

RECEIVED

01 Mar 2019

DPTI

Submission

February 2019

Submission: Draft Development Assessment
Regulations and Practice Directions

Contents

1. Background: Who we are and the importance of the building and construction industry to South Australia’s economy	3
2. Overview	4
3. Proposed Development Assessment timeframes under the Draft Regulations.....	5
4. The Regulations confuse the equal stats common to an accredited professional and a Council in the PDI Act	6
5. The Regulations do not respond to system refinements that could come from the SA Planning Portal.....	8
6. Documentation for simple residential development applications is more complicated and does not align with standard building industry practice	9
7. Certificates of occupancy.....	10

1. Background: Who we are and the importance of the building and construction industry to South Australia's economy

Established in 1884 as the peak body representing South Australia's building and construction industry, Master Builders SA is committed to building a highly productive industry and a prosperous South Australian community and economy.

The building and construction industry undertakes about \$16 billion of work every year, contributing more than \$1 for every \$7 of economic activity within the State. Indirectly, more than one-quarter of South Australia's wealth is produced by the building and construction industry.

In the year to February 2018, there were 65,100 people directly employed in the construction industry across all sectors, including residential, commercial, civil engineering, land development and building and completion services. This represents 7.8 per cent of the total workforce. Indirectly, the industry supports tens of thousands more South Australian jobs.

Master Builders SA is proud of the industry it represents, the jobs it creates, the 11,000 homes it built and extended for families last year, the outstanding health, education and sporting facilities it has constructed, and the offices it has built for South Australian businesses.

South Australia's building and construction industry is focused on the development and transfer of skills into a life-long career. It is consistently among the leading sectors when it comes to training and apprentices and last year provided new apprentice places for more young workers than the Northern Territory, ACT and Tasmania combined. Unfortunately, our industry has been part of the disturbing decline in the number of apprenticeships in South Australia over the past five years. Apprentice in-training numbers have declined from 15,132 in 2011/12 to 9,791 in 2017, the lowest number since 1999.

2. Overview

Master Builders SA welcomes changes to the way development applications are lodged and assessed provided they will unlock investment and speed up development.

The current system is of great frustration to many of our members. It is unnecessarily complex and confusing for applicants. Master Builders SA welcomes that planning authorities will be required to process development applications within set timelines. We completely support the new direction where applicants who do not receive a decision from their planning authority within the required timeframe will be able to apply for automatic consent. This will increase accountability and efficiency, both of which are sorely lacking.

Master Builders SA also believes it is a sensible approach to phase in the way development assessment is done by introducing it in the outback first before commencing in regional council areas from late-2019 and metropolitan council areas by mid-2020. This will enable the opportunity to remedy any glitches that might be identified.

However, Master Builders SA is concerned about the application time frames. We also believe there are three key issues regarding accredited professional (certifier) and deemed-to-satisfy (res code complying) decisions that will have a negative impact on the efficiency of the system:

- 1. The Regulations confuse the equal status common to an accredited professional and a Council in the Planning, Development and Infrastructure Act**
- 2. The Regulations do not respond to system refinements that could come from the SA Planning Portal**
- 3. Documentation for simple residential development applications is more complicated and does not align with standard building industry practice**

Further, we are concerned that under Regulation 108 certificate of occupancies are now required to be issued by the relevant authority for class 1a buildings. Buildings cannot be occupied unless the certificate is issued and delays will have an adverse impact on builders.

3. Proposed Development Assessment timeframes under the Draft Regulations

5 business days seems excessive for verification and the vast majority of categories have not achieved a speedier consent process. Master Builders SA makes the following comments on the timeframes under the Draft Regulations:

Deemed-to-satisfy (10 bds)

This seems reasonable

Performance-assessed – no public notification, no referral, assessment manager authority (20bds)

We suggest 15 business days for performance assessment

Performance assessed – no public notification with referral required, or assessment panel of Commission are authority (40bds)

We suggest 15 business days for performance assessment plus an additional 10 business days for referral. The current timeframe for referral doubles the duration and is out of step with actual time needed

Performance assessed - public notification required (15 bds for public notification & 10 bds for applicant response) (65 bds)

We suggest 15 business days for performance assessment component plus 15 calendar days for public notification. Equal time for applicant response of 15 business days

Restricted – public notification (20 bds for public notification + 10 bds for applicant response)

We suggest 20 business days for performance assessment component plus 15 calendar days for public notification. Equal time for applicant response of 15 business days

Class 1 or 10 (20 bds + 10 bds when referred to Commission).

