OUR NEW SYSTEM

WHAT WE HAVE HEARD REPORT

DEVELOPMENT ASSESSMENT REGULATIONS AND PRACTICE DIRECTIONS

Introduction

The *Planning, Development and Infrastructure Act 2016* (the PDI Act) establishes a new assessment framework for the processing of development applications. The detailed procedures for planning, building and land division assessment (which collectively provide development approval) are set out in the draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 (the draft Regulations).

The draft Regulations were initially prepared based on consultation with the public, industry, local councils and the professional planning and development community through a discussion paper titled *Assessment Pathways: How Will They Work?,* released in August 2018.

The draft Regulations were released for further public consultation from 16 January to 1 March 2019, along with four draft Practice Directions regarding:

1. public notification
2. restricted/impact-assessed development
3. conditions
4. standard conditions for deemed planning consent.

While there is no statutory requirement to consult on Regulations or Practice Directions, the Department of Planning, Transport and Infrastructure (the Department) and the State Planning Commission (the Commission) elected to consult on these documents given their significance to current planning reforms.

The draft Regulations and Practice Directions were available on the SA Planning Portal for all South Australians to access during the consultation period. The consultation featured a platform on the Government's YourSAy website, inviting feedback through a discussion board and online survey, as well as written submissions. The consultation documents were also directly distributed across the practitioner network and relevant peak bodies (including the Local Government Association, the Property Council of Australia, Urban Development Institute of Australia and Community Alliance SA).

During the consultation period, the Department conducted a number of presentations, workshops and information sessions with the community, local government, the development industry and agencies.

This report summarises the key messages that were communicated to the Department throughout the consultation process.

Survey responses

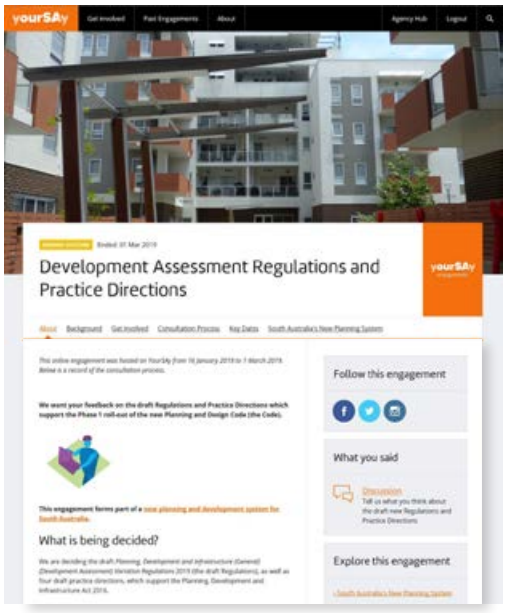
Ten statements were posed through a survey on the YourSAy website and respondents were given the opportunity to choose a response option that ranged from 'strongly agree' to 'strongly disagree'.

The survey received 176 responses, of which only 13% represented the development industry.

Of those who responded to the survey, 59% felt that the timeframes allocated to various stages in the assessment process did not strike the right balance.

Further, 75% were of the view that the draft Regulations did not set out a fair system for public notification to ensure neighbours had a reasonable opportunity to respond to development happening near them.

The written submissions received on the draft Regulations provided further insight into these concerns.



