



STATE
PLANNING
COMMISSION

GUIDE TO THE DRAFT DEVELOPMENT ASSESSMENT REGULATIONS & PRACTICE DIRECTIONS

January 2019



Contents

Introduction	1
Relevant authorities	4
Application Timeframes	10
Application information requirements	11
Public notification	15
Assessing separate elements of development (in any order)	18
Variations	20
Exempt Development	22
Exempt State Agency development	25
Development assessed by the Commission	26
ePlanning	29
Building regulations	30
What is not in these Regulations?	33
Glossary of terms	34
Proposed Development Assessment timeframes under the Draft Regulations.....	35

Introduction

The [Planning, Development and Infrastructure Act 2016](#) (the Act) establishes a new assessment framework for development applications.

Draft [Planning, Development and Infrastructure \(General\) \(Development Assessment\) Variation Regulations 2019](#) (the draft Regulations) have been prepared for comment. The draft Regulations support the Act to prescribe further detail on the operation of the new development assessment framework, covering planning, building and land division assessment.

The Department of Planning, Transport and Infrastructure (the Department) has developed an engagement approach to support the drafting and implementation of the Regulations. To date, the engagement has involved the preparation of a discussion paper titled [Assessment Pathways: How will they work?](#) (the Discussion Paper), which was consulted with accompanying workshops, presentations and information sessions from August to October 2018. The Department has also established a series of working groups to assist in identifying the key issues and opportunities of the ‘assessment pathways’. Following from these collaborative activities, the draft Regulations have been prepared and are now ready for consultation.

Feedback from engagement activities has not only informed the preparation of the draft Regulations, but also four draft practice directions¹ which support the development assessment framework.

¹ The Act enables practice directions to be issued by the State Planning Commission to specify procedural requirements or steps in connection with any matter arising under the Act.

An overview of the regulatory framework established under the Act is illustrated in Figure 1, showing the series of regulations that will support the Act.

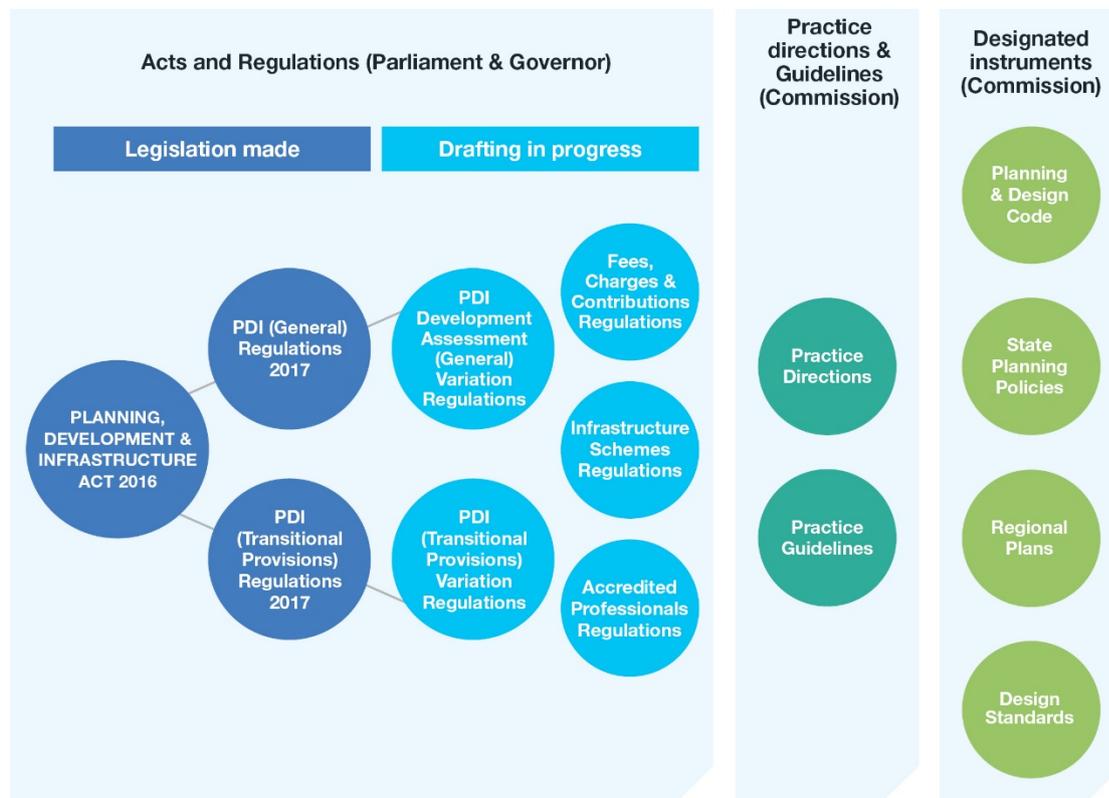


Figure 1. Overview of the Act and supporting documents/legislation/instruments

Although there is no statutory requirement to consult on regulations or practice directions, the State Planning Commission (the Commission) and the Department have elected to undertake engagement on these particular Regulations and practice directions to enhance understanding of the key elements of the new development assessment framework, and to seek feedback on any areas for improvement.

The four practice directions for consultation are:

1. **Notification of performance assessed development applications**
This practice direction specifies the form of notices to be given to the public where a notice of a performance assessed development application is required. This includes posting letters to adjacent land owners/occupiers and placing a notice on the subject land.
2. **Restricted and impact assessed development**
 - a) Restricted development – This practice direction describes the circumstances under which the Commission would be prepared to assess restricted development and how the Commission would proceed with the assessment
 - b) Impact assessed development – This direction specifies what is required in relation to an Environmental Impact Statement (EIS): the requirements for assessing the level of impact, the information that must be provided by the proponent, the period of consultation, and the process for amending an EIS.

3. Deemed planning consent – standard conditions

This practice direction prescribes the standard conditions that apply to deemed planning consents.²

4. Conditions

This practice direction:

- provides clear direction about the type of conditions that may be validly imposed by a relevant authority, including the prohibition of certain conditions or classes of conditions
- specifies the conditions that must be imposed on the granting of a development authorisation for certain classes of development.

