Guide to Development Assessment

A guide to assist relevant authorities in assessing development applications that apply to the new *Planning, Development and Infrastructure Act 2016.*

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Government of South Australia
Department for Trade and Investment

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Introduction

This guide is intended to provide a detailed overview of the development assessment process in accordance with the *Planning, Development and Infrastructure Act 2016* (the Act).

The guide will assist the users and practitioners of the development assessment processes in the public and private sectors.

The Planning and Design Code (the Code), PlanSA Portal website and the Development Application Processing (DAP) system) are integral components in the development assessment process.

To complement these initiatives and to assist authorities in assessing applications in accordance with the Act, the Department has prepared this guide.

Requirements for a development application

Development within South Australia can only be undertaken if the development is approved under the Act.

A development is approved once a relevant authority has assessed the development against, and granted, all relevant consents.

Where to look:

Act: Section 101, 102

The Relevant Authority

The term ‘relevant authority’ applies to the person/body responsible for making an assessment of and decision on a development application. This may relate to the planning consent, building consent, land division consent, encroachment or offset scheme. The relevant authority’s assessment and decision will be undertaken in accordance with the provisions of the Act and its associated Regulations.

A relevant authority includes an Assessment Panel, a council, the State Planning Commission (the Commission), the Minister for Planning (the Minister), Assessment Manager or Accredited Professional.

Where to look:

Act: Part 6

What is Development?

Development is defined in the Act as:

- the construction, demolition or removal of a building or the making of any excavation or filling for, or incidental to, the construction, demolition or removal of a building
- a change in the use of land
- the division of an allotment
- the construction or alteration (except by the Crown, a council or other public authority of a road, street or thoroughfare on land (including excavation or other preliminary or associated works)

- in relation to a State Heritage Place – the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work that could materially affect the heritage value of the place
- in relation to a local heritage place – any work (including painting) that could materially affect the heritage value of the place (including, in the case of a tree, any tree-damaging activity) specified by the Planning and Design Code for the purposes of this paragraph (whether in relation to local heritage places generally or in relation to the particular local heritage place)
- the external painting of a building within an area specified by the Planning and Design Code
- in relation to a regulated tree – any tree damaging activity
- the creation of fortifications
- prescribed mining operations on land
- prescribed earthworks
- an act or activity in relation to land declared by or under the regulations to constitute development, (including development on or under water) but does not include an act or activity that is declared by or under the regulations not to constitute development for the purposes of the Act.

In relation to (l), the Planning, Development and Infrastructure (General) Regulations 2017 ('the Regulations') sets out additions to the definition of development in Schedule 3, and further exclusions from the definition of development in Schedules 4 and 5.

Where to look:

Act: Section 3 (1)
Regulations: Regulation 3B, 3C, 3D, 3E, 3F, 3G, Schedule 3, Schedule 4, Schedule 5

Development Approval and Consent

Development Approval

Section 101 of the Act states that any acts or activities defined as development can be undertaken with a development approval. A development approval could be made up of one or more of six consents. In this regard, the required number of consents depends on the nature and kind of development proposal. When all necessary consents have been granted, the relevant authority can issue a development approval to the applicant.

Types of Consents

Section 102 of the Act describes how a development is an approved development if, and only if, a relevant authority has assessed the development against, and granted a consent. The following matters and the different types of consent that may need to be obtained for development approval include:

- the relevant provisions of the planning rules (planning consent)
- the relevant provisions of the building rules (building consent)
- consent in relation to the division of land (other than by strata plan or community title) where it satisfies the following conditions:
    - requirements set out in the Planning and Design Code

  - any relevant requirements set out or a design standard
  - the provision of water supply and sewerage services
  - where land is to be vested in a council or other authority – the council or authority consents to the vesting
  - requirements set out in regulations ('land division consent').
- consent in relation to the division of land by strata plan or community title where it satisfies the following conditions:
  - requirements set out in the Planning and Design Code
  - any relevant requirements set out or a design standard
  - any encroachment of a lot or unit other land is acceptable having regard to any provision made by the Planning and Design Code or a design standard
  - where land is to be vested in a council or other authority – the council or authority consents to the vesting
  - a building or item intended to establish a boundary (or part of a boundary) of a lot or lots or a unit or units is appropriate for that purpose
  - having regard to the nature and extent of the common property that would be established by the relevant scheme
  - the provision of water supply and sewerage services
  - any building situated in the land complies with the building rules
  - requirements set out in regulations ('land division consent').
- consent in relation to the encroachment of a building over a public place
- consent in relation to any applicable Offset Scheme (Part 15 Division 2 of the Act)
- consent in relation to any other matter prescribed through Regulations.