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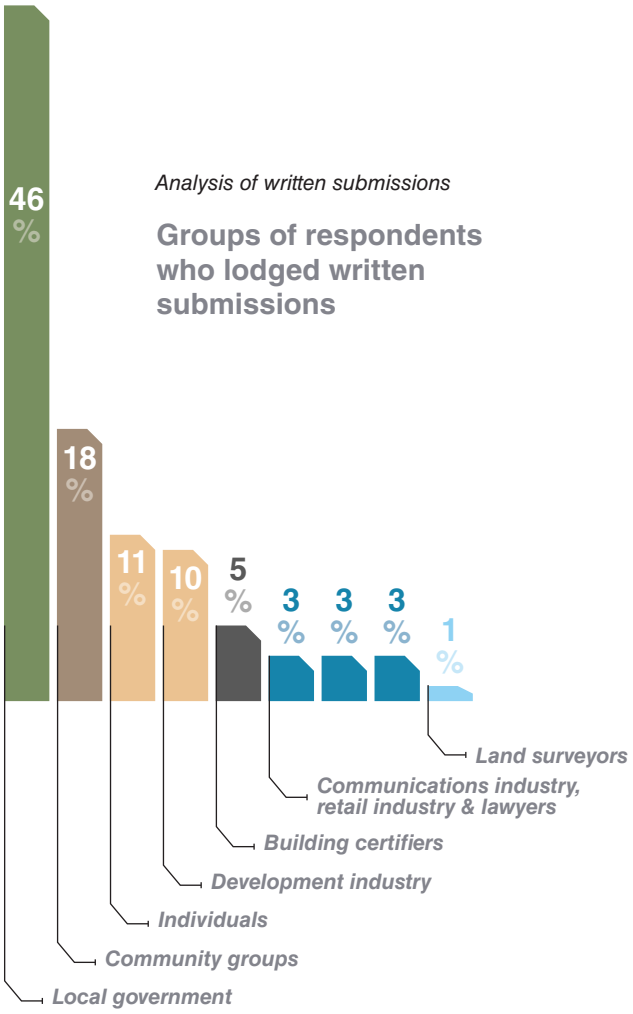
Written submissions

Seventy-two written submissions were received on the draft Regulations and Practice Directions.

The majority of respondents came from local councils, followed by community groups, individual community members and practitioners from the development industry.



Respondents indicated that the draft Regulations should help ensure that:

- development applications are assessed by those most suitably qualified to make assessments, and building inspections are likewise undertaken by suitably qualified professionals
- Code-assessed applications are suitably distributed between assessment panels, assessment managers and accredited professionals, and that the resourcing required to hold assessment panel meetings is acknowledged
- the SA Planning Portal is better utilised in the various steps of development assessment, minimising delays in hard copy communication
- agencies and bodies are given sufficient time to give informed comment on applications, but that this time period is not unduly long
- an initial 'verification' period after applications are submitted is clear, streamlined, and provides for more efficient application processing
- the process of putting a notice/sign on development sites is as efficient as possible, minimising unnecessary resource burdens
- heritage buildings are protected from proposed exemption to demolition approval
- future home-owners have certainty that new dwellings are built correctly and are suitable for occupation in a way that doesn't delay the handover process or adversely affect housing affordability
- conditions imposed on development applications follow clear rules, are fair and easily understood by authorities and applicants
- there is increased clarity around the information required to be submitted for different types of proposed developments.

Some written submissions offered detailed commentary on each Regulation and Practice Direction. While this report will not capture the full scope of all comments, it provides an overview of the key themes raised.

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Relevant authorities

Assessment managers v assessment panels

A number of responses, from both local government and the development industry alike, raised concern that that there would be a significant increase in the number of applications for which an assessment panel would be the relevant authority. It was observed that assessment by an assessment panel could result in significantly longer decision timeframes and increased costs for applicants.

Respondents suggested that the range of applications for which an assessment manager was the relevant authority should be expanded. It was noted that an assessment manager was required to have significant experience and qualifications under the Accredited Professionals Scheme, and would therefore be sufficiently qualified to undertake the assessment of some classes of development currently drafted as being assessed by assessment panels.

In particular, respondents queried the need for the following types of development to be considered by assessment panels:

- development subject to notification where no third party representations were received
- land divisions proposing over 20 additional allotments
- demolition of heritage places, particularly partial/ minor demolition works.