We suggest 15 business days for BRC. Plus time for Commission is OK

Class 2-9 (60 bds + 10 bds when referred to Commission)

We suggest 20 business days for BRC. Plus time for Commission is OK

Land division consent (inc encroachment or off-set) (60 bds)

If planning approval is obtained why does this require 12 weeks for land division consent? Once planning is obtained land division consent should take much less time for assessment as land use in principal is already agree in previous stage. We suggest 20 business days is adequate.

4. The Regulations confuse the equal status common to an accredited professional and a Council in the PDI Act

1. Although the Act sets accredited professionals on an equal level to a council, the Regulations create many procedural steps that confuse the intent of the Act. For example, given the role of the SA planning portal, why should an accredited professional be required to notify an Assessment Panel (i.e. Council) of their engagement? There is nothing preventing a Council from downloading this information as required.

Page 24, 3(1)(2) – Notification of acting (accredit professionals – planning)

Master Builders SA believes this is less efficient than the existing Res Code system.

An assessment panel should be notified by the SA planning portal via automated email (in the same way that occurs for land division applications lodged via the current EDALA system) of the notice of acting by an accredited professional. Instead, an assessment panel should be required to view the SA Planning Portal should it so desire (noting an accredited professional is an “equal” relevant authority (S82 of the Act) and an assessment panel has no role to review the decision of an accredited professional).

The 5 day time frame to “notify” is also unnecessary because most planning consents will be issued within this period. A decision made by an accredited professional within 5 days should also be taken to be the notification.

Regulation 33(2) should be amended so the plans, drawings, specifications and other documents and information are not required at the time of notifying the assessment panel, with only the application forms being provided at the time of notification. Amended planning draws would only render such notification documents superfluous and confusing. The only information of relevance should pertain to the approved documentation.

2. The Regulations suggest that a relevant authority (i.e. an accredited professional) is to review the history of previous decisions associated with a development. This should be strictly applied to previous decisions within the same development application.

Page 45, 66 – Consideration of other development authorisations

Regulation 66 needs to make it clear that it relates to Section 118 of the Act with respect to consistency of consents within the same development “application”.

As it stands Regulation 66 could be misconstrued as requiring a relevant authority to review the history of previous decisions associated with a development and be bound by that decision. This is unacceptable – this regulation should link specifically the consents within the “same application”.

This will ensure development approvals can be issued without confusion and accredited professionals we be absolved from the need to be aware of or bound by other development associated with the subject land.

3. The base fee payment (currently \$64) should be paid to the SA Planning Portal when securing a development application number rather than being paid to a Council. The Council is just like an accredited professional and all applications will need to be uploaded. A payment to the Council is meaningless and unnecessary in an “equal relevant authority” environment.

Page 24, 33(4) Notification of acting (accredited professionals – planning)

Payment is to be made for the base lodgment fee to the relevant assessment panel by the accredited professional. The SA Planning Portal is integral to the Act and the practical operation of the Regulations and a single entry payment system should be created to streamline and simplify the assessment processes for applicants and accredited professionals. Automated reconciliation of payment returns to assessment panels could occur quarterly.

The Regulations are unclear as to whether the SA Planning Portal or assessment panel issues the development application number associated with each lodgment. It is sought that an automated and instant development application number be issued by the SA planning portal in order to streamline the assessment process.

5. The Regulations do not respond to system refinements that could come from the SA Planning Portal

1. The Regulations assume a highly systematic and step-by-step process with respect to the assessment of deemed-to-satisfy development. In practice the verification of a complying development involves steps occurring concurrently. Providing 5 business days to validate an application and 10 business days to make a decision is unnecessary as the verification and assessment are one and the same.

Page 25, 35 – Verification of application and determination of nature of development

The Regulations lay out a sequential process that represents a less efficient system than the “Res Code” system. In practice determination of the nature of the development involves assessment of the development to confirm whether a proposal is deemed to satisfy. Regulation 35 needs to be amended to enable all steps to occur concurrently or sequentially and for the issue of a development application number to be followed by the issue of planning consent, with the decision being confirmation that all interim steps associated with “verification” have been satisfied.

Page 24, 33(1)(2) – Notification of acting (accredited professionals – planning)

These Regulations will not provide a more efficient system. In fact, they will be a backwards step.

See previous comments on Page 24, 33(1)(2) above.

2. The Regulations should envisage application fee payments being made direct to the SA Planning portal, and the portal should provide an automated development assessment number to avoid delays experienced waiting for numbers delivered in different formats than councils. State-wide improvements would enable builders to gain efficiencies from adapting to one system, regardless of the council area.

