



DRAFT FOR CONSULTATION - 14/1/19

This practice direction is issued by the State Planning Commission under section 42 of the *Planning, Development and Infrastructure Act 2016*.

## Introduction

Section 42 of the *Planning, Development and Infrastructure Act 2016* allows the State Planning Commission (the “Commission”) to issue practice directions for the purposes of the Act. Generally, practice directions specify procedural requirements or steps in connection with a matter arising under the Act. In certain cases, the Act requires a particular matter to be addressed or dealt with by a practice direction.

This practice direction is being made by the Commission to support the operation of section 107 of the Act with respect to the public notification of performance assessed development applications.

### **107—Performance assessed development**

(3) *If a proposed development is to be assessed under this section—*

(a) *subject to a decision of a relevant authority made in accordance with a **practice direction**, notice of the application for planning consent must be given, in accordance with the regulations, to—*

(i) *an owner or occupier of each piece of adjacent land; and*

(ii) *members of the public by notice placed on the relevant land; and*

(b) *a person may, in accordance with the regulations and within a period prescribed by the regulations, make representations to the relevant authority in relation to the granting or refusal of planning consent; and ...*

(9) *A **practice direction** may specify the form of any notice to be given under this section.*

This practice direction provides for notice about the procedures required under section 107 of the Act with respect to notification of performance assessed development applications.

## Practice direction

### **Part 1 – Preliminary**

#### **1 – Citation**

This practice direction may be cited as the State Planning Commission Practice Direction (Notification of Performance Assessed Development Applications) 2019.

#### **2 – Commencement of operation**

This practice direction will come into operation on the day on which it is published on the SA planning portal.

### 3 – Object of practice direction

The object of this practice direction is to specify the form of notice in cases where notice of a performance assessed development application is required to be given to the public in accordance with the Act and Regulations.

### 4 – Interpretation

In this practice direction, unless the contrary intention appears –

**Act** means the *Planning, Development and Infrastructure Act 2016*

**Adjacent land** in relation to other land, means land that is no more than 60 metres from the other land.

**Commission** means the *State Planning Commission*

**Public road frontage** means—

- a) the boundary between the subject land and any public road adjoining the subject land; or
- b) if the only access to the premises is across private land, the boundary between that private land and any road adjoining that private land at the point of access.

**Regulations** means the *Planning, Development and Infrastructure (General) Regulations 2017*.

*Note:* Section 14 of the *Acts Interpretation Act 1915* provides that an expression used in an instrument made under an Act has, unless the contrary intention appears, the same meaning as in the Act under which the instrument was made.

## **Part 2 – Notification of Performance Assessed Development Applications**

### 5 – Determination under section 107(3) of the Act

- (1) Section 107(3) of the Act specifies that notice of an application for planning consent must be given in accordance with the Regulations, subject to a decision of a relevant authority made in accordance with a practice direction. This practice direction outlines the circumstances in which the relevant authority may determine such a decision in relation to public notification.
- (2) If a relevant authority is of the opinion that a proposed performance assessed development is a kind of development which is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development, the relevant authority may resolve to proceed with assessment without undertaking a process for public notification or submissions in relation to the proposed development.
- (3) A decision under subclause (2) has effect despite whether the development is a class of development excluded from notification by the Planning and Design Code.

### 6 – Form of Notice under section 107(9) of the Act

- (1) Section 107 of the Act outlines the manner in which performance assessed development applications are to be assessed and processed with respect to planning consent. Section 107(9) allows a practice direction to specify the form of any notice to be given under Section 107.

- (2) The following directions apply to all performance assessed development applications, except where specifically excluded from requiring public notification in the Planning and Design Code, or where the relevant authority has made a determination under clause 5(2) of this practice direction.

## **7 – Responsibility to undertake notification**

- (1) The relevant authority will be responsible for giving notice of the application to owners/occupiers of adjacent land in accordance with Section 107(3)(a)(i) of the Act.
- (2) The applicant will be responsible for giving notice of the application to members of the public by notice placed on the relevant land (either personally or by engagement of a contractor) in accordance with Section 107(3)(a)(ii) of the Act.
- (3) Upon lodgement of a performance assessed development application via the SA planning portal that is not exempt from public notification, the applicant must either:
  - (a) confirm they accept responsibility to place a notice on the land (either personally or by engagement of a contractor) in accordance with the relevant requirements of the Act, Regulations and this practice direction on or before the notification commencement date (the applicant will be notified of the commencement date by the relevant authority at least 5 business days prior); or
  - (b) request that the relevant authority place the notice on the land, and if so requested, pay the relevant fee prescribed by the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*.
- (4) Should the applicant request the relevant authority to place the notice on the land and pay the relevant fee in accordance with clause 7(3)(b) of this practice direction, the relevant authority will be responsible (either personally or by engagement of a contractor) for giving notice of the application to members of the public by notice placed on the relevant land in accordance with Section 107(3)(a)(ii) of the Act.