Planning consent

Most forms of development (including land division) require a planning consent.

An application for planning consent is assessed by the relevant authority with regard to its compliance with the planning rules (which includes the Planning and Design Code and any applicable design standards).

The Code sets out provisions dealing with the design and location of development and includes matters such as zoning and design criteria.

Building consent

A building consent is applicable to development where building work is involved, unless exempted by the Regulations. Each proposal is assessed by the relevant authority with regard to its conformity with the building rules (which includes the Building Code of Australia (BCA), regulations that regulate the performance, standard or form of building work, regulations that relate to designated safety features, and Ministerial building standards).

The BCA is published by the Australian Building Codes Board in the National Construction Code series.

In general, the building rules cover structural matters, fire protection, safety of occupants, health and amenity and equitable access.

Staged consent

An applicant can choose to obtain each of the required consents in any order, under separate submissions. This approach to the assessment system is called a 'staged consent'.

The granting of consent does not enable a development to be undertaken. This can only happen when the applicant receives a development approval from the relevant authority. Consent signifies a proposed development has been assessed in relation to the planning rules, the building rules or the other consent matters and has been subsequently supported by the relevant authority in respect of each.

A proposal for development will usually require more than one consent to be obtained to enable the issue of a development approval by a relevant authority.

Where to look:

Act: Section 102(2), (6), (8), Section 119(12)

Development Application Form

Application form

The applicant must apply for development approval (which may include a land division certificate) using the standard development application form (see link below).

Development Application Form

Development application forms are available from the PlanSA portal.

Filling in the development application form

The applicant is to complete all relevant parts of the development application form online. If there is any doubt about the information required on the form, assistance can be obtained from relevant authority staff.

If the applicant is not the land owner, then the owner's name and address must be written in the space provided. However, the owner is not required to sign the form if he or she is not the applicant.

Lodging Applications

Where to lodge a development application - Regulation 29

All applications for development are to be lodged electronically via the PlanSA portal or be lodged at the principal office of the relevant authority in accordance with the requirements of the Regulations.

The Act enables the South Australian planning system to be delivered online and will allow South Australians to:

- lodge development applications online, using a single application form
- easily monitor and track progress of development applications online
- receive decision notices electronically – and get faster approvals

- gain 24/7 fast access to searchable and reliable planning information, publications, maps and data
- easily access the latest planning news and updates
- access online planning policy and spatial map information online
- submit and track Planning and Design Code amendments online
- check the online register of accredited professionals
- use online help tools such as:
    - an interactive building with click and view areas to highlight what is exempt from requiring approvals
    - a questionnaire to check if an application needs to be submitted and, if so, the associated planning policy.

Copies of plans - Regulation 30

An application for a development approval must be accompanied by a copy of plans, drawings, specifications and other documents and information relating to the proposed development required under Schedule 8 of the Regulations.

Land division plans - Schedule 8 of the Regulations

The Regulations set out requirements for the drafting of plans showing proposed land divisions. Detailed plans are necessary for servicing authorities (such as the SA Water Corporation) to determine the location of existing services and the best method of providing required new services.

Fees – Schedule 1 (Planning, Development and Infrastructure (Fees, Charges and Contributions) (Miscellaneous) Variation Regulations 2020)

An application for a development approval must be accompanied by the prescribed fees (in accordance with Schedule 1 of the Regulations). During the verification process of a development application, the appropriate fees will be raised by the relevant authority and an invoice sent to applicant for payment.

