

Advisory Notices are issued to assist in the interpretation of the Planning, Development and Infrastructure Act 2016

ADMINISTRATION: Revised Essential Safety Provisions Form 3 Annual Return for 2022

As part of South Australia's transition from the *Development Act 1993* (Development Act) to the *Planning, Development and Infrastructure Act 2016* (PDI Act), this Advisory Notice seeks to provide clarification regarding the Essential Safety Provision (ESP) annual maintenance (Form 3) returns process for 2022, and specifically to advise that a 12 month grace period has been provided for the use of the Development Regulations Form 3 for the 2022 return (due 29 March 2022).

Background

In March 2021, South Australia transitioned to the PDI Act, with the Development Act and associated *Development Regulations 2008* (Development Regulations) repealed as part of this process, including relevant ESP Schedules. Given this transition, all ESP forms (ESP Forms 1, 2 and 3) are now approved under Regulation 94 of the *Planning, Development and Infrastructure (General) Regulations 2017* (General Regulations), as determined by the Chief Executive and published on the SA planning portal.

A key ongoing requirement under the PDI Act is the annual demonstration that any ESPs installed in a building have met required maintenance and testing requirements, to ensure that a buildings ESPs are continuing to perform to at least the standard that was required when they were installed, to ensure ongoing building and occupant safety.

Demonstration of this required maintenance and testing must be recorded using the approved ESP compliance form, commonly known as 'ESP Form 3', with the correctly completed form required to be provided by the building owner to the relevant local council within the regulated time period. Under Regulation 94 of the General Regulations this form must be provided no later than 60 business days after the end of each calendar year.

2022 ESP Form 3 return

Given the full transition to the PDI Act in March 2021, demonstration of ESP maintenance and testing for the 2022 annual ESP return would nominally require completion on the Form 3 approved under General Regulation 94 only, as published on the SA planning portal on 1 July 2019. Noting the 60 business day requirement, the next annual return following the publication of this Notice is due by 29 March 2022.

Discussion

Revised ESP Form 3 for 2022 Annual Return

Planning and Land Use Services (PLUS) has been made aware that despite the PDI Act requirements in place as set out above, there is a significant challenge for building owners in transferring maintenance and testing records to the PDI Act Form 3s prior to the March 2022 deadline for all commercial buildings with ESPs.

In response a 12 month grace period is provided so that the previous Development Regulations Form 3 can continue to be used for the 2022 annual return.

Stakeholders must note however that the 2022 return is designated as the last annual return for which the repealed Form 3 will be acceptable. For all subsequent ESP Form 3 annual returns (due 2023 and onwards) all ESP maintenance and testing must be recorded on the PDI Act Form 3, as published on the SA planning portal.

The intention of the 12 month grace period is to provide time for:

- building owners to transfer maintenance and testing requirements to the new PDI Act Form 3, and to ensure that their contractor(s) can meet the signatory requirements on the new Form as part of maintenance verification
- councils to ensure their systems are ready to accept the PDI Act Form 3s provided by building owners when they are provided for the next annual return (due 2023)
- contractors to work with building owners to transfer maintenance and testing requirements to the new Form 3, and ensure they have the suitable licence, competency and/or qualifications to undertake this work.

For those buildings where a transition has already or will take place to the new PDI Act Form 3, building owners are reminded of the need to ensure that this transfer is completed accurately, including that these records capture any ESP-related performance solutions that were included in a building's construction.

60 Day Requirement

Councils, building owners, and maintenance contractors are reminded that under the PDI Act all ESP Form 3s are due to the relevant council within 60 business days of the end of the calendar year. The return date for the 2022 annual return is 29 March 2022.

This represents a change from the Development Regulations, where the Form 3 return was instead due 'as soon as practicable' after the end of each calendar year, which left setting an enforceable timeframe in council hands. As a result of feedback, the 60 day period was introduced in the General Regulations to provide a clear deadline for annual Form 3 returns.

Additional Information

The 12 month grace period is provided via a revised ESP Form 3. Please note it is not compulsory to use this form for the 2022 return – instead this revised form has been approved by the Chief Executive to permit the use of the Development Regulations form for the 2022 annual return.

The revised Form 3 – ESP Maintenance verification form for 2022 is available from the Plan SA website at [https://plan.sa.gov.au/resources/forms/Form 3 - ESP maintenance certificate](https://plan.sa.gov.au/resources/forms/Form_3_-_ESP_maintenance_certificate)

The PlanSA system has also been reconfigured to generate this new Form 3 for any new development approval under the PDI Act from 4 February 2022.

Further information

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