

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

Introduction

Section 42 of the Act allows 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 made by the Commission to support the operation of sections 109 and 110 of the Act. The relevant sections of the Act as they relate to this practice direction are outlined below:

109—Practice direction to provide guidance

(1) In connection with the operation of this Subdivision, the Commission must publish a practice direction with respect to—

(a) in relation to restricted development—

- (i) *the circumstances under which the Commission will be prepared to assess restricted development; and*
- (ii) *if an assessment is to be undertaken—how the Commission will proceed with the assessment (including requirements as to the information that must be provided by an applicant for a development authorisation and the other steps that an applicant must take)*

110—Restricted development

(1) *The Commission will determine, in relation to proposed development classified as restricted development, whether or not the development will be assessed and, if so, whether or not planning consent will be granted, and in doing so will act as the relevant authority under this Act.*

In according with the above, this practice direction provides for the following:

Restricted Development – *The circumstances under which the Commission will be prepared to assess restricted development and how the Commission will proceed with the assessment.*

Practice Direction

Part 1 – Preliminary

1 – Citation

This practice direction may be cited as the *State Planning Commission Practice Direction 4 Restricted Development 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 outline:

- (a) The circumstances under which the Commission will proceed to assess restricted development.
- (b) Where the Commission has resolved to proceed to assess restricted development:
 - (i) What information the proponent will be required to provide.
 - (ii) What steps the assessment process will go through.

4 – Interpretation

In this practice direction, unless the contrary intention appears:

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

Commission means the *State Planning Commission*.

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

Note: Section 12 of the Legislation Interpretation Act 2021 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 – Restricted Development

5 – Circumstances under which the Commission will assess restricted development

- (1) For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.
- (2) A decision to refuse to proceed with an assessment of a restricted development must include the reasons for refusal.

6 – Review of the Commission's decision not to proceed with an assessment

- (1) For the purposes of section 110(16) of the Act, an application for review under subsection (15) of that section must be made in the form outlined in Attachment 1.

- (2) The application may be made by email to the Commission's current email address or via the SA Planning Portal¹.
- (3) The Commission, on a review, may give the applicant an opportunity to be heard in support of the review in accordance with the State Planning Commission Deputation, External Meeting and Event Policy².

7 – How the Commission will proceed with assessment of a restricted development

- (1) For the purposes of section 109(1)(a)(ii) of the Act, if an assessment of restricted development is to be undertaken, the following information will be sought:
 - (a) A planning report including:
 - i. A description of the nature of the development and the nature of its locality.
 - ii. An assessment of the likely effects of the development on the subject land, surrounding land, the character of its locality, and the environment.
 - iii. A statement as to the provisions of the Planning and Design Code which are relevant to the assessment of the proposed development.
 - iv. An assessment of the extent to which the proposed development accords with the relevant provisions of the Planning and Design Code, notwithstanding that it is a restricted form of development.
 - v. Identification of any other document or legislation which may be of relevance to the assessment of the proposed development.
 - vi. An assessment of the expected social, economic and environmental effects of the development on its locality.
 - vii. An assessment demonstrating that the anticipated impacts of the development can be Appropriately mitigated or minimised.
 - viii. An assessment of the interface between the proposed development and adjoining land.
 - ix. An assessment of whether the development will hinder or jeopardise the continued or future use of adjoining land in accordance with the Planning and Design Code.
 - (b) Technical reports in support of the application relating to such matters as traffic impacts, noise, environmental/ecological impacts, waste management, stormwater management, lighting, site contamination, heritage impacts, and any other matter considered relevant to the planning assessment in the opinion of the Commission.
 - (c) Detailed plans and elevations for the development.
 - (d) Any other information that may assist the Commission in determining the application.
- (2) Following receipt of the information, notification will be undertaken in accordance with the Act, the Regulations and any relevant practice direction.

¹ Section 110(16) of the Act provides that an application for review must be made within one month after the applicant receives notice of the decision unless the Commission, in its discretion, allows an extension of time.

² On a review, the Commission may affirm the decision of the delegate, or the Commission may refer the matter back to the delegate with a direction that the applicant for planning consent be assessed under the Act.

- (3) At the conclusion of the notification period, the Commission must provide the applicant with a copy of each representation and allow the applicant to respond to the representations within the time frame prescribed by the Regulations. This response may include the provision of any further information requested by the Commission in order to address any issues raised throughout the public notification period.
- (4) Where a representor wishes to appear before the Commission, a meeting must be held to which the representor is invited to be heard in support of their representation and the applicant is invited to respond.
- (5) The Commission must take into account the relevant provisions of the Planning and Design Code but is not bound by those provisions (as provided by section 110(10) of the Act). The Commission may also decide to take into account the following:
 - (a) Any relevant design standard issued by the Commission.
 - (b) Any expert advice received in relation to the proposed development.
 - (c) Any comments or report from the relevant council.
 - (d) The content of any representation received under section 110(2)(b) of the Act.
 - (e) The *Principles of Good Design* issued by the Office for Design and Architecture South Australia.
 - (f) Any other Act relevant to the proposed development.
 - (g) Any other document the Commission believes to be relevant to the assessment of the development application.
- (6) When considering matters outside the Planning and Design Code as provided by section 110(10) of the Act, the Commission must make reference to the specific document, legislation or matter considered in its assessment.

Issued by the State Planning Commission on 15 December 2022.

Note: This practice direction commences operation in accordance with 'Part 2 – Commencement of operation'.

Versions

Version 1: Commenced operation on 15 December 2022.

Attachments

Attachment 1: Template – Request for review of decision to not proceed with assessment of a restricted development

Attachment 1 – Template - Request for review of decision not to proceed with assessment of a restricted development

APPLICATION TO THE STATE PLANNING COMMISSION

Decision Review Request

Review of a decision of the State Commission Assessment Panel (as delegate of the State Planning Commission) to refuse a restricted development application without proceeding to make an assessment pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016*

Applicant:	[applicant name]
Development Number:	[development application number]
Nature of Development:	[development description]
Zone / Sub-zone / Overlay:	[zone/sub-zone/overlay of subject land]
Subject Land:	[street number, street name, suburb, postcode] [lot number, plan number, certificate of title number, volume and folio]
Date development application lodged:	[lodgement date, being the date fees were paid]
Date of decision of the State Commission Assessment Panel (SCAP):	[date application was refused by the SCAP, as per Decision Notification Form]
Do you wish to make a verbal presentation (deputation) at the Commission Meeting?	<input type="checkbox"/> No <input type="checkbox"/> Yes* *A request for a deputation must be made in accordance with the State Planning Commission Deputation, External Meeting and Event Policy
Date:	
Signature:	

Submit form to saplanningcommission@sa.gov.au or via the relevant Application Record on the SA Planning Portal.