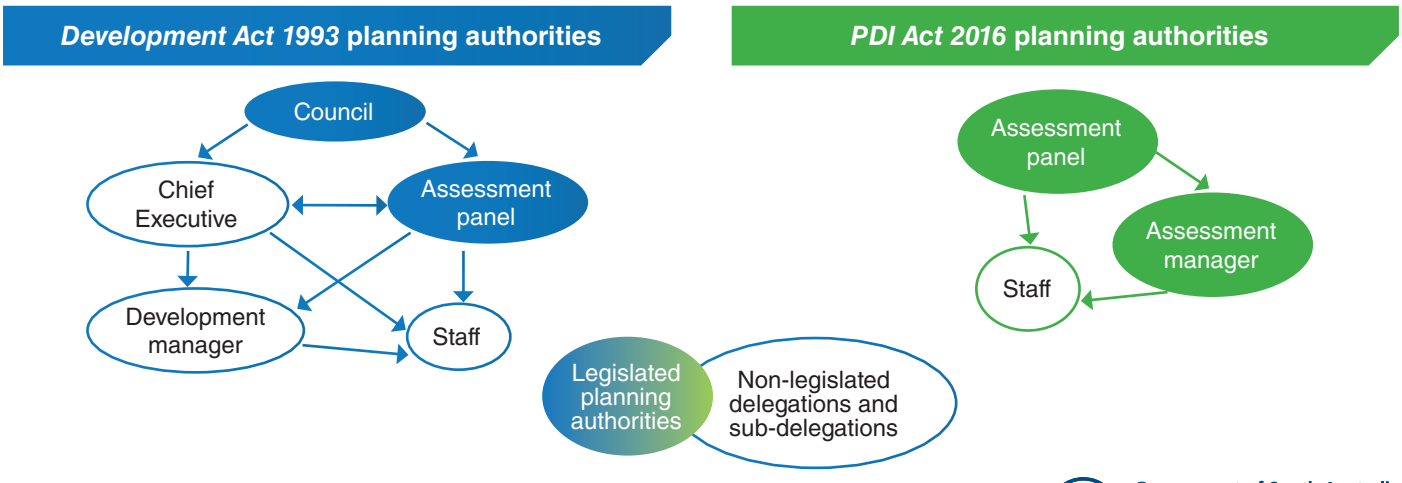
Clarification:

The draft Regulations prescribe classes of development for which an assessment manager/ accredited professional will be the relevant authority for Code-assessed development, with the remainder assessed by an assessment panel. This situation differs to the *Development Act 1993*, where 'council' is assigned as the relevant authority in its own right – leaving the council to delegate to its assessment panel (or Chief Executive or staff) as it sees fit.

By the *PDI Act* establishing assessment panels as the relevant authority in the first instance, and the draft Regulations further setting out the role of assessment managers and accredited professionals, the new planning system effectively removes a layer of delegation, ensuring that only higher-impact applications are assessed at higher levels (see Figure 1).

Furthermore, nothing prevents assessment panels from further delegating their role/function as a relevant authority to staff, as they commonly do at present – there will just be less applications to delegate, because unlike the Development Regulations 2008, the draft Regulations now assign development to assessment managers.

Fig 1. How will the PDI Act change council delegation structures?



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Accredited professionals

Submissions made by several local councils supported the idea of limiting accredited (planning) professionals to assessing deemed-to-satisfy forms of development only.

Land surveyors

Concern was raised from the community and local government regarding the ability for land surveyors to act as a relevant authority, emphasising the importance of decision-making in land division matters.

Clarification:

Land surveyors were introduced into the Accredited Professionals Regulations following consultation on the Accredited Professionals Scheme (which had excised land surveyors based on feedback from the Accredited Professionals Scheme Discussion Paper). While feedback on this accreditation level was mixed, concerns around this level focused on the need for technical knowledge of infrastructure requirements, etc. when assessing land divisions.

Notably, the role of an 'Accredited Professional – Surveyor' is proposed to be limited via the draft Regulations to deemed-to-satisfy land divisions only, and for planning consent only. This means that an 'Accredited Professional – Surveyor' could only provide planning consent to land divisions which satisfy all clear, prescriptive deemed-to-satisfy criteria. If granted, land division consent must still be obtained from the appropriate assessment manager, where matters related to design standards, offset schemes, public realm, provision of water supply, sewerage services and other matters will be considered.

It is anticipated that deemed-to-satisfy land division will be limited to divisions that follow an approved land use. This is similar to the current scope of complying land divisions under the current Development Regulations 2008.