## **8 – Period of notification**

The period of public notification commences on the day when either:

- (a) letters are expected to be received by owners or occupiers of adjacent land (allowing 3 business days for the ordinary course of postage); or
- (b) the notice is erected on the subject land,

whichever is the later, in accordance with the Regulations.

## **9 – Preparing for notification**

If the applicant has confirmed they accept responsibility to place a notice on the land as per clause 7(3)(a) of this practice direction, at least 5 business days prior to the commencement of public notification, the relevant authority must:

- (a) give notice of the intended start date and end date of the public notification period to the applicant; and
- (b) provide the applicant with a copy of the notice content to be published in either Microsoft Word, Microsoft Publisher or PDF format; and
- (c) advise the applicant of the position and number of the notice(s) to be erected on the land in accordance with the guidance of this practice direction.

## **10 – Notice to adjacent land owners/occupiers**

- (1) For giving notice to owners of properties adjacent the subject land in accordance with section 107(3)(a)(i) of the Act, the relevant authority will post a letter to all owners or occupiers of adjacent land.
- (2) The relevant authority will determine the current owner details of adjacent properties from the online State Atlas.
- (3) Any property without an owner address on the State Atlas will be posted “to the occupier” of the subject adjacent property.
- (4) The letter will contain the following details:
  - The date when public notification is to commence (see clause (8) of this practice direction); and
  - The date when submissions must be received by (in accordance with timeframes prescribed by the Regulations); and
  - The development application number (as it appears on the relevant SA Planning Portal application record); and
  - The nature of the proposed development (as it appears on the relevant SA Planning Portal application record); and
  - The applicant name (as it appears on the relevant SA Planning Portal application record); and
  - The address of the subject land (including street address, lot number, plan reference and certificate of title volume and folio number); and
  - Where the plans and application will be available for inspection during the notice period.
- (5) A template outlining the mandatory content of the letter is contained in Attachment 1 of this practice direction.
- (6) A template of the submission form to be provided with the letter to owners or occupiers of adjacent land is contained in Attachment 2 of this practice direction.

## **11 – Notice on land**

- (1) In relation to placing a public notice on the premises in accordance with section 107(3)(a)(ii) of the Act, a public notice must be:
  - (a) placed on, or within a reasonable distance of, the public road frontage for the premises, ensuring that it is visible to members of the public from the public road;
  - (b) mounted at least 300mm above ground level;
  - (c) made of weatherproof material (laminated print attached to fence, corflute print on star droppers, or other); and
  - (d) at least A2 size.
- (2) In relation to clause 11(1)(a), the relevant authority shall determine the most appropriate position for the notice on the land in order to provide for maximum visibility from a public road. In cases where the subject land has more than 1 frontage to a public road, the relevant authority may determine that more than 1 notice must be erected on each of the public road frontages to ensure that notice of the development is reasonably apparent to members of the public.

- (3) The general layout for a notice on the subject land is detailed in Attachment 3 of this practice direction, including minimum specifications for font size and information to be included.
- (4) The entity responsible for placing the notice on the land must undertake all reasonable endeavours to ensure that the notice is erected in accordance with the relevant requirements of this practice direction, the Act and Regulations, and maintained to an appropriate standard for the minimum period after letters have been sent to owners/occupiers of adjacent land.

## **12 – Availability of plans**

- (1) The relevant authority shall make a copy of the relevant plans available for viewing by the public throughout the notification period in accordance with the Regulations.
- (2) The relevant authority must ensure that the application details/plans reasonably relevant to the decision of the relevant authority (based on the performance assessed elements of the development only) are available to view via the SA planning portal during the public notification period. Access to those plans shall be made available via a unique URL or QR Code listed on both the letters to adjacent land owners/occupiers and the notice on the subject land.

## **13 – Confirmation of public notification**

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

## **14 – Interpretation**

- (1) The above procedures also apply to applications for outline consent or applications to vary an existing development authorisation where public notification is required in accordance with the Planning and Design Code.
- (2) The form of notice specified in this practice direction may apply to the notification of an application for restricted development if the Commission determines as such under section 110(13) of the Act.

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## **15 – Attachments**

Attachment 1 – Template – Letter to adjacent land

Attachment 2 – Template – Representation Submission Form

Attachment 3 – Template – Notice on Land

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*Note: To the extent that section 107 of the Planning, Development and Infrastructure Act 2016 applies as if it formed part of the repealed Act (being the Development Act 1993) –*

- (a) a reference in this clause to a relevant authority will be taken to be a reference to a relevant authority under the repealed Act; and*
- (b) a reference in this clause to a development approval will be taken to be a reference to a development approval under the repealed Act.*

DRAFT FOR CONSULTATION

# Proposed Development

*Under the Planning, Development and Infrastructure Act 2016*

[date of public notification commencement]

[owner name] or [if owner details not available, “to the occupier”]  
[Address line 1]  
[Address line 2]  
[Suburb] [State] [Postcode]

Dear [salutation] [surname]

**Applicant:** [Applicant name]  
**Application Number:** [Development application number from SA Planning Portal]  
**Proposed Development:** [description of proposed development]  
**Subject Land:** [address of subject land]

As an adjoining owner/occupier or person potentially affected by the above development application, you are invited to view details of the application and make comment.