Some fees may require further consideration and subsequent advice from the relevant authority. Components of the overall fee could include public notification, referral to a prescribed body and Building assessment fee. The relevant authority has the discretion to waive or refund all or part of an application fee, excluding the lodgement or referral fees which are payable to other bodies.

The development number

All development applications will be given a development number through the online application system.

Verification

Verification process

On receipt of an application, a relevant authority must undertake the following checks to ensure the application has been correctly lodged and can be assessed:

- determine the nature of the development
- if the application is for planning consent, determine:
    - whether the development involves two or more elements and, if so, identify each of those elements for the purposes of assessment against the provisions of the Planning and Design Code

  - the category or categories of development that apply for the purposes of development assessment
- determine whether the relevant authority is the correct entity to assess the application under the Act
- if the relevant authority is the correct entity to assess the application (or any part of the application):
  - check that the appropriate documents and information have been lodged with the application;
  - confirm the fees required to be paid at that point under the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019
  - provide an appropriate notice via the PlanSA portal
- if the relevant authority is not the correct entity to assess the application (or any part of the application):
  - provide the application (or any relevant part of the application), and any relevant plans, drawings, specifications and other documents and information in its possession, to the entity that it considers to be the correct relevant authority in accordance with any practice direction; and
  - provide an appropriate notice via the PlanSA portal.

Determining the nature of the development – Planning and Design Code (the Code)

The relevant authority receiving a development application has the task of determining the nature of a proposed development. The Code contains a list of defined land uses that should be used as a first point of reference in determining the nature of development.

By determining the nature of a proposed development, the body receiving the application will then be able to determine:

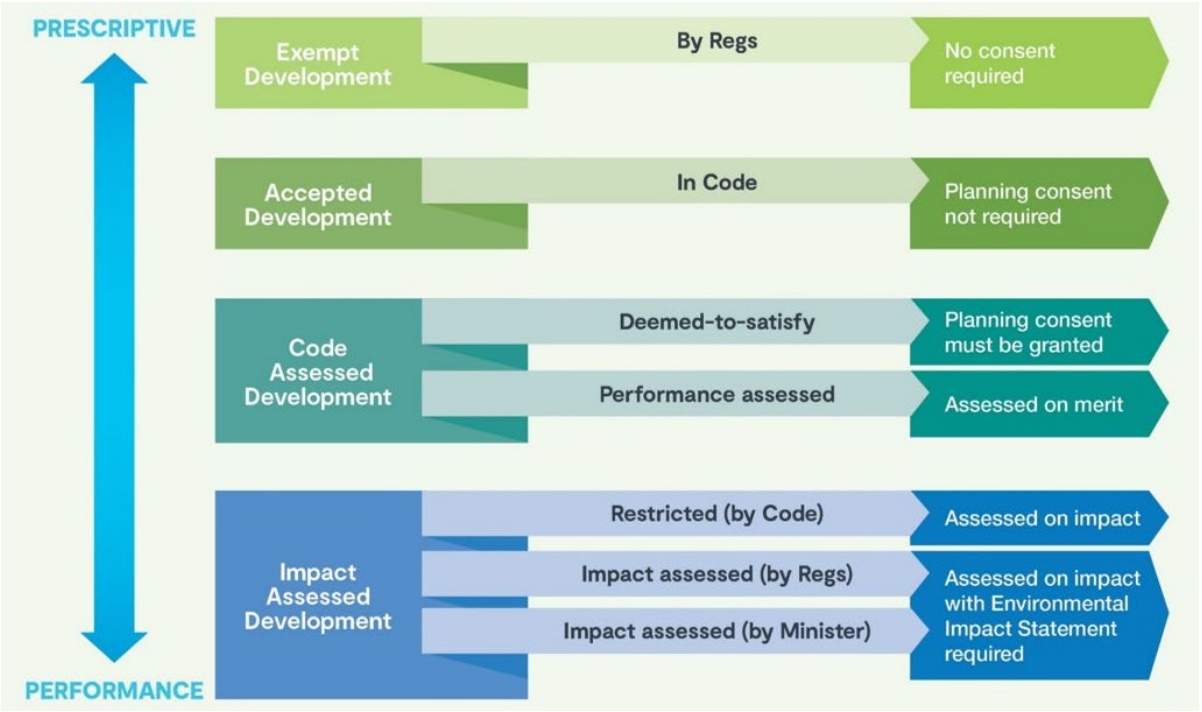
- the category/classification of development (accepted, deemed to satisfy, performance assessed, restricted)
- the relevant authority for the application
- if the application needs to be referred to any prescribed bodies or other government agencies
- if the application needs to be notified to the local community.