Building Level 3 (Assistant Buiding Surveyor)

Some submissions raised concerns regarding the scope of the role of Building Level 3 as a relevant authority, which no longer allows assessment of class 2-9 buildings as is the case under the current Development Regulations 2008.

Clarification:

The proposed scope of Building Level 3 in the draft Regulations aligns with Australian Institute of Building Surveyors national standards for Building Level 3 (Assistant Building Surveyor). It is noted that, when applying for accreditation, the Accreditation Authority has the discretionary ability to assess individual cases and grant conditional accreditations as deemed appropriate.

State Planning Commission applications

Many local government submissions raised concern regarding the limited matters that council may provide comment on for applications where the State Planning Commission is the authority for planning consent. These submissions also noted that the proposed turnaround time for comment (15 business days) was too short.

Clarification:

It is noted that 'council' is no longer a relevant authority for planning consent (see Figure 1), so the scope for comment is intended to capture only technical/local matters that the State Planning Commission should be aware of rather than comments on planning merit. Concerns around the timeframe to respond is acknowledged, however it is also noted that draft Regulation 23(2)(b) allows the Commission to grant a longer period if deemed appropriate.

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Assessment timeframes

Generally speaking, submissions from the development industry observed that the assessment timeframes were too generous and should be reduced, while the local government sector and community groups observed the timeframes were too short and should be lengthened.

Several submissions expressed general support for the timeframes prescribed, subject to certain refinements. Common observations and suggestions are summarised below.

Verification

Most respondents expressed support for incorporating an initial 'verification' period for applications.

A number of responses supported the five-business-day verification timeframe, while others (predominantly regional councils) observed that a longer period was required to ensure that all steps in the verification process could be undertaken.

Some development industry submissions raised concern that the verification period would unduly extend the assessment period, raising particular concern around deemed-to-satisfy application timeframes.

Agency referrals

Several submissions observed that 30 business days for an agency referral was too long, particularly given that performance-assessed developments should be determined within 20 business days. This raised the question of why a referral relating to specific matters would take longer than the planning assessment of an entire proposal.

Performance assessment

The proposed 20-business-day assessment timeframe for a performance-assessed application (where neither public notification nor agency referral is required) was considered too limited, particularly for more complex applications where 'internal' referrals/advice may need to be undertaken by the relevant authority.

Concurrent periods for notification/referrals

There was support for additional timeframes to allow for public notification and referral processes to occur, however a number of responses from local government observed these timeframes should not occur concurrently. This was because of potential amendments arising from either of those processes which may impact on the other (e.g. where an agency requires changes to the plans that have been publicly notified, then allow additional time built in to allow for re-notification processes).

Clarification:

If substantial changes are made to a development proposal in response to a referral agency report, or in response to representations through the notification period, the 'clock' would restart on receipt of the amended plans, as outlined in draft Regulation 38 – 'Amended applications'.

Period to request additional information (for performance-assessed development)

The period of ten business days to request additional information was queried by local government respondents, who observed that the period was too limited for more complex developments which require input from various disciplines. It was felt that important matters may not be readily identified in this time.

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Public notification

Notice (sign) on land

Local government submissions raised concern around the procedure of placing a notice on development sites, and in particular, posed the following questions:

- How will the resourcing and material costs of printing, erecting, maintaining and dismantling an A2 weatherproof sign be supported during and after the notification period?
- How will dates of the public notification period be known when preparing the site notice/letters to adjacent land, given that the notification period wouldn't commence until either the site notice is erected, or the letters are received, whichever occurs later?
- Will site notices be an effective form of notification in rural areas or on high-speed roads?
- What is the impact to the public notification period and assessment timeframes if the sign is damaged, obscured or removed?

Period within which to submit a representation

Responses were mixed regarding the proposed 15-business-day notification period for performance-assessed development, and 20 business days for restricted development. Some individuals believed the period should be longer, while the development industry requested that the current ten-business-day timeframe should be retained. A number of responses expressed support for the extended periods as drafted, observing that it provided a genuine opportunity for affected parties to comment on a development proposal.

Response to representations

It was observed that applicants should have at least 15 business days, not ten, to respond to any representations received, matching the notification period.