In relation to building assessment, a building working group was formed to seek feedback and advice on a range of issues to improve compliance and enforcement under the new Act and ensure the delivery of a safe and high performing built environment.

This group was comprised of council building officers, private certifiers, engineers and the Housing Industry Association who provided valuable feedback and input. These proposals have been considered by the Department and incorporated in the draft Regulations as appropriate.

This Guide provides a summary of the key themes in the draft Regulations and practice directions, identifying how they have been shaped by feedback received from the development industry, planning/building practitioners and the community.

² A deemed planning consent notice can be served on the relevant authority by an applicant once the assessment timeframe has elapsed.

Relevant authorities

What we've heard

The Act establishes that assessment panels will be the relevant authority for code assessed applications for planning consent, except where the Regulations prescribe an assessment manager or accredited professional as the relevant authority.



Figure 2. Pathways associated with code assessed development

Respondents to the Discussion Paper made the following comments in relation to how code assessed development should be distributed between these relevant authorities:

- Concern was raised by the majority of submissions regarding the level of discretion required to assess performance assessed applications (as well as minor variations to deemed-to-satisfy criteria) and the incompatibility of this discretionary approach with private accredited professionals.
- Most respondents were of the view that accredited professionals should be the relevant authority for deemed-to-satisfy developments where clear assessment parameters can be employed.
- Some respondents identified that assessment managers should be the relevant authority for performance assessed applications, including in circumstances where public notification has been undertaken and no representations raising concerns have been received.
- Respondents identified a number of circumstances where assessment panels should be the relevant authority for performance assessed development, such as:
 - o Where representations raising concern with the proposed development have been received
 - o Medium/high rise residential development
 - o Large land divisions
 - o Developments over a certain value
 - o Developments of environmental significance
 - o Development involving the demolition of heritage items.

What we've done

The intention of the planning reforms has been to ensure standard developments with minimal impacts follow a streamlined assessment process while more complex developments require a more involved assessment process focussed on design and impact.

Draft regulation 22 outlines cases where assessment managers and accredited professionals are the relevant authority while regulations 24 and 25 set out additional cases specific to assessment managers and accredited professionals.

The draft Regulations limit the role of **Level 4 accredited professionals** to deemed-to-satisfy developments (without any variations from the deemed-to-satisfy criteria). This is considered to uphold the aspirations of the new planning system as standard development types that meet prescriptive criteria should be able to be assessed by a range of private accredited planners thereby speeding up the assessment process via competitive options. Deemed-to-satisfy development is expected to encompass development where external impacts are low and there is no need for advice on more complex issues such as stormwater, waste management and traffic.

Where development falls slightly outside the deemed-to-satisfy criteria, a **Level 3 accredited professional** (with a greater level of experience than Level 4) would be able to assess minor variations to the deemed-to-satisfy criteria (as well as deemed-to-satisfy development able to be assessed by Level 4 accredited professionals).

Accredited professionals who are qualified **land surveyors** would also be able to assess land division applications for planning consent where such land division is deemed-to-satisfy (regulation 22(1)(d)).

Development that doesn't fall within the deemed-to-satisfy pathway would be assessed by the relevant assessment manager or assessment panel.

Draft regulation 22(1)(a)(ii) establishes **assessment panels** as the relevant authority for performance assessed development which is subject to public notification. Such development would involve a level of public interest that benefits from decision-making by a panel of experts instead of an individual (and that panel may choose to hear verbal representations). Assessment panels will also assess more complex forms of development that require a mixed specialist skillset that only they can provide. These include:

- Developments exceeding \$5 million
- Developments exceeding 3 storeys
- Land divisions creating more than 20 additional allotments
- Developments that have been referred to a Design Panel under section 121 of the Act
- Developments that propose demolition of a local or State heritage place
- Certain developments in the 'Hills Face' area of the Planning and Design Code
- Activities of environmental significance (Schedules 16 and 17 of the draft Regulations)

Assessment managers can act as the relevant authority for all remaining forms of performance assessed development where public notification isn't required. They are also prescribed as the relevant authority for the assessment of land division consent (under section 102(1)(c)&(d) of the Act) where the technical advice of council is needed to assess infrastructure impacts/demands. Assessment managers could also assess any proposed offset schemes or encroachments (under section 102(1)(e) or (f) of the Act).

Some feedback suggested that assessment managers could be a relevant authority for notified performance assessed applications where there are no representations or all representations are in favour; however this would be contrary to one of the principles identified in the Discussion Paper:

'The relevant authority will be determined at the time of application lodgement.'

The draft Regulations have been prepared to provide certainty in assessment approach, and for this reason, assessment panels have been proposed as authority for all notified performance assessed development. That being said, assessment panels could choose to establish delegations (similar to many panels' current delegations) which delegate applications without representations to assessment managers or council staff.

 ACCREDITED PROFESSIONAL SURVEYOR	 ACCREDITED PROFESSIONAL PLANNING LEVEL 4	 ACCREDITED PROFESSIONAL PLANNING LEVEL 3	 ASSESSMENT MANAGER PLANNING LEVEL 1	 ASSESSMENT PANELS PLANNING LEVEL 2
Deemed-to-satisfy land divisions (planning consent only)	Deemed-to-satisfy development	Deemed-to-satisfy development	Deemed-to-satisfy development	Notified performance assessed development
		Deemed-to-satisfy development with minor variations	Deemed-to-satisfy development with minor variations	Development exceeding \$5 million
			Performance assessed development not assigned to assessment panels	Buildings exceeding 3 storeys in height
			Land division consent	Land division creating more than 20 additional allotments
				Development which has been referred to a Design Panel
				Demolition of local or state heritage items
				Certain development in Hills Face area of the future Code
				Development involving acts/activities of environmental significance

Figure 3. Role of relevant planning authorities for code assessed development

In relation to **building consent**, draft regulation 25 establishes the particular level of accreditation required for a building certifier to assess particular types of development (which align with the accreditation scheme of the Australian Institute of Building Surveyors). Further, regulation 118 establishes that each council must appoint an accredited building professional to carry out inspections of building work under section 144 of the Act.