Where to look:

Regulations: Regulation 31

Kinds of Development

The Act introduces new assessment pathways to increase certainty for simple developments and provide a tailored approach for more complex development applications.



Exempt and Accepted Development

Accepted development includes minor and standard applications which will need no approval, or building consent only.

For example, a shed will require no planning or building consent and a shop fit out would require building consent only.

Exempt development also covers what types of development does not require any form of assessment.

Code Assessed Development

Code Assessed development includes applications which will be assessed on their merit against the Planning and Design Code and are either deemed-to-satisfy development or performance assessed development.

Simple developments such as a detached house in a residential zone will be fast tracked as a deemed-to-satisfy development application. More complex applications such as a multi storey building will be subject to performance based assessment.

- **Deemed to satisfy application** – will typically require both planning and building consent but not require any notification or agency referral.
- **Performance assessed** - will typically require both planning and building consent and require notification and agency referral to complete an approval.

Restricted development

Restricted development is a category of development designated by the Planning and Design Code (the Code) that is assessed by the Commission as the relevant authority.

A restricted classification generally applies to development that warrants consideration of strategic implications and impacts or requires detailed investigations and assessment beyond that provided through the Code Assessed - Performance Assessed pathway.

Unlike other assessment pathways, restricted development proposals are subject to an 'initial decision' by the Commission's delegate to proceed or not to proceed further to assessment (refer to the PlanSA portal for further information).

Practice Direction 4 provides the circumstances under which the Commission will be prepared to assess restricted development; and how the Commission will proceed with the assessment (information required and other steps).

This type of assessment is a more rigorous and will generally require notification of adjoin neighbours, the wider community and a notice on the land. Agency referrals are likely.

Where to look:

Act: Part 7, Division 2, Subdivision 4

Impact Assessed development

Development that is 'impact assessed' if it is specified in the regulations as requiring impact assessment of if the Minister otherwise determines that it should be impact assessed.

Rather than being assessed against the Code, impact assessed development is subject to an environmental impact assessment process. To provide guidance, the Commission is required to prepare a practice direction setting out assessment guidelines for impact assessment, including the preparation of an environmental impact statement (EIS).

Impact assessed development is likely to be major developments such as a new port or a new foundry.

Where to look:

Act: Part 7, Division 2, Subdivision 2, 3, 4

Variations (Amended Applications)

A relevant authority may permit an applicant to vary an application at any time before the application is decided. The date of receipt of the varied application then becomes the new date of receipt of the application for the purposes of decision time limits. If the variations are not substantial then time limits will continue to run from the original verification date/payment of fees.

Regulation 35(2) provides that if the variations are not substantial then the time limits are not reset. The date of receipt of the varied application becomes the new date for decision time limits where the variations are substantial.

If an application is for development approval, the amendment of the application could occur at any time before the relevant authority granted development approval. In circumstances where the application is one only for planning consent, the amendment could only occur prior to the decision on the consent. Where an application has been varied by the applicant following its referral to a prescribed body or the

completion of public notification and consultation, the relevant authority can decide not to repeat these procedures if the variation is not substantial.

If the relevant authority considers that the amendment changes the essential nature of the proposed development, then the amendment is considered to be a new application with a new lodgement date and time limits. In these circumstances, the relevant authority can agree with the applicant to treat the amended application as a new application and continue to assess it. In this situation, the relevant law and Development Plan will be that in place at the time to new application is received.

Where to look:

Act: Section 119(9)
Regulations: Regulation 35

Additional Information

A relevant authority may request, in writing, that the applicant provide additional information. The relevant authority may decline to proceed further until the applicant has complied with the request.

