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Department of Planning, Transport and Infrastructure
Building Branch
State Planning Commission
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Dear Sir/Madam

Adelaide Hills Council Submission on the Draft Inspection Policies Practice Direction

Adelaide Hills Council is grateful for the opportunity to provide feedback on the draft Inspection Policies Practice Direction released for feedback by the State Planning Commission on 21 October 2019.

Note that this submission was considered by Council at its meeting on 26 November 2019 and the comments contained herein were supported by Council Members.

At the outset Council advises that it supports the principle behind the draft Practice Direction to provide for occupant and public safety outcomes. However, it has significant concerns regarding the cost implications of resourcing the anticipated inspection regime, noting that no new fee structure is proposed at this stage by the State Planning Commission (SPC) in order to off-set the additional cost imposed on local government. Outsourcing is suggested in the document as an option to recruit private sector expertise. However, for councils to do so there would need to be an appropriate 'fee for service' in place, a sufficient pool of interested accredited professionals to undertake these inspections and access to a central register for recording inspection information. Not having the ability to charge the applicants a fee in this regard would mean councils, and ultimately ratepayers, bear the costs of the proposed inspection regime, which is not supported.

At a time where there is a call for national building reform after a range of building failures, the SPC considered that there was a need to effectively address the building issues raised by these building failures interstate. In November 2018 the Department of Planning, Transport and Infrastructure (DPTI) engaged Botten Levinson Lawyers to examine the issue of inspections for the SPC. The Botten Levinson Report (the Report) prepared an analysis of current council inspection regimes established under the Development Act 1993 and conducted interviews with a representative sample of 17 metropolitan and regional councils to gauge the effectiveness of the policies and to make a recommendation on the potential content of a new practice direction to be prepared under the PDI Act. Adelaide Hills Council was not one of the representative councils. Of note across its 19 recommendations, the Report recommended that the State Government should adopt a transitional approach to the implementation of a new inspection regime, with inspection levels to be increased

over time to reflect council capacity and industry circumstances. However, such a transitional approach is not evident in the draft Practice Direction and it is considered that it should be.

It is noted that the draft Practice Direction is intended to set minimum mandatory building inspection requirements to be undertaken by councils to achieve a minimum level of building inspection consistently across the state, and it will replace the Inspection Policies set by Council under the Development Act, 1993. It is further noted that the SPC has attempted to balance the risk of public safety with an increased level of inspections for certain types of buildings. However, this poses a risk for the Council in that the increased levels of inspections will not be achievable utilising current resources. There is a risk that public confidence in the integrity of the development control system will diminish if councils cannot achieve the levels of inspections required by the draft Practice Direction.

With the above points in mind, Council provides the following comments regarding the draft Practice Direction and requests that the SPC addresses these with amendments to the draft Practice Direction accordingly:

- i) The principle behind the draft Practice Direction is supported but there are significant concerns regarding the cost implications of resourcing the inspection regime for local government without a commensurate fee structure to fund undertaking the additional inspections, and the follow-up and enforcement required for non-compliance. For our Council it is estimated that this will require recruitment of two additional accredited building professionals at an approximate cost of \$200,000 which equates to an additional 0.6% rate increase at a time when the State Government is pushing for reduced rate increases. Therefore Council considers that the increased inspection levels as proposed by the draft Practice Direction cannot be achieved without a commensurate funding proposal by the SPC to cover these costs. To not do so would result in councils either increasing rates or reducing services in other areas in order to off-set these additional costs which is not supported.
- ii) The level of building inspections proposed and the follow-up required for identified non-compliance is unachievable with the current resourcing. It is therefore recommended that the Building Inspection levels either remain at 20% in accordance with Council's current Building Inspection Policy, or that a commensurate funding proposal be put in place in accordance with point i) above, in order to enable councils to cover the costs of the required additional resources.
- iii) The proposed one (1) business day inspection timeframe from receipt of notification for all building completion inspections is an unrealistic expectation that sets the system up to fail with the current levels of resourcing. It is therefore recommended that this be increased to two (2) business days at the minimum.
- iv) There is concern regarding the risk of liability to councils if the required level of inspections is not achieved and issues arise in buildings not inspected by councils. This matter therefore requires further consideration by the Local Government Association and the Mutual Liability Scheme before the full implications in this regard can be fully appreciated. It is therefore recommended that the SPC consult further with the LGA in this regard.
- v) The draft Practice Direction allows councils the discretion when setting a notification requirement for a dwelling inspection and for the notification requirements to differ depending upon what a council chooses to inspect in relation to that specific dwelling. It is recognised that this approach is intended to provide a degree of flexibility but it also creates inconsistency between dwelling developments and from council to council. This appears to be contrary to the aims of the reform to deliver consistency in the development system across the State. Even in

the one council area, the administration could choose to ask for notification of a framing completion during construction on one dwelling, and notification at completion for another dwelling, and the two dwellings could be adjacent to each other. It is therefore recommended that this discretion not be permitted or that further guidance be provided to councils to ensure a consistent approach when exercising such discretions.

- vi) Clarification is sought in circumstances where a council believes it is necessary to undertake both an inspection of a dwelling during construction and on completion, whether both inspections can be counted towards the 66% inspection requirement for dwellings. It is recommended that the draft Practice Direction be amended to allow both inspections to be counted as part of the 66% requirement, or reduce the 66% requirement accordingly.
- vii) The draft Practice Direction makes no allowance for the need for re-inspection after a non-compliance matter is rectified by the owner or builder. Further, in order to off-set the costs of these additional inspections it is recommended the SPC set an appropriate inspection fee for each follow-up inspection to cover these costs. It is noted that inspections are charged this way under the *SA Public Health Act 2011* which demonstrates that the State already uses such an approach and it should be replicated for the proposed building inspection regime.
- viii) It is noted that there will be two separate Practice Directions providing requirements for building inspections namely, one for swimming pools and one for all other buildings. It is therefore recommended that these be combined into one document with two parts for ease of reference.
- ix) If the use of the private sector for building inspections is being seriously considered to assist with resourcing in this instance, then the SPC is strongly urged to set an appropriate fee per inspection to enable councils to off-set this additional cost. If the private sector option is pursued, it would also be important for the SA Planning E-development solution to have the functionality to act as a central register for building inspection records and the SPC is urged to consider this as a future system enhancement.
- x) To allow for the impact of the development reforms to be properly evaluated by all relevant authorities, it is recommended that the date of implementation of the draft Practice Direction should be deferred for 6-12 months after the 1 July 2020 implementation of the *Planning, Development & Infrastructure Act 2016* and the associated new systems. It is noted that across its 19 recommendations, the Botten Levinson Report recommended that the State Government adopt a transitional approach to the implementation of a new inspection regime, with inspection levels to be increased over time to reflect council capacity and industry circumstances. However, this has not flowed through into the draft Practice Direction and it is strongly recommended that it should have.
- xi) The reduced timeframes for swimming pool inspection completion proposed places an additional burden on the limited resources of the Council to achieve the requirements of the draft Practice Direction, and the proposal doesn't consider the amount of non-compliance with swimming pool and safety barrier construction. It is therefore recommended that 80/20 two week/two month split for pool inspections is not altered.

Council looks forward to seeing a revised Practice Direction which addresses the above issues and looks forward to working with the State Planning Commission to successfully roll out the new Planning Reforms. The Council Administration would be happy to discuss the points made in this submission if further clarification is required.

If you have any queries regarding the above comments then please do not hesitate to contact Deryn Atkinson, Manager Development Services on [REDACTED].

Yours sincerely



Andrew Aitken
Chief Executive Officer