Legislation	Level and function			
<p>New Development Assessment (General) Regulations 2019</p>	NEW LEVELS			
	 BUILDING LEVEL 4 BUILDING INSPECTOR	 BUILDING LEVEL 3 ASSISTANT BUILDING SURVEYOR	 BUILDING LEVEL 2 BUILDING SURVEYOR LIMITED	 BUILDING LEVEL 1 BUILDING SURVEYOR
	Undertake inspections.	Assess and provide consent for class 1 or 10 buildings not exceeding 2 storeys and a floor area not exceeding 500m ² .	Assess and provide consent for buildings (all classes) not exceeding 3 storeys and a floor area not exceeding 2000m ² .	Assess and provide consent for any class of development. Planning consent for certain deemed-to-satisfy development, as determined by the Minister (similar to the current scope of 'Residential Code' development under the existing Regulations).
<p>Outgoing Development Regulations 2008</p>	OUTGOING LEVELS			
	N/A	Building Surveying Technician	Assistant Building Surveyor	Building Surveyor
	Not in outgoing regulations.	Assess class 1a or 10 buildings not exceeding 2 storeys. Assess class 2 to 9 buildings not exceeding 1 story and not having a floor area exceeding 500m ² .	Assess any class of buildings not exceeding 3 storeys and not having a floor area exceeding 2000m ² .	Assess any development. Building consent for any class of development if registered as a private certifier. Planning consent for 'Residential Code' development.

Figure 4. Role of accredited building certifiers

Under section 99 of the Act, a **council** may act as a relevant authority for the granting of building rules consent. So while council officers need not necessarily be accredited to make decisions in respect to building consent, regulation 26 establishes that the council or the Commission must seek and consider the advice of an accredited professional in accordance with the above levels for each building consent application.

Application Timeframes

What we've heard

Submissions on the Discussion Paper observed the following in relation to decision timeframes:

- Decision timeframes under the *Development Act 1993* are generally appropriate and should be used as a guide for the new timeframes. However, increases to the timeframes could be considered to ensure a reasonable assessment time before a deemed planning consent notice could be served.
- Additional time should be added to the overall timeframe to account for periods of public notification, agency referrals and determination by an assessment panel.
- There needs to be a period of verification by the relevant authority before the 'clock' starts on an application to ensure the application has been categorised correctly, all base information has been provided, and the correct fees are charged.
- Timeframes should exclude public holidays and be prescribed in business days to avoid confusion.

What we've done

Overall assessment timeframe

The time within which a decision must be made on an application (regulation 56) has been based on the timeframes prescribed in the *Development Act 1993* as well as baseline data on current assessment timeframes.

The draft Regulations have adopted the recommendations from submissions to base timeframes on business days, and provide additional time when notification, agency referral or a panel meeting is required.

The Department also heard queries regarding when the 'clock' starts for assessment. Given that all applications will be lodged on the SA planning portal and sent to the relevant authority for checking, the clock should not start until the authority has:

- checked all mandatory information has been submitted
- confirmed the application has been categorised correctly and that they are the relevant authority and agree to act as such (e.g. a private accredited professional may be on leave or not have the capacity to assess)
- received the relevant assessment fees.

Draft regulation 35 assigns a maximum period of **5 business days** for these checks to occur.

The application timeframes once the 'clock' starts are prescribed in proposed regulation 56 and illustrated on the chart at the end of this Guide.

Application information requirements

What we've heard

Some respondents to the Discussion Paper believed the current information requirements for development applications (prescribed by Schedule 5 of the *Development Regulations 2008*) were sufficient. Others thought they should be expanded to apply to a variety of development types, including standardised information for commercial/industrial businesses, multi-level dwellings and changes of land use.

What we've done

Baseline information for planning consent

The baseline information required for lodgement has been expanded in the new 'Schedule 8 – Plans'.

In the current *Development Regulations 2008*, the base information for planning consent is prescribed for complying developments only, which means that merit applications technically have no minimum requirements for plans and rely instead on the authority's request for information or the relevant council's guidelines.

By outlining the baseline information for planning consent based on different forms of development, the draft Regulations will provide a more streamlined and consistent application process. This information will be automatically requested from the applicant when they lodge their application on the SA Planning Portal.

That being said, the Department understands that no two applications are the same and it would be inappropriate to require the exact details for every application. This is why relevant authorities can choose to waive information prescribed by Schedule 8 of the draft Regulations and must do so if the information is not directly relevant to the application (provided reasons for doing so are documented – see regulation 31).

The proposed Schedule 8 lists the basic information required for applicants seeking planning consent:

TYPE OF APPLICATION FOR PLANNING CONSENT	BASELINE INFORMATION FOR LODGEMENT
<p>Outbuildings, carports, garages, verandahs or pergolas</p> 	<p>+ Schedule of cladding colour</p> 
<p>Residential alterations/additions and new dwellings</p> 	<p>+ For new dwellings: declaration regarding potential contamination</p> 
<p>Non-residential development</p> 	<p>+ Descriptive information regarding proposed activities (e.g. hours of operation, number of employees/patrons, waste management, etc.)</p> 
<p>Swimming pools</p> 	<p>(showing dimensions, pool pump/equipment location and pool setbacks from boundaries)</p> 

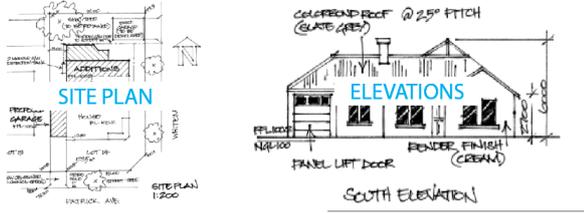
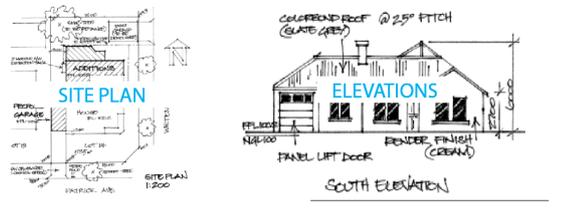
TYPE OF APPLICATION FOR PLANNING CONSENT	BASELINE INFORMATION FOR LODGEMENT
<p>Retaining walls</p> 	<ul style="list-style-type: none"> + Schedule of wall materials 
<p>Tree-damaging activity</p> 	<ul style="list-style-type: none"> + Tree species and trunk circumference + For tree pruning, photographs of tree showing the proposed pruning points 
<p>Advertising signs</p> 	<ul style="list-style-type: none"> + Sign material and form of illumination 