The time limits applying to the making of a decision are then extended by the period between the date the relevant authority requested the additional information, and the receipt of it. The time allowed to respond with the information will depend on the type of development. If the applicant fails to provide the information within the allocated time, the relevant authority may refuse the application.

This enables the relevant authority to finalise applications where there does not appear to be any strong intention or commitment on the part of the applicant to undertake the proposed development.

Where to look:

Act: Section 119
Regulations: Regulation 33

On Hold (applicant request)

An applicant may request time to address an issue related to the application or respond to any matter raised in connection with the application.

The time required by the applicant (up to 1 year) is not included in the time within which the relevant authority is required to decide the application.

The Development Application Processing (DAP) system enables a relevant authority to place an application on and off ‘hold’ at the applicant’s request.

Where to look:

Act: Section 119(11)
Regulations: Regulation 34(2)

Withdraw Applications

Applications may be withdrawn by the applicant. It is the responsibility of the applicant to inform the relevant authority of the decision to withdraw the application. The relevant authority must be notified of the decision to withdraw.

Upon receipt of the advice from the applicant, the relevant authority must notify any agency consulted on the application under Division 2 of the Regulations and any representative on the application under Division 3 of the Regulations of any such withdrawal.

The refund of any lodgement or assessment fees to the applicant is entirely at the discretion of the relevant authority, usually depending on the extent of assessment work already undertaken.

Where to look:

Act: Section 119(14)
Regulations: Regulation 38

Contravening Development

If development has taken place, or is continuing in contravention of the Act and Regulations, an application for development approval or a staged consent may be made to the relevant authority. If proceedings have already been initiated, in accordance with the Act, to remedy or restrain the contravening development, the relevant authority can decide not to deal with the assessment of the development application until the conclusion of any proceedings. This empowers the Environment, Resources and Development Court, after hearing the parties involved, to make an order to:

- require the respondent to refrain from the course of Action constituting the contravention or to make good the breach
- cancel or vary any development approval and/or
- require the respondent to compensate any person who has suffered loss or damage as a result of the contravention.

Alternatively, the relevant authority may decide to deal with the application and possibly defer any further proceedings until a decision has been made on the development application. The court also has the power to defer enforcement proceedings pending the result of an application.

Where to look:

Act: Section 214(14)
Regulations: Regulation 39

Staged Development

The Act allows for the situation where an application or consent envisages a development being undertaken in stages, with separate consents or approvals for the various stages. Conditions can be imposed on the development approval that recognise the need to have longer than normal periods of time for the lawful commencement and the substantial completion of the development.

The Act and Regulations do not allow for only parts or sections of an approved development to be completed. The development that receives development approval must be constructed and substantially or fully completed to the satisfaction of the relevant authority within the prescribed time.

If the applicant is unable to satisfy the requirements of a development approval then the original approval will need amendment. If this happens, the applicant must submit a new application for development approval to the relevant authority.

Where to look:

Act: Section 119(12)
Regulations: Regulation 53(5)(6)(7)

Lapsing Applications

A relevant authority may lapse an aged application if at least one year has passed since the date on which the application was lodged with the relevant authority under the Act.

A relevant authority must, before it takes action to lapse an application take reasonable steps to notify the applicant of the action under consideration and allow the applicant a reasonable opportunity to make submissions to the relevant authority (in a manner and form determined by the relevant authority) about the proposed course of action. An applicant is not entitled to a refund of any fees if an application is lapsed under this regulation.

This enables the authority to prevent applications continuing in existence beyond a reasonable period.

Where to look:

Regulations: Regulation 38(2)

Who will be making the decision?