Verbal hearing of representations

Many submissions expressed support for the ability for the relevant authority to hear verbal representations, however it was also asserted that this should be a right rather than at the discretion of the relevant authority.

Other matters

Respondents suggested that:

- letters to adjacent land should be able to be sent via email
- the 'ordinary course of postage' should be increased from three to five business days
- public inspection should take place only through the SA Planning Portal, with hard copy plans no longer required.

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Exempt development

A number of respondents supported the new types of 'exempt' development proposed (including tree houses, wood-fire pizza ovens and larger water tanks in regional areas), but suggested that:

- councils be allowed to not only construct playground equipment in reserves, but also other recreational facilities such as adult exercise equipment and skate ramps
- outbuildings be allowed to be constructed in heritage conservation areas with a floor area up to 15 square metres
- development approval for larger water tanks be exempt in bush-fire risk areas
- terminology around tree houses be expanded to include cubby houses (which often exceed the maximum height of an exempt outbuilding)
- Schedule 5 'Colonel Light Gardens Heritage Area' be expanded to apply to all State Heritage Areas.

Combined fence and retaining walls to a total height of 3.1 metres

Concerns were raised regarding the proposed exemption related to combined fence and retaining walls. Specifically, respondents expressed caution around structural adequacy, impacts to visual amenity, streetscape presentation and overshadowing.

Demolition of single-storey buildings

Concerns were raised by a majority of submissions regarding the proposed exemption for demolition of single-storey buildings. The concerns focused on the following matters:

- the protection of Heritage Conservation Areas and Contributory Items
- the risk of unlawful demolition if the application process is removed
- the inability of councils to monitor impacts on infrastructure during demolition
- the risk of vacant sites contributing to economic stagnation
- the decision to limit this exemption to single-storey buildings only, and not also apply it to buildings of two or more storeys.

Clarification:

In the current development system, any building or structure that requires approval to construct also requires 'building rules consent' and 'development approval' to demolish – whether this be a retaining wall, cubby house, house or apartment building. However, the majority of such developments do not require planning consent. This results in hundreds of applications for demolition being lodged every year in South Australia, where only a few of those require any meaningful assessment to be undertaken.

It is not anticipated that the proposed demolition exemption would change where demolition would require planning consent – approval would still be required where the demolition relates to State or Local Heritage Places, or any building in a zone, subzone or overlay identified under the Planning and Design Code (allowing the Code to establish the need to obtain planning consent for demolition in certain areas such as the City of Adelaide or Heritage Conservation overlays).

The key difference offered by the draft exemption is the removal of the requirement for demolition to obtain building consent and development approval where planning consent **is not** required (see Figure 2).

Advice from a Building Reform Working Group has demonstrated that the Building Code of Australia and the National Construction Code do not specifically deal with demolition (this is handled by a separate Act altogether – the *Work Health and Safety Act 2012 (SA)*), and therefore requiring building consent has questionable purpose.

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Fig 2. How are the proposed demolition exemptions different to the current demolition exemptions?

OLD Demolition under the *Development Regulations 2008*

PLANNING CONSENT	BUILDING CONSENT
Planning consent is not required, unless: • the demolition affects a Heritage Place / Area, Adelaide City, an Historic Conservation Area or Minister-designated areas	Building consent is always required

NEW Demolition under the draft *PDI Regulations 2019*

PLANNING CONSENT	BUILDING CONSENT
Planning consent and building consent are not required, unless: • the demolition affects a Heritage Place / Area*, Adelaide City* or former Historic Conservation Areas* *areas to be designated by the Code • only part of a building is to be demolished • the demolition affects a building that is over one storey	

Provision of information

Schedule 8 of the draft Regulations prescribes the type of information that must accompany an application for a development authorisation.

The development industry noted concerns around adopting a 'one-size-fits-all approach' to the information required for residential development applications.

Specific concern was raised regarding:

- the requirement for a declaration or site audit regarding site contamination for residential development (respondents instead suggested the use of conditions on an approval to deal with any necessary investigations)
- the need to provide details of colours/materials and landscaping, as these works often do not constitute development in their own right, and so could be subject to future change.