Figure 5. Baseline information required to be lodged with applications for planning consent

Requests for additional information

The proposed regulation 36 prescribes that a relevant authority cannot request further information (exceeding the baseline information prescribed in Schedule 8) for deemed-to-satisfy applications where the development proposes residential development. However, the relevant authority can request information on one occasion for all other classes of deemed-to-satisfy development and in relation to any performance assessed development.

Time to provide additional information

Once the relevant authority receives an application, regulation 36(5) prescribes they will have **10 business days** in which to request information (as described above). This regulation ensures that any extra information needed is requested upfront thereby providing the applicant a complete understanding of what's required at the initial stages of the assessment process.

Draft regulation 37 allows a period of **60 business days** for an applicant to respond to a request from a relevant authority for further information. While an authority has the right to refuse an application if the requested information is not provided after this time, applicants can request an extension of time. If the extension of time is granted, any time in excess of **one year** taken by the applicant will be included in the time in which the relevant authority decides on the application (regulation 37(2)). In other words an application can remain on hold for a maximum of one year before the clock starts again and a decision needs to be made.

An application can be lapsed by the relevant authority **one year** from the date of lodgement (regulation 41), however the relevant authority must take reasonable steps to notify the applicant of the intent to lapse an application before doing so.

Further requests

Once the information is submitted to the authority, the authority may decide they cannot make a decision on the application due to some outstanding matter. Draft regulation 36(6) then allows them to make a further request for information, but only with the agreement of the applicant. If the applicant believes the additional request for information is unwarranted they can opt not to provide the requested information and wait until the assessment timeframe has expired. At this point they could serve a deemed planning consent notice. In such cases, the relevant authority can appeal a deemed planning consent to the Environment, Resources and Development Court if they are of the view that consent should not have been granted.

Public notification

What we've heard

Responses to the Discussion Paper included the following views regarding public notification of development applications:

- Opposing views were raised about who should be responsible for placing a notice on the subject land (57% nominated the applicant; 43% nominated the relevant authority). All agreed that the cost of the sign should be borne by the applicant.
- Most respondents agreed that evidence of the sign should be recorded via a photograph. If the applicant is responsible for erecting the sign, a statutory declaration could also be an appropriate method of verification.
- To minimise the risk of interference with the sign, it was suggested that a penalty could be prescribed in the legislation.
- Local government representatives were generally of the view that the current 10 business day timeframe was reasonable for the public to respond to a publicly notified application. However, members of the community observed that a longer period was needed.
- Most respondents agreed that, for more complex applications, a longer timeframe should apply.
- Respondents observed that the period for notification should take into account any delays in postage and should not include public holidays.
- It was observed that assessment panels should have the discretion to hear persons notified of a development who wish to make verbal submissions.
- Concern was raised around the concept of comments on performance assessed development being limited to the performance assessed elements of the development only, and how the different elements eligible for comment should be clearly communicated to the public.
- Local government respondents advised there may be cases where an application is of a minor nature and shouldn't require notification. In those cases, an assessment manager should be able to determine that public notification isn't required.

What we've done

Responsibility for notification

Draft regulation 50 and the draft practice direction titled *Notification of Performance Assessed Development Applications* establishes that the applicant will be responsible for preparing and placing a notice on the land unless they (a) request the relevant authority to do so and (b) pay the relevant fee (to be prescribed in future regulations).

If the applicant accepts responsibility to place the notice on the land, the relevant authority will still confirm the location, the number of notices required and the notice content and must provide this information to the applicant at least 5 business days prior to the commencement of the notification.

The details surrounding notification of a performance assessed development application are contained in the practice direction, including a template of both the letter to adjacent land and the notice on the land.

Period of notification

Regulation 53(1) prescribes that a representation in relation to a performance assessed development must be made within **15 business days** of the day when all forms of notice have been given. For a restricted development, a longer period of **20 business days** applies. For impact assessed development, the period of consultation of an EIS is at the discretion of the Minister, however the practice direction titled *Restricted and Impact Assessed Development* prescribes a period of **30 business days**.

The period of notification commences from the day when letters to adjacent land owners/occupiers are expected to be received (allowing 3 business days for postage) or when the notice has been erected on the subject land (whichever is the later).

Notice on land details

The practice direction outlines that the notice on the development site must be:

- 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 (as per the determination of the assessment manager)
- mounted at least 300mm above ground level
- made of weatherproof material (laminated print attached to fence, corflute print on star droppers, or other)
- at least A2 in size.

Following the conclusion of the public notification period, two time-stamped photographs of the sign – one at the beginning and one at the end of the notification period – are required to be uploaded to the application record to confirm the sign was present for the duration of the notification period, as well as written statement confirming that the notice was undertaken in accordance with the requirements of the legislation.

A maximum penalty of up to \$2500 and an expiation fee of \$500 are prescribed in regulation 50 for anyone found guilty of interfering with the sign during the notification period.

Deemed-to-satisfy elements

Both the letter and sign templates (which are attached to the practice direction) include an area for the relevant authority to highlight any deemed-to-satisfy elements of the proposal that are not subject to public notification, as well as standard text reminding representors that, under the Act, comments must be limited to the performance assessed elements of the application only.

Availability of plans

Regulation 52 requires the relevant authority to make copies of the application's plans available to the public for inspection without charge at their principal office during the public notification period. In addition, plans must be available to view on the SA planning portal.

