* to an event a notification should be provided (see regulation 93). This is why this matter (timeframe to inspect) needs to be prescribed in the practice direction itself.

4.9 General support for flexibility on who may inspect, including use of private sector

Feedback on this issue is divided into two parts:

FLEXIBILITY TO INSPECT AT ANY ACCREDITED PROFESSIONAL LEVEL

General support was provided for the proposal – via a deliberate lack of strict controls in the draft policy – on who may undertake inspections for a council.

This was included in the draft policy to provide councils with flexibility both on how they deploy their building officers (as authorised officers) to inspect, and to permit the recruitment of private expertise to undertake inspections, so long as that person is appointed as an ‘authorised officer’ under the PDI Act and Regulations.⁵

This flexibility was provided to councils to assist them in meeting the prescribed requirements in the policy, and received support from several councils.

“The City of West Torrens considers it appropriate that councils are able to determine how to resource and allocate the undertaking of inspections” – City of West Torrens

Some councils welcomed this proposal for flexibility on who can inspect, in relation to accreditation levels, but noted a need for caution.

“In principle [this] is supported. However councils should be cautious when allocating large scale commercial buildings to a level 4 accredited professional.” – City of Onkaparinga

One council (Roxy Downs) argued that inspections for commercial buildings should be limited to Level 1 and 2 accredited professionals only, while the City of Onkaparinga argued that accredited professionals should be able to do an inspection ‘one level up’ from their accreditation level, e.g. a Level 3 should be able to inspect Level 2 buildings, but not a Level 1.

The Commission acknowledges that this is a complex issue with competing demands of providing flexibility to councils versus maintain the integrity and effectiveness of the policy.

Feedback on this issue will be considered by the Commission, noting that if stricter requirements are put in place, that this will likely be a regulatory matter.

⁵ Planning, Development and Infrastructure (General) Regulations 2017

ABILITY TO ENGAGE THE PRIVATE SECTOR TO EITHER UNDERTAKE OR ASSIST WITH INSPECTIONS

Good support was also provided for the proposition that councils should be able to engage non-council employees to undertake inspections.

“An inspection process for large commercial buildings that is collaborative and 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 draft practice direction, this approach should be adopted.” – LGA and City of Adelaide

As City of Adelaide and others noted ‘there would be significant challenges for many council areas in meeting the proposed requirements without recruitment of the private sector’.

However several councils argued that the private sector must be made to undertake these inspections.

This is a point clarified below, alongside conflict of interest, which was also raised.

For a council employee or any other person to undertake an inspection under this policy for the purpose of section 144 of the Act they must be appointed as an ‘authorised officer’ of that council (regulation 112).

Therefore a private (non-council) employee may undertake inspections, so long as they are appropriately appointed under the Act. If this person is an accredited professional (AP) the councils may make this appointment themselves. However, if this person is not an AP, then this person must either hold an accreditation recognised by the Chief Executive (CE) of DPTI for the purposes of regulation 112; or an approval from the CE, and then be appointed by council.

This will potentially allow a person, such as builder, or an engineer, to undertake inspections, again so long as they are approved to do so by the CE, and correctly. A person may also be appointed by multiple councils.

As proposed by the CoA and LGA (see ‘large commercial buildings’ above), there is no issue with another ‘design professional’ accompanying this authorised officer to undertake an inspection, but this professional cannot fulfil the requirement of the section 144 policy, unless they are appointed as an authorised officer.

Councils should also note there are no set conflict of interest controls in relation to inspections.

While certifiers (via the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*) are not allowed to undertake design and certification for the one development, this is no restriction on a certifier inspecting a building they have certified or assisted in the design of.

See the Background Paper for more discussion on this issue.

5.0 OTHER ISSUES RAISED

This second major section describes the range of other issues raised that are associated with but outside the policy – for example, fee levels.

While these are not matters that can be addressed by the Commission directly, feedback and discussion of these is considered valuable and forms part of the broader reform process.

5.1 Uncertainty on setting of notifications – by who/when

The Commission appreciates, as it sought to set out in the Background Paper, the importance of the notification system (under section 146 of the Act and regulation 93 of the Regulations) in providing the basis for a council to undertake inspections.

The Commission recognises that without a properly functioning notification system that the chances of an inspection occurring when it should are remote to nil.

Some councils, such as Adelaide Hills Council, also argued that notifications should be set so that all builders are required to provide the same notifications.

“Notification flexibility will lead to inconsistency between dwelling developments and from council to council. This appears to be contrary to the aims of the reform to deliver consistency” – Adelaide Hills Council

This issue is discussed further in relation to liability at 5.6 below.

! Stakeholders should note that the flexibility for certifiers and then councils to set notifications during construction – except importantly for the mandatory commencement and completion notifications – is a matter for the Regulations, and not this practice direction.