Local government submissions expressed a different view, suggesting that prescribed information include:

- plan scaling of a larger size
- a site plan that also illustrates rainwater tanks, air-conditioning units, storage sheds, clothes-lines and external bin storage
- details of civil siteworks and stormwater disposal
- a certificate of title to confirm land ownership, allotment boundaries and the presence of any easements, common land, rights of way, land management agreements or other relevant information.

Submissions also highlighted mixed opinions about the need for applicants to provide all information in Schedule 8 – some felt that the draft Regulations shouldn't require all application documents at the time of lodgement (noting that it would only be suitable for deemed-to-satisfy applications).

Others noted that there should not be an option for applicants to submit applications without the minimum baseline information. Respondents also queried the need to document the circumstances in which applications were lodged without meeting all of the Schedule 8 requirements.

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Clarification – function of Schedule 8:

The information prescribed in Schedule 8 of the draft Regulations needs to be sufficient to allow for the assessment of 'deemed-to-satisfy' applications, because in those cases, the relevant authority cannot request further information over and above the minimum prescribed. For 'performance-assessed' and 'restricted' applications, the relevant authority will be able to request any further information as reasonably required to assess the application, pursuant to section 119 of the PDI Act.

Clarification – certificates of title:

The need for a certificate of title to be provided with applications for planning consent has been contemplated by the Department for some time. While it is noted that practitioners find the information on the certificate of title to be useful, it is important to consider what matters are technically relevant to the planning assessment under the Planning Rules, and which relate to private ownership matters.

Clarification – waiving information:

Draft Regulation 31 establishes that an applicant must not be required to provide any information specified in Schedule 8 unless the requirement is directly relevant to the application, which maintains the status quo from the Development Regulations 2008. The need to document any variation from Schedule 8 was included in draft Regulation 31, however it is noted that this would also be dealt with under the auditing function of the Accredited Professionals Scheme in any case, as the Code of Conduct requires an accredited professional to maintain adequate documentation of their decisions and actions.

Conditions

A range of concerns were raised around the Practice Direction, "Standard Conditions – Deemed Planning Consent". Respondents suggested that:

- there was a lack of specificity around who determined which conditions applied and how this was confirmed on the development authorisation
- 'standard' conditions were too onerous and would not be suitable for every development (concerns specifically related to standard conditions on landscaping, screening, privacy treatments, stormwater disposal and site clearance for land division)
- there should be additional standard conditions to cover a larger scope of developments
- the use of the phrase 'to the reasonable satisfaction of the relevant authority' may not be valid (however, respondents from local government requested that this phrase be applied to more of the standard conditions).

Respondents also queried the level of consistency between this Practice Direction and the Practice Direction titled "Conditions".

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Other matters

Certificates of Occupancy

A majority of respondents supported the requirement for a Certificate of Occupancy for all dwellings. However, it was emphasised that potential delays in occupation need to be minimised, as not all works need to be completed for the Certificate to be issued. Such works could include landscaping, paving and fencing, which are often left to the owner to complete after handover.

Building inspections

Respondents emphasised that accredited professionals should only be able to inspect buildings that they are qualified to assess.

Clarification:

Future inspection policies will outline which Building Levels will be able to inspect different buildings. The intention is that the accreditation levels of inspectors will align with buildings they are accredited to assess.

Regulated and significant trees

A number of submissions highlighted the need for a review of regulated tree controls, with a view to maximising tree canopy and assisting with mitigation of climate change impacts. Specifically, requests were made to further protect the Corymbia genus of trees and trees in the National Trust Significant Tree Register while removing special protections for the Agonis flexuosa species. The current allowance to prune 30% of a tree's canopy was also queried.

Clarification:

When the PDI Act was made, the State Government made it known that regulated tree provisions would not be subject to reform. As such, any amendments to regulated/significant tree legislation will not be progressed as part of these planning reforms.

Next steps

The Department offers sincere thanks to everyone who provided valuable feedback during the consultation process.

The Department is undertaking a review of the draft Regulations and Practice Directions in light of all comments received.

It is anticipated that the new Development Assessment Regulations and Practice Directions will be operational by mid-2019.