Minor nature – notification not required

Part 5 of the practice direction allows the relevant authority to dispense with the need to undertake public notification for a performance assessed development if they are of the view that the application is of a minor nature and will not unreasonably impact on nearby land. This is a similar mechanism to Schedule 9 (Part 1 – 2 (g)) of the current *Development Regulations 2008*, which allows a relevant authority to determine an application to be Category 1 if it is of a minor nature.

Applicant's response

Regulation 54 prescribes that the applicant must provide a response to representations within 10 business days after the relevant authority forwards copies of the representations to them. However the relevant authority may permit an extension of time to provide a response if deemed appropriate.

Verbal representations

Draft regulation 53(5) prescribes that the relevant authority may, if it wishes, grant a person who has made a representation (and indicated an interest in appearing before the relevant authority) an opportunity to appear in person or by a representative.

In such cases, the applicant will also be provided an opportunity to respond in person to any verbal representation(s).

This provides a similar avenue for the relevant authority to hear verbal submissions as the Category 2 public notification process under the *Development Act 1993*.

Assessing separate elements of development (in any order)

What we've heard

Section 102 of the Act allows elements of a development to be lodged separately with different authorities and in any order. There is however confusion around what comprises an 'element' of development as well as who will be checking for consistency between the consents for each element.

Some respondents also raised concerns about consents being able to be granted in any order and the potential for confusion after obtaining a building consent.

What we've done

Elements of development

It is the Department's understanding that the term 'element' relates to a component part of a development. For example, a dwelling, detached garage and swimming pool would each be separate 'elements'. In contrast, front setback, building height or building materials are not considered 'elements', and therefore cannot be separated for assessment purposes. Further, something that is related to the development cannot be assessed as a separate element (e.g. a car park associated with a shop is not a separate 'element' where the shop requires car parking and could not be properly assessed without the car park).

Consents in any order

Regulation 66 prescribes further procedures around how this will work in practice. Previously under the *Development Regulations 2008*, the responsibility to check for consistency lay with the building certifier. Now however all relevant assessing authorities must take into account any prior development authorisation that relates to the proposed development when deciding whether to grant authorisation.

The existence of any other related applications will be made clear through the SA planning portal application record.

For example, if an applicant chooses to apply for building consent at the same time as planning consent and the building consent is issued first, the building certifier would no longer need to undertake a consistency check. Rather, the relevant planning authority would need to take into account the building consent before issuing planning consent.

That being said, it is noted that it often makes good sense to apply for planning consent first to confirm that the overall concept and form of the proposal fits within the planning rules.

Advisory material will be included in the SA planning portal to communicate these issues and ensure the sequencing of consents provides the most efficient assessment pathway.

Development approval

While the various relevant authorities issuing consents need to take into account any prior related consent under regulation 66, the council will ultimately be responsible for ensuring that all elements of the development have been approved before issuing development approval under section 99(3) of the Act.

Variations

What we've heard

Respondents generally agreed that minor variations should be kept in the new planning system because it provides a practical method by which to approve these variations to a development post-decision.

However, respondents also observed that a fee should be required to cover the administrative costs and time required to process such minor variations. In doing so, the need for consistent documentation of the minor variation was also identified. Suggestions to achieve this included the generation of an amended decision notification form.

Some respondents were of the view that the development application number should be modified to keep track of any minor variations approved.

Submissions also raised the need for clear advice regarding what constitutes a 'minor variation'.

What we've done

Minor variations

Draft regulation 71 provides a similar mechanism as regulation 47A of the *Development Regulations 2008*, which enables a relevant authority to accept a minor variation to a development authorisation without requiring the lodgement of a new application. However, the new regulation now specifies that:

- an administrative fee may be charged for a minor variation in accordance with the future *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*
- the authority must endorse the notice that was given for the original authorisation by noting the date and nature of the minor variation (e.g. by issuing an amended Decision Notification Form)
- the plans subject to the minor variation shall be stamped or otherwise endorsed by the relevant authority.

It is intended that the ePlanning application tracking system will provide a function for a minor variation to be processed by the relevant authority, including the generation of a minor variation reference number.

With whom is a variation application lodged?

Regulation 71(1) prescribes that an application for variation shall be lodged with the relevant authority that originally issued the development authorisation. This ensures that any variations are assessed by the person/body who has knowledge of all considerations relevant to the assessment.

The exception to this is where an accredited professional was the relevant authority. This is because accredited professionals may operate as a sole person, not as part of an organisation or panel (as would be the case for all other relevant authorities), and may be on leave or have extenuating circumstances that make them unable to reassess a particular application.

What is a minor variation?

The Commission will publish a practice guideline to clarify what constitutes a minor variation. While the guideline will be based on the concept of a minor variation to deemed-to-satisfy criteria, the principles could also be applied to post-decision requests for variations on all application types.

Exempt Development

What we've heard

Most of the respondents to the Discussion Paper were of the view that there is scope to increase the types of development that do not require any form of development approval ('exempt' development). This was based on the understanding that these developments will have negligible impacts and are standard, expected development commonly undertaken in its setting. Suggestions included children's cubby houses and tree houses, small verandas, aviaries, cat runs and wood fire pizza ovens.

What we've done

Schedule 4 of the draft Regulations lists some 94 types of buildings, works and activities that do not require development approval. Those exemptions include the following key changes from the current scope of exempt development under Schedule 3 of the *Development Regulations 2008*.