The application documentation may be examined:

- In person at [street address of relevant authority]
- Online on the SA Planning Portal [insert URL]

If you wish to comment on the application, please complete an online submission form at [\[insert url\]](#), or complete the attached form and submit to [relevant authority] at [email address] or [postal address]. All submissions must be received by no later than **5pm on [date 15 business days from date of commencement]**.

Please note that the subject matter of any representation must be limited to what should be the decision of the relevant authority in relation to the performance based elements of the development as assessed on its merits. The elements of the proposal which comply with the relevant deemed-to-satisfy standards, and therefore are not subject to comment, include:

- [e.g. Freestanding garage]
- Boundary fencing
- Swimming pool, etc.]

You may be given an opportunity to appear before the relevant authority to further explain your views. You will be contacted should a hearing be arranged.

If you have any questions relating to this matter, please contact [relevant authority name] by telephone on [phone] or email [email address].

South Australia

PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016

REPRESENTATION ON APPLICATION – PERFORMANCE ASSESSED

**Applicant:** [applicant name – consistent with SA Planning Portal application]  
**Development Number:** [development application number – consistent with SA Planning Portal application]  
**Nature of Development:** [development description – consistent with relevant authority’s description of the proposed development on the SA Planning Portal application]  
**Zone / Sub-zone / Overlay:** [zone/sub-zone/overlay of subject land as per the Planning and Design Code]  
**Subject Land:** [street number, street name, suburb, postcode]  
 [lot number, plan number, certificate of title number, volume and folio]  
**Contact Officer:** [relevant authority name]      **Phone Number:** [relevant authority phone]  
**Close Date:** [closing date for submissions]

My Name: \_\_\_\_\_ My phone number: \_\_\_\_\_

Primary method(s) of contact:      Email: \_\_\_\_\_  
 Postal Address: \_\_\_\_\_ Postcode: \_\_\_\_\_

My interests are:  
 (please tick one)

- owner of local property
- occupier of local property
- a representative of a company/other organisation
- a private citizen

My position is:  
 (please tick one)

- I support the development
- I support the development with some concerns
- I oppose the development

The specific aspects of the application to which I make comment on are: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[attached additional pages as needed]

**Pursuant to Section 107 of the Planning, Development and Infrastructure Act 2016, the subject matter of this representation must be limited to what should be the decision of the relevant authority as to planning consent in relation to the performance based elements of the development as assessed on its merits.**

**You may be contacted via your nominated PRIMARY METHOD(S) OF CONTACT if you indicate below that you wish to be heard by the relevant authority in support of your submission:**

**I:**       wish to be heard in support of my submission  
 (please       do not wish to be heard in support of my submission  
 tick one)

**By:**       appearing personally  
 (please       being represented by the following person: \_\_\_\_\_  
 tick one)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Return Address: [relevant authority postal address] or  
 Email: [relevant authority email address] or  
 Complete online submission: SA Planning Portal [www.sa.gov.au/saplanningportal/applicationsubmissions](http://www.sa.gov.au/saplanningportal/applicationsubmissions)

# Proposed Development



Aerial, size 72, bold

Aerial, size 36

Make a submission from **[date]** to **[date]**

**[Insert description of the proposed development, listing all relevant components, such as: a building (number of storeys, type of building, floor area), change of use (from [existing use] to [proposed use]), land division (number of proposed allotments), lease/license, removal of a significant tree (tree species), etc.]**

Aerial, size 28, bold

**[Insert image of proposed development]**

## Location

Aerial, size 28, bold

[insert street address of subject land]

[insert allotment, plan reference, certificate of title reference and hundred]

Aerial, size 28

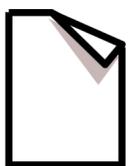
## Applicant

[insert applicant name]

Please note that the subject matter of any representation must be limited to what should be the decision of the relevant authority in relation to the performance based elements of the development as assessed on its merits. The elements of the proposal which comply with the relevant deemed-to-satisfy standards, and therefore are not subject to comment, include:

- [e.g. Freestanding garage
- Boundary fencing
- In-ground swimming pool]

Aerial, size 16



### View the application:

- > [insert address of the relevant authority's public office]
- > [insert link to url for online plans]
- > or by scanning the QR Code

Aerial, size 22



### For further information:

- Contact [relevant authority]:
- > in person at [address of the relevant authority's public office] or
  - > via phone on [phone number] or
  - > via email on [email address] or
  - > via post at [postal address]



### Make a submission:

- > online at [url of online public notice]
- > in person at [address of the relevant authority's public office] or
- > via email on [relevant authority's email address] or
- > via post at [relevant authority's postal address]