See previous comments above on page 24, 33(4) Notification of acting (accredited professionals – planning)

3. An accredited professional can be required to provide documents associated with an application to a Council in certain circumstances. The Regulations should require a Council to download these details from the SA Planning Portal, rather than compel an accredited professional.

Page 85, 127(2) – Documents to be provided by an accredited professional

Consistent with the above comments on Page 24, 33(1)(2), an accredited professional should not be required to produce documents to a Council. The Council should be required to view the documents on the SA Planning Portal or a member of the public should be referred to the portal.

6. Documentation for simple residential development applications is more complicated and does not align with standard building industry practice

The Regulations adopt a one size fits all approach to information required for residential development applications and is to be upgraded to include landscaping and materials and external finishes including walls, doors and windows. This information is unnecessary for deemed to satisfy applications. Timing issues regarding selections by clients (often made after the planning consent is granted) and the nomination of landscaping plants (which may not be of interest until after clients have moved in) demonstrate the lack of practicality with the Regulations coupled with a lack of any real benefit.

Page 138, 2(a)(c) – Plans for residential alterations, additions and new dwellings

The following are an unnecessary burden for deemed to satisfy development:

Regulation (2)(a)(ix) – the amount and location of private open space that will exist on the site after completion of the development

Regulation (2)(a)(x) – any areas of landscaping

Regulation 2(c)(viii) – roof materials

Regulation 2(c)(ix) – materials and finishes of all external surfaces, including walls, doors and windows.

They should be exempt from the regulations, or a separate deemed to satisfy list should be created.

Additionally, the Regulations require the upload of all application documents received at the time of lodgment, which is currently not required as the application forms are all that is required to secure the development assessment number. The Regulations should enable this option to remain for deemed to satisfy applications as it better matches the approach of the building industry.

7. Certificates of occupancy

Previously, under Regulation 83 Class 1A buildings (single dwellings) could be occupied if they were structurally sound. The suitability of a building for occupation is certified by way of a Statement of Compliance signed by the licensed building work contractor (where one exists) and the owner. The current regime includes the ability for buildings to be occupied prior to final completion (Regulation 83A) where essential health and safety features exist. Likewise, the Statement of Compliance can be issued within 10 days after the building is occupied (Regulation 83AB).

However, Regulation 108 removes the exemption for certificates of occupancy for class 1a buildings. So a certificate of occupancy will now be required for all class 1a buildings. While statements of compliance will still be required, a building cannot be occupied until there is a certificate of occupancy issued by a council and the statement of compliance is required for the certificate of occupancy.

Currently, there is no template for Certificate of Occupancies listed in the draft Regulations. It is very difficult to know how the Certificate of Occupancy will relate to the Statement of Compliance. While the Statement of Compliance (shown in Schedule 13 of the draft) states a builder may disregard variations of a minor nature (such as landscaping), the draft regulations do not definitively state such discretions can be made under a Certificate of Occupancy.

In practice, this potentially means Council does not have to issue an occupancy certificate if the builder has not completed minor items like paving, landscaping, septic, stormwater, rainwater tank and so on.

The Guide to the Draft Regulations issued by DPTI justifies the change as follows:

This change has been included following feedback that owners and occupiers, upon completion of the construction of the 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.

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.

As per other building 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.

This change warrants some serious consideration. Master Builders SA believes there is a real risk that this adds at least cost and delay to the process, noting that:

1. A person must not occupy a building without a certificate of occupancy (where one is required);

2. The certificate will be issued by a council;
3. The issuing of a certificate requires an application to the council with prescribed information and the payment of the appropriate fee;
4. The application may be required to include a report or consent from an agency or authority;
5. The application will presumably require (in most cases) an inspection by the council, necessarily meaning potential further delay;
6. Although the regulations can specify a timeframe for a council to issue a certificate of occupancy, an application will be **taken to be refused** if not determined within the specified timeframe (in contrast to the deemed consent scheme imposed elsewhere in the Act);
7. There are checks and balances that can be implemented short of requiring a certificate of occupancy for class 1a buildings, let alone contractual and other legal obligations on a builder.

In considering an application for a certificate of occupancy a council may consider whether the conditions of approval have been satisfied and whether “the building is suitable for occupation”. As it is a standard condition that development be undertaken in accordance with approved plans, in theory a council could withhold a certificate of occupancy until all work is completed, including such things as landscaping which will often occur after handover.