TYPE OF DEVELOPMENT	PROPOSED EXEMPTION	REASON
<p>Fence / retaining wall combinations</p> 	<p>Fences on top of retaining walls.</p>	<p>Given that 1.0m high retaining walls can be constructed without needing approval, it makes sense to permit fences to be constructed on top of such structures to provide for a reasonable level of privacy between properties.</p>
<p>Water tanks</p> 	<p>All water tanks up to 15m² (or 60,000 litres maximum) in areas outside of Metropolitan Adelaide.</p>	<p>To enable appropriate bushfire protection measures to be undertaken without requiring approval.</p>
<p>Tree houses</p> 	<p>Tree houses of less than 5m².</p>	<p>Small structures built for child recreation should not require approval.</p>
<p>Woodfire pizza oven</p> 	<p>Woodfire pizza ovens (and similar domestic masonry ovens) less than 2m in height.</p>	<p>Domestic kitchens are becoming increasingly common, and result in minimal planning and building impacts (noting that such ovens would still need to meet the Environment Protection Authority's requirements regarding chimney/flue location and smoke impacts).</p>

TYPE OF DEVELOPMENT	PROPOSED EXEMPTION	REASON
<p>Demolition</p> 	<p>Demolition of certain single-storey buildings. However, this does not apply to partial demolition, where the building involves a party wall, or in relation to heritage places.</p>	<p>There are limited relevant assessment considerations in the planning or building rules when assessing demolition of an entire structure/building. Relevant considerations are covered by Safework SA legislation Work Health and Safety Regulations 2012 (SA).</p>
<p>Advertising in the City of Adelaide</p> 	<p>Remove separate provisions regarding advertising signs in the City of Adelaide. This means that, within the City of Adelaide, non-illuminated advertising signs could be displayed on the front facade of businesses (provided they are no higher than the verandah/fascia) without needing approval.</p>	<p>Consolidate the rules for advertising signs to achieve consistency across the state.</p>
<p>Renewable energy infrastructure</p> 	<p>Renewable energy infrastructure on existing council buildings.</p>	<p>Encourage energy saving methods associated with council and community buildings.</p>

Figure 6. Summary of key changes to Schedule 4 – Exclusions from the definition of development in the draft Regulations compared to Schedule 3 of the *Development Regulations 2008*

Exempt State Agency development

What we've heard

Respondents to the Discussion Paper were generally of the view that the current scope of Schedule 14 under the *Development Regulations 2008* was appropriate to guide the types of state agency development that should not require approval.

What we've done

Some minor changes have been proposed in Schedule 14 of the draft Regulations to align the types of developments able to be undertaken by state agencies with modern development standards.

The key changes are summarised in the below table:

PROPOSED CHANGES	REASON
Include telecommunications facilities where the facility is required to support emergency services communications.	As community expectations grow regarding direct notification of emergencies, there may be significant black spots that need to be addressed but don't fall within the exemptions for ordinary aerials and towers.
Continue to allow the construction of single storey outbuildings, classrooms associated with schools and other buildings, but specify that such buildings must accord with setback requirements prescribed in the Code, or if there are no setbacks prescribed, a minimum setback of 0.9 metres (currently 5 metres) is required.	Non-compliance with boundary setback generates a significant number of development applications with relatively minor impacts. It is more appropriate for boundary setback criteria to accord with the Code, or in the absence of criteria, be sited a minimum of 0.9 metres from a boundary. Retaining the provision relating to a maximum of one storey ensures an appropriate level of impact for development not requiring approval.
Allow all classrooms and learning areas to be exempt (subject to conditions), not just those of a temporary/transportable nature.	The impacts of a temporary/transportable classroom are similar to that of a permanent building. Such structures will still need to be certified for compliance with the Building Rules.
Remove reference to a maximum total of 150% floor area for building additions/alterations.	Floor area ratios are not necessarily an effective indicator of impact.
Introduce a new provision which allows the construction of playground structures and equipment without approval.	Playgrounds and similar structures are generally low impact and should be excluded from requiring approval where constructed by a state agency (they are currently exempt when constructed by a council).
Allow the construction of shade structures/sails not exceeding 5 metres in height.	Shade structures are relatively common and have limited impacts beyond the site, such that they should be excluded from requiring approval where constructed by a state agency.
Allow the construction of a beacon/antennae related to the provision of global navigation/positioning systems	Such infrastructure is likely to be increasingly developed in the future to enhance the accuracy of global navigation/positioning systems, and is unlikely to result in unreasonable amenity impacts.

Development assessed by the Commission

Schedule 10 of the *Development Regulations 2008* prescribes cases where the Commission is the relevant authority. The draft Regulations prescribe such cases in Schedule 6.

Some of the key principles that were considered when reviewing the classes of development assessed by the Commission included:

1. Development that is likely to result in impacts or outcomes that are of **significance to the State** should be assessed by the Commission.
2. If the Commission maintains **specific expertise** relevant to the class of development that would assist the assessment process (compared to if the development were assessed by an assessment panel), the Commission should be the relevant authority.
3. Classes of development that are no longer commonly developed in South Australia such as commercial forestry but have been maintained through **historical legislation**, should no longer be prescribed to the Commission.
4. If a **pathway under the Act** provides for assessment by the Commission in any case (e.g. restricted development or 'call in' by the Minister), the Commission should not be prescribed as the relevant authority.
5. If the anticipated key assessment considerations for that class of development would be **dealt with through direction of an agency/body** under section 122 of the Act, the Commission should no longer be prescribed as the relevant authority.

The below table provides an overview of the proposed draft changes between proposed Schedule 6 of the draft Regulations and the current Schedule 10 of the *Development Regulations 2008*.

PROPOSED DRAFT CHANGES IN CLASSES OF DEVELOPMENT FOR WHICH THE COMMISSION WILL BE THE RELEVANT AUTHORITY		
PROPOSED CHANGE	REASON	PRINCIPLES
In relation to development undertaken by the Urban Renewal Authority , exclude the Commission from acting as the relevant authority for applications proposing the construction of dwellings following the approval of a land division on the relevant land for residential purposes.	<p>Large scale land division of government-owned land (or under contact to a third party) should continue to be assessed by the State Commission Assessment Panel (SCAP) to ensure a coordinated approach to development in renewing areas. However, if dwellings are not proposed at the same time as the land division, the assessment of the dwellings after the land division is approved should be assessed by the relevant council.</p> <p>Alternatively, such projects could be progressed through a precinct authority under the Urban Renewal Act, in which case the precinct authority would assess all applications within the precinct.</p>	1 2