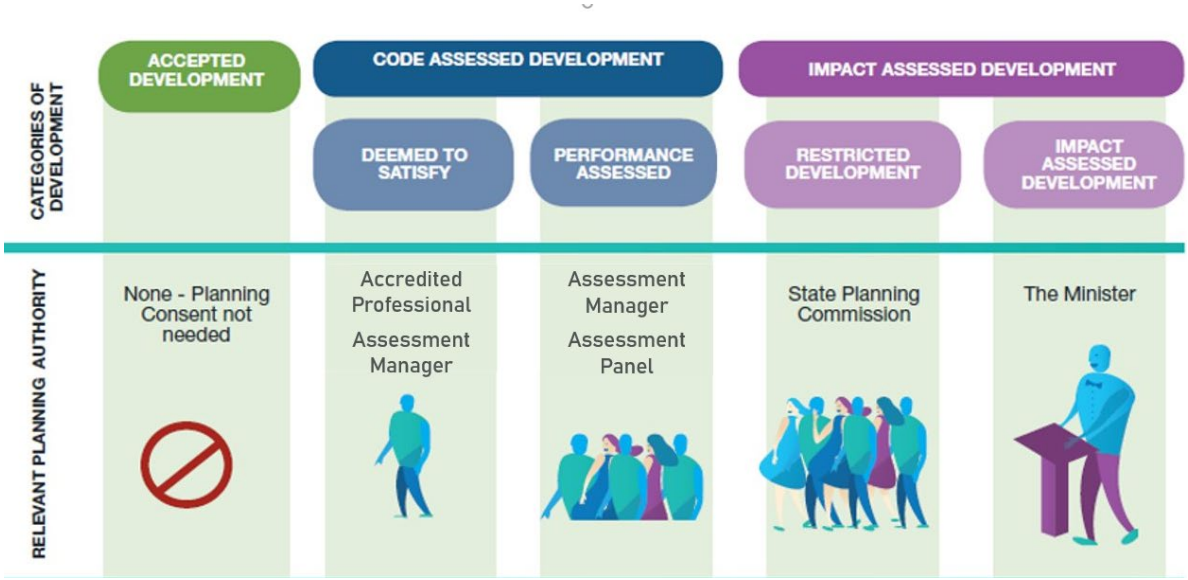
Determination of relevant authority

The Act allows entities to be constituted as relevant authorities for the purposed of determining development applications.

There are five types of relevant authority envisaged:

- an assessment manager
- an accredited professional
- an assessment panel
- the Minister
- the Commission.

Councils continue as relevant authorities for certain building-related matters, but otherwise a council-appointed assessment panel and assessment manager will be the relevant authority in their own right, rather than as a delegate, and may not be directed by the council in undertaking their statutory functions.



Assessment Manager

A new role of 'assessment manager' is created in the Act, regularising the current practice of delegations made to council and departmental planning staff.

Generally, an assessment manager will be an accredited professional appointed by the chief executive of a council or the department, but they may also belong to a class of persons prescribed by the regulations. Flexibility is provided for smaller councils by enabling assessment managers to be appointed for more than one assessment panel and to be contractors rather than employed by the council.

An Assessment Manager is a separate statutory role to a Panel member and is responsible for managing the staff and operations of the Panel. An Assessment Manager cannot, therefore, also be a member of the Panel.

An Assessment Manager may also be a relevant authority in their own right if so prescribed under the Act or regulations.

Accredited Professionals

A person holding accreditation will be known as an 'accredited professional' and will be able to undertake assessment functions prescribed by regulation. It is envisaged this will see a substantial increase in the use of privately contracted professionals to certify deemed-to-satisfy applications, reducing costs for councils and time delays for applicants. At the same time, assessment panels will consist of accredited professionals able to objectively apply their relevant skills and knowledge to the decision making process.

Examples of what an Accredited Professional can assess include the following:

An Accredited professional—building level 1 may act as a relevant authority:

- for the purposes of giving planning consent in relation to deemed-to-satisfy development of a class determined by the Minister for the purposes of this sub regulation (other than where there may be one or more variations)
- for the purposes of giving building consent in relation to any class of development.

An Accredited professional—building level 2 may act as a relevant authority for the purposes of giving building consent in relation to building work that relates to a building that does not have, or will not have when the development is completed:

- a rise in storeys exceeding three
- a floor area exceeding 2000 square metres.

An Accredited professional—building level 3 may act as a relevant authority for the purposes of giving building consent in relation to building work that relates to a Class 1 or 10 building under the Building Code that does not have, or will not have when the development is complete:

- a rise in storeys exceeding two
- a floor area exceeding 500 square metres.