The LGA submissions stated that is unclear ‘*whether the private certifier specifying additional stages of inspection creates any obligation on councils to undertake inspections at those specific stages.*’

To clarify, while councils will be required to comply with the requirements of the inspection policy, they will not be required to inspect at every notification point that the relevant authority who does the building rules consent (building certifier) may nominate should they use new regulation 57(7).

Another council also asked whether councils are able to add their own notifications in addition to those specified by the relevant authority – the answer to this query is yes, the final list of notifications an applicant must provide will be set on the final development approval in the Decision Notification Form (DNF).

5.2 Key concerns raised over capacity, particularly in rural areas

Many councils raised the issue of capacity in considering the levels of inspections proposed by the draft policy, particularly in regional and rural areas of the State.

As the LGA points out ‘the success of the proposed framework is dependant on the availability of qualified and experienced professions to carry out the work required’.

“Adequate resourcing is a very real concern in order to achieve 100% inspections of Class 1b-9 buildings” – Alexandrina Council

The Commission acknowledges the many comments received on this issue and is keen to ensure that councils will be able to take necessary steps to ensure compliance with the policy. A key quote in this regard is provided by AIBS:

“AIBS, through member engagement on the draft practice direction, understands that there is a degree of capacity within regional councils for a re-allocation of duties which building surveying officers are currently responsible for so, that they will have adequate time to allow the levels of inspection proposed in the practice direction to be achieved ... many such officers are engaged in multiple roles, health, planning, general inspectorial activities and such like.” – AIBS submission

The Commission also welcomes the suggestion made by the LGA that ‘the State Government should seek to address the potential shortfall in experienced and qualified professionals and work with universities, industry and local government to address this concern.’

Developing better career paths for building surveyors is noted as being a recommendation of the Building Confidence report (recommendation 4).

5.3 Need for adequate fees - linked to capacity and resourcing, and consideration of the fee structure

Often raised in parallel with resourcing, the Commission notes that many councils used their submissions to address the issue of the Act fee structure to provide an appropriate level of cost recovery for inspection activities.

Noting the issue of fees is outside the Commission’s remit, feedback on this issue is acknowledged.

“The principle behind the draft Practice Direction is supported but there are significant concerns regarding the cost implications of resourcing the inspection regime for local government without a commensurate fee structure to fund undertaking the additional inspections.” – Adelaide Hills Council

Councils differed on the preferred level of cost recovery, but generally called for costs to be substantially if not completely covered by fees levied on the applicant.

“Inspections fees should ensure full cost recovery to enable councils to fully meet their statutory obligations – City of Onkaparinga

In addition to fee levels, comments were also received on the topic of fee structure, with several councils calling for a ‘fee per-inspection’ model, rather than a general fee charged per development.

! A new fee model for the PDI Act is continuing to be developed and will be in place to support commencement of Phase Two and Three of the rollout of the Act.

5.4 Reintroduction of framing statement, and potential for other statements

The focus of this consultation was on on-site inspections, but considerable support was provided for the reintroduction of a checklist for the installation of roof trusses – and potentially for the frame in general – for class 1a dwellings, to be completed on-site and provided to council.

This requirement is currently in place under the *Development Act 1993*, in conjunction with the 66% inspection requirement for roof trusses.

This checklist, also known as a ‘Reg 74 checklist’, was removed in the initial Regulations made under the Act.

Several councils supported its reintroduction, stating that this process has supported improvements in building compliance for frames. The Masters Builders Association of South Australia (MBA) in particular stated that ‘it would encourage the state government to maintain current legislative requirements specific to framing’.

Some disagreed however, the Copper Coast Council and City of Onkaparinga observing that issues are still frequently detected on-site and that the checklist system is open to misuse. Other councils said that to be effective, any reintroduction of this checklist must be supported by mandatory inspections of trusses.

Support or otherwise for introduction of other mandatory statements (for example, footings or wet areas) was muted.

Feedback on this issue will be passed onto the department, given it falls outside the scope of the policy.

5.5 Linkage between final inspection and certificates of occupancy

Several submissions queried how the proposed introduction of mandatory Certificates of occupancy will interact with the proposed inspection policy, particularly final inspection undertaken of class 1a buildings, where a building certifier may be issuing this certificate.

This was an issue raised in response to the Other Matters question (see **Appendix 2**), due to councils seeking to determine how inspections will integrate with the overall compliance approach, particularly for Class 1a buildings.

As AIBS correctly points out ‘*unlike other jurisdictions, in South Australia the conduct of mandatory inspections, including a final inspection, is not linked to occupancy authorisation*’.

This means there is the potential, as several councils highlighted – notably Port Adelaide Enfield and Onkaparinga – that the building certifier might issue the certificate permitting occupancy prior to a council undertaking a final inspection, where they might seek or be mandated to under the inspection policy.

“*What happens if the private certifier issues the certificate of occupancy prior to the council undertaking the mandatory inspection?*” – City of Onkaparinga

In response to this issue some, including Onkaparinga, have called for a regulated link to be made between any final inspection and the issuing of a certificate of occupancy.