PROPOSED CHANGE	REASON	PRINCIPLES
Landfill depots no longer assessed by the Commission.	Council assessment panels are equipped with assessing landfill depots, particularly as they have been operating for some time. These are also assessed by the Environment Protection Authority, providing another layer of assessment. In addition, major landfill depots may meet the criteria for declaration as 'impact assessed' by the Minister, which involves an Environmental Impact Statement (EIS) assessment in conjunction with the Commission.	3 4 5
Works in the Metropolitan Hills Face Zone no longer assessed by the Commission.	The Hills Face zones currently extend across multiple council areas. There is strong policy already in place and councils play a role in the assessment of a range of applications. The State's interest is limited to the creation of new allotments and this is likely to be assigned to the Commission as restricted development in the Code in any event.	1 4
Commercial forestry on over 20 hectares in prescribed areas no longer assessed by the Commission.	State interests in commercial forests are less relevant now than when this provision was first introduced. These developments should be assessed by a non-State authority as the primary considerations are environmental and will be addressed via a permit required under the <i>Natural Resources Management Act 2004</i> in any case.	3 5
Only development exceeding \$3 million in the Port Adelaide Regional Centre Zone assessed by the Commission.	The current situation captures all forms of development in specific policy areas in the Port Adelaide Regional Centre Zone, no matter how minor. By limiting the cases where the Commission is the relevant authority to developments over \$3 million, assessment of developments which are not of significance to the State can be done by the local authority.	1 2
The division of land in the Mount Lofty Ranges Water Protection Area no longer assessed by the Commission.	While the area represents the state's water catchment area, there is currently strong policy in place to determine land division applications, as well as referrals to the Environment Protection Authority in certain circumstances. The State's interest is limited to the creation of new allotments, and these should still be assigned to the Commission as restricted development in any case.	1 4 5

PROPOSED CHANGE	REASON	PRINCIPLES
Only development exceeding \$3 million in the Urban Core Zone of the Bowden Urban Village assessed the Commission.	The current provision currently captures all forms of development. Alignment with a trigger based on value similar to that in Port Adelaide is proposed. NB: land division will still be assessed by the Commission if lodged by the Urban Renewal Authority.	1 2 4
Only tourism development exceeding \$3 million in conservation zones on Kangaroo Island assessed the Commission.	Currently all forms of tourism development in these areas are assigned to the Commission, including small scale developments. The introduction of a cost trigger should ensure that only development of significance to the State is assessed by the Commission.	1 2

ePlanning

What we've heard

A number of matters were raised by respondents in relation to ePlanning, including:

- Scope for error by applicants entering incorrect information to guide their proposal's categorisation and the relevant assessment authority
- The need for the system to automatically advise people who have lodged a representation about the application's outcome (i.e. withdrawn, approved, or split into elements).
- How sensitive material can be obscured from public view (e.g. floor plans).
- How relevant authorities' assessment reports, plans and decision notification forms can be made available to the public
- Alternative options for submitting applications should be available for applicants without reliable internet connection or the technology to prepare/copy electronic plans.

What we've done

Unlike the *Development Regulations 2008*, the draft Regulations allow for the transmission of documents via the SA planning portal and in electronic format. There will no longer be a need to provide multiple hard copies of plans, as plans will all be digitised.

Regulation 30 specifies that, while all applications must be lodged on the SA planning portal, an applicant can still elect to lodge an application in hard copy at the office of the relevant authority. It is anticipated that the future *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019* will establish a separate fee structure to cover the administrative costs for an authority to lodge an application on the SA planning portal on the applicant's behalf (scanning plans, entering data into the portal, etc.). This will account for cases where applicants may not have access to a computer or reliable internet connection.

It is anticipated that while the SA planning portal will prompt information from an applicant when lodging an application to assist in its categorisation and allocation to the relevant authority, there will also be an option for the applicant to lodge their application without this information. In such cases, it is likely that the application will be automatically allocated to the assessment manager or assessment panel relevant to the location of the proposed development.

Regulation 35 allows an authority to re-allocate an application if they believe that the application has been sent to them erroneously or if they are unable to act as relevant authority for any reason.

The other matters raised are under active consideration by the Department's ePlanning team as they continue to work on building the SA planning portal's functionality.

Building regulations

What we've heard

A 'Building Reform Working Group' (the Group), comprised of council officers, engineers and certifiers was formed during the consultation period to examine building related issues under the draft Regulations.

The Working Group provided a range of advice to the Department on the formation of the draft Regulations under the Act.

Proposals from the Working Group were divided into following themes:

- Accountability / integrity
- Owner builders
- Assessment
- During construction
- Pre-occupancy / approval phase
- Enforcement
- Essential Safety Provisions.

What we've done

Approximately 50 proposals were received from the Group and the Department is now keen to test some of these with a wider audience.

Key examples of changes included in the draft Regulations are set out in the below table. As a general rule, the focus has been on improving the draft Regulations to deliver a clear line of sight from the approval phase, through to construction and approval, with a view to improving compliance with the Building Rules. NB: no commentary is provided where current regulations have been largely carried over 'as is'.

A range of additional expiations have also been added throughout the draft Regulations to enable councils to more effectively ensure compliance without having to undertake cost-prohibitive legal action.

A range of other proposals suggested by the Group may be implemented via other means, such as new forms, practice guidelines and/or directions, or new Ministerial Building Standards.

DRAFT REGULATION	KEY CHANGE AND REASON
25(2) – Accredited Professionals	It is proposed that Accredited Professionals – Building Level 1 - may continue to grant planning consents, but only within the scope of the existing complying development known as “Residential Code”. The intention is to allow building certifiers with existing authority to determine ‘Residential Code’ applications to continue to hold those powers.
25(7) – Independent technical expert	The draft Regulations prescribe that independent technical experts must have engineering or other qualifications to the satisfaction of the relevant authority.
99 – Notifications during building work	<p>This regulation has been rewritten to support the development of new inspection policies under the Act. Notifications are still required for commencement, commencing a specified stage, installing a designated building product, and at the completion of building work.</p> <p>Current notifications in relation to swimming pools and roof framing will be incorporated into new inspection policies, along with any other new inspections required, subject to development of these policies. Once developed, this new notification and inspection system will be integrated with the ePlanning system.</p> <p>This regulation has also made it clearer that the name and details (including licence number) of the licensed building work contractor who will carry out the relevant work, and the name and details of the persons proposed to sign the Statement of Compliance (generally building work contractor again, and the owner), are required on the notice.</p>
100 – Essential Safety Provisions (ESPs)	<p>It is proposed that there will continue to be three Essential Safety Provision forms that will perform the same approximate functions as now: specification, installation, and maintenance. However, these will now be published on the SA planning portal in a form specified by the Department and approved by the Chief Executive, rather than in a schedule to the draft Regulations. This provides the flexibility to amend these forms as necessary.</p> <p>Current references to ‘within a reasonable time’ and ‘as soon as practicable’ have been replaced with ‘20 business days’ for notification of installation, and ‘within 60 business days after the end of each calendar year’, for notification of maintenance.</p> <p>An expiation fee of \$750 has also been added to penalise those who do not comply with Essential Safety Provision requirements, with a maximum penalty of \$10,000. The addition of this expiation is considered important to ensure councils have a mechanism to pursue owners who do not provide their annual Form 3s in a timely manner.</p>