An Accredited professional—building level 1, 2 or 3 may act as a relevant authority in relation to the following:

- the issue of a schedule of essential safety provisions
- the assignment of a classification to a building under these regulations
- the provision of a Statement of Compliance (Statement of Compliance Form).

Assessment Panels

The Act provides for Assessment Panels to make decisions on more complex developments and on those matters which may be prescribed by regulations.

Each Assessment Panel will have an Assessment Manager who is an Accredited Professional. The Assessment Manager will help support, advise and coordinate the work of the Assessment Panel and will also be responsible for the assessment of certain types of applications as a decision authority in his/her own right. The Assessment Panel may review an assessment decision made by the Assessment Manager, if requested to do so by an applicant.

The following kinds of panels proposed and authorities responsible for establishing them are:

- Council Assessment Panel – appointed by a council to replace the current council's Development Assessment Panel.
- Joint Planning Board Assessment Panel – appointed by a Joint Planning Board.
- Combined Assessment Panel – established by the Minister to be involved in applications across different legislation (e.g. planning and mining or liquor licensing).
- Regional Assessment Panel – established by the Minister and comprises parts or all of the areas of two or more councils.
- Local Assessment Panel – constituted by the Minister upon recommendation of the Commission following an inquiry into an existing Council Assessment Panel.

The Minister for Planning and Local Government

For the South Australian Government, the Minister for Planning and Local Government is primarily responsible for assessing development applications for essential infrastructure across South Australia and crown development applications including facilities associated with power, water, waste, education and our ports.

Excluding restricted developments, the Minister is primarily responsible for impact assessed development applications which require a full analysis of a wide range of possible impacts.

State Planning Commission

The State Planning Commission is now South Australia's principal planning and development assessment body. The Commission comprises experts across a range of disciplines including economics, urban design, construction, social and environmental policy and public administration.

The Commission is primarily responsible for assess development applications for restricted development occurring outside of local council areas or directed by the Minister, for example on matters of state significance or for delayed application.

The State Commission Assessment Panel (on behalf of the State Planning Commission) is the relevant authority for the following development types:

- It is designated by the Planning and Design Code.
- Where the proposed development is classified as restricted development by the Planning and Design Code.
- Where the proposed development is to be undertaken in a part of the state that is not (wholly or in part) within the area of a council, other than in a case where a regional assessment panel has been constituted in relation to that part of the state.
- Where the Commission, and an assessment panel appointed by a council or by the Minister in substitution for such an assessment panel, would, apart from this provision, both be constituted as relevant authorities in relation to the proposed development.
- Where the Commission and an assessment panel appointed by a joint planning board would, apart from this provision, both be constituted as relevant authorities in relation to the proposed development.
- Where the Commission and a regional assessment panel would, apart from this provision, both be constituted as relevant authorities in relation to the proposed development.
- Where the Minister, acting at the request of a council or a joint planning board, declares, by notice served on the proponent, which the Minister desires the Commission to act as the relevant authority in relation to the proposed development.
- Where the Minister, by notice served on the proponent, calls the proposed development in for assessment.

A detailed list of the classes of development for which DAC is the relevant authority is contained in Schedule 6 of the Regulations.

Where to look:

Act: Part 6, Division 5, Section 93, 94, 95, 96, 97, 98, 99
Regulations: Part 5, Regulations 22, 23, 24, 25, 26, Schedule 6

Table 1 Relevant Authority – Assessment Roles

Type of relevant authority	Summary of type of assessment	How appointed
accredited professional	• prescribed in the Regulations • building consent in relation to any class of development • planning consent in relation to deemed-to-satisfy development	• accreditation scheme provided in regulations
assessment manager	• prescribed in the Regulations • planning consent in relation to deemed-to-satisfy development • planning consent in relation to performance assessed development (excluding developments where notice of the application must be given)	• appointed by the Chief Executive or a joint planning board • must be an accredited professional or meet other prescribed criteria • every assessment panel must have an assessment manager • an assessment panel may review an assessment manager's decision, if an applicant so requests
assessment panel	• prescribed in the Act • primarily to assess complex developments • planning consent in relation to performance assessed development (including developments where notice of the application must be given • review and assessment decision made by the assessment manager	• various appointment methods – see below • generally appointed by councils
State Planning Commission	• restricted development (not accessible unless Commission determines) • call-ins by the Minister due to state significance or delays • developments outside of council areas • Crown development and essential infrastructure	• appointed by Minister
Minister	• impact assessed development (other than restricted) • Commission prepares and releases assessment report	