The Commission notes that ensuing a sound process at the end of construction is important to deliver certainty to all those involved in the process, including owners, applicants, tenants, councils and builders, and this feedback will be provided to the department for consideration as part of the Regulations.

5.6 Liability

The general issue of liability was raised by a few submissions, but did not emerge as a dominant topic.

The Commission does recognise that liability is an issue that is agitating the minds of councils, and the new policy is intended to be published with sufficient time for councils to discuss any liability issues with the LGA's Mutual Liability provider.

From the consultation the issue of liability arose most frequently in relation to the potential use of regulation 57(7) (discussed at 5.1) by builder certifiers to set notification stages, and whether a council not undertaking an inspection on these notifications may be potentially liable should an issue arise.

Again, the Commission understands that the purpose of regulation 57(7) is to provide council with important guidance on when they may wish to undertake an inspection, rather than mandate inspections, and that council's obligation is to ensure compliance with the inspection requirements of the section 144 policy.

The Commission perceives that this regulation is therefore designed to support conversation or dialogue between the certifier and council in relation to a development, particularly complex buildings, and to increase council awareness about development going on in their respective areas in the spirit of supporting increased compliance, not liability.

5.7 Swimming pools

The Commission took the opportunity to ask whether councils supported the existing inspection requirement for swimming pools in relation to timing – within the swimming pool inspection policy (operational since 1 July 2019) – which requires 80 per cent of completed pools to be inspected within two weeks of completion, and the remaining 20 per cent within two months of this date.

Noting the high risk that pools pose and the need to ensure correct installation of safety features, councils were asked whether they would support a change to require all (100%) of completed pools to be inspected within two weeks.

Consistent support is provided for this change, although some councils, particularly in rural areas, suggested that a compromise of 4 weeks is more suitable.

The Commission will consider revisions to the swimming pools practice direction when it considers the broader section 144 policy.

Please note, despite calls from several councils, this pools-related policy cannot be combined with the practice direction given Act requirements.

5.8 ePlanning related feedback

Lastly, considerable feedback was received on the ePlanning solution under development.

The Commission notes the message from councils that it would be strongly appreciated if the ePlanning system could integrate existing council inspection systems to enable a ‘one stop shop’ for the building compliance process.

“It is understood that the ePlanning portal will provide a means for inspection notification only and not act as a database for the whole inspection process. This places an extra burden on Council to maintain dual systems for tracking inspections and storing inspection data.” – Alexandrina Council

Some proposed improvements did receive support, including the integration of notifications into the portal.

“The use of the SA Planning Portal to provide a single place for all building notifications is a positive initiative” – Roxby Downs

On behalf of the department, the Commission also thanks councils for this specific feedback, which may be used to inform the ongoing development of the new system.

A key point to remind councils of however is that the Commission will review the operation of the practice direction in two years, and to enable it to do this effectively, councils must keep accurate records using their own systems.

6.0 NEXT STEPS

Again, the Commission offers sincere thanks to everyone involved in the consultation process for their valuable feedback.

The department is now working on refining the practice direction to take into account the comments received, with a final version to be provided to the Commission shortly.

Subject to the Commission’s approval, the final practice direction will be published on the SA planning portal and will become operational as the Act is ‘switched on’ for Phase Two and Three areas of the State.

For further information visit: www.saplanningportal.sa.gov.au

www.saplanningcommission.sa.gov.au

APPENDIX 1

List of submissions received (no specific order):

Councils:

District Council of Copper Coast
Adelaide Hills Council
City of Salisbury
City of Port Adelaide Enfield
City of Onkaparinga
City of West Torrens
City of Adelaide
City of Playford
City of Unley
Mount Barker District Council
City of Charles Sturt
Alexandrina Council
City of Prospect
District Council of Lower Eyre Peninsula
City of Mitcham
Mid Murray Council
Light Regional Council
Yorke Peninsula Council
City of Marion Council
Roxby Downs Council
Coober Pedy Council

Peak bodies / industry bodies:

Local Government Association (SA)
Masters Builders Australia (SA)
Australian Institute of Building Surveyors (AIBS)

Individuals:

Peter Morgan
Ron Lochert
Kym Rowland
Favian Costello

APPENDIX 2

List of consultation questions (taken from the Background Paper):

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.

Inspection levels and capacity

2. Are the proposed inspection requirements easily understood? 66% for Class 1as and 100% for Class 1b-9?
3. For the main, the inspection requirements for Class 1as are largely unchanged while Class 1b-9 buildings will require one inspection – do you think this is realistic and achievable for councils?
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?
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?
6. While not in the s144 practice direction, is the potential removal of the 80/20 two week/two month percentage split for pool inspections, to instead require that all pools to be inspected within two weeks of completion supported?

Who may inspect

7. As long as an authorised officer is appointed under r 112 of the General Regulations, the draft policy allows the council to decide which officer to allocate to an inspection (from level 1 to 4) – do you support this approach?
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?

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

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?

Other matters

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



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