DRAFT REGULATION	KEY CHANGE AND REASON
108 – Certificates of Occupancy	<p>The most significant change in this regulation (compared to regulation 83 under the <i>Development Regulations 2008</i>) is the requirement for a certificate of occupancy for class 1a buildings, which are single dwellings.</p> <p>This change has been included following feedback that owners and occupiers, upon completion of the construction of house, should be able to receive confirmation that their dwelling is suitable for occupation. This change is proposed to bring South Australia into alignment with other jurisdictions.</p> <p>In recognition that current building work undertaken against approved plans often does not include every element that is on the approved plans (for example stormwater connections, rainwater tanks, landscaping), there is an identified need to ensure that, following the ‘statement of compliance’ stage, proper evidence is provided to the owner/occupier confirming their house is ready for occupancy.</p> <p>As per other buildings classes (except class 10), the certificate of occupancy for class 1a buildings will be signed by the prescribed authority under Part 11 Division 4 of the Act, to again state that a building is suitable for occupancy. Once all work on the approved plans is complete, the owner will receive this certificate from the relevant authority. It is not anticipated that this change will incur any further impact on the builder.</p> <p>Also, rather than being in a schedule attached to the draft Regulations, the new certificate of occupancy will be published on the SA planning portal in a form prepared by the Department and approved by the Chief Executive.</p> <p>This provides the flexibility to amend the certificate to stay up to date with current demands (e.g. the current need for performance solutions to be documented).</p> <p>The Department is particularly interested in the views of the community, councils and industry in relation to this proposed change.</p>
109 – Statement of Compliance (and Schedule 12)	<p>An expiation fee of \$750 has also been added to allow councils ensure compliance with the draft Regulations relating to these statements, with a maximum penalty of \$10,000.</p>
118 -Authorised officers and inspections	<p>This regulation requires each council to have at least one building-accredited professional appointed as an authorised officer to undertake inspections under the Act in accordance with any approved inspection policy for that council.</p>

What is not in these Regulations?

Impact Assessed development

The draft Regulations do not currently prescribe any classes of development as ‘impact assessed’ development under section 108(1) of the Act. It is noted however that the Minister can declare specific development as being impact assessed development via Gazette notice, separate from the Regulations.

Accepted development

While section 104 of the Act allows the draft Regulations to classify forms of ‘accepted’ development (i.e. where planning consent is not required), at this stage the Department anticipates that all accepted development will be prescribed in the Code to provide all information in a single source as part of the integrated ePlanning solution.

Fees, Charges and Contributions

The Department is currently undertaking an investigation into the new fees, charges and contributions applicable under the Act. The outcome of these investigations will be translated into future regulations known as the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*.

Schedule 9 – Referrals

The referral agencies or authorities to be prescribed under section 122 of the Act will be prescribed in separate regulations at a later date when the Code is consulted on. This will allow for an important integrated approach because:

- a) While the referral bodies will be prescribed in the Regulations, they will link to overlays and associated policy in the Code, which will need to be considered together
- b) The Governor cannot prescribe a referral body (other than the Commission) unless:
 - i. The Governor is satisfied that provisions about the policies that the body will seek to apply have been included in the Code
OR
 - ii. The Minister has indicated that he is satisfied that policy in the Code related to that referral body is not necessary or not appropriate.

Schedules 17 and 18 – Activities of environmental significance

These activities are currently under review in conjunction with the Environment Protection Authority.

Swimming pools

Separate swimming pool regulations will be drafted in the near future which provide revised swimming pool safety and upgrade requirements.

Glossary of terms

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.

Building Rules means:

- (a) the Building Code, as it applies under the Act (meaning an edition of the Building Code of Australia published by the Australian Building Codes Board in the National Construction Code series); and
- (b) any regulations under the Act that regulate the performance, standard or form of building work; and
- (c) without limiting paragraph (b), any regulations that relate to designated safety features; and
- (d) the Ministerial building standards published by the Minister under the Act;

Code means the *Planning and Design Code*

Commission means the *State Planning Commission*

Department means the *Department of Planning, Transport and Infrastructure*

Minister means the *Minister for Planning*

Planning Rules means:

- (a) the *Planning and Design Code*; and
- (b) the design standards that apply under Part 5 Division 2 Subdivision 4 of the Act; and
- (c) any other instrument prescribed by the Regulations for the purposes of this definition;

Regulations means the 'Draft for comment' version of the *Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019* dated 11.12.2018

Residential Code means development that is complying development under clause 1(2) or (3), 2A, 2B or 2C of Schedule 4 of the *Development Regulations 2008*

Proposed Development Assessment timeframes under the Draft Regulations



Decision issued =  (5 business days)
 Decision issued =  (2 business days)
 *Business days = bds

HAVE YOUR SAY

The Department is committed to genuine collaboration with the community in the development of South Australia's new planning system.

Interested parties are invited to provide feedback on the regulations and practice directions discussed in this document until 1 March 2019.

Submissions can be lodged via:

- Email: DPTI.PlanningEngagement@sa.gov.au
- Post: PO Box 1815, Adelaide SA 5001

For details about future engagement activities and how to get involved, visit

saplanningportal.sa.gov.au