Referral to Prescribed Bodies

The process of referrals in the Act will be streamlined. Referrals will be confined only to matters for direction apart from three referral bodies for advice (please refer to Schedule 9 of the Planning, Development and Infrastructure (General) Regulations 2017). Referral bodies will be statutorily required to confine their comments to matters relevant to the purpose of the referral and within their field of expertise.

To avoid lengthy time delays on matters of detail, applicants will have the option of deferring a referral to be addressed later as a clearance or reserved matter. This will allow applicants to tailor the order in which consent matters are addressed in a manner which suits their project needs. The applicant will be required to accept any risk that a subsequent referral may negate, or require amendment to, the head consent.

In accordance with the Act, the regulations may provide that an application for consent to be assessed by a relevant authority is to refer the application, together with a copy of any relevant information provided by the applicant, to a body prescribed by the regulations. The relevant authority must not make its decision until it has received a response from that prescribed body in relation to the matter or matters for which the referral was made.

A prescribed body may, before it gives a response, request the applicant to provide such additional documents or information as the prescribed body may reasonably require to assess the application. The prescribed body may specify a time within which the request must be complied with and if it thinks fit, grant an extension of time.

The regulations provide that the relevant authority cannot consent to or approve the development without the concurrence of the prescribed body and empower the prescribed body to direct the relevant authority to refuse the application or if the relevant authority decides to consent to or approve the development – to impose such conditions as the prescribed body thinks fit.

A relevant authority is to ensure that a response from a prescribed body is published on the PlanSA portal.

Where to look:

Act: Section 122
Regulations: Regulation 41, Schedule 9

Preliminary Agreements

Section 123 of the *Planning, Development and Infrastructure Act 2016* allows agreements to be reached between an applicant and referral agencies prior to lodging an application. Preliminary agreements can be reached with any referral body.

An application for a preliminary agreement can be made directly with the referral agency, prior to the submission of your application for Planning/Land Division Consent. A copy of the application form is available on the PlanSA portal – application for preliminary agency advice. Applications for a preliminary agreement can be made directly to the referral agency prior to the submission of your application. Please refer to the referral agencies and preliminary agreements fact sheet for contact details and information that is required to be included in support of your application.

The preliminary agreement process eliminates the need for referrals to be undertaken during the formal application assessment process, significantly reducing assessment timelines and potential delays to your application. The agreement should be submitted along with the development application within a year of signing the agreement.

If an agreement expires – i.e. more than a year has passed between the agreement being signed and the application for Planning/Land Division Consent being lodged – a new agreement can be sought by submitting a new preliminary agreement request form and fee. In this case the referral body would have regard to the policies applying at the time of signing of the second agreement, rather than at the time of signing the first agreement.

Public Notice and Consultation

The relevant authority may be required to undertake some form of public consultation on an application for development before making its decision.

The Act has determined that development applications determined to be "Performance Assessed" and "Restricted Development" will in most instances require a level of notification.

Category	Sub-category	Notification required	Notification timeframe	Method of notification
Accepted	-	✗	-	-
Code assessed	Deemed-to-satisfy	✗	-	-
	Performance assessed: excluded by Code or minor	✗	-	-
	Performance assessed (not minor)	✓	15 business days	✉ Letter/email to adjacent land ⚐ Site notice*
Impact assessed	Restricted	✓	20 business days	✉ Letter/email to adjacent land ✉ Letter/email to others significantly affected ⚐ Site notice* 💻 Published on Portal
	Impact assessed by Minister (EIS)	✓	30 business days	💻 Published on Portal 🕮 Published in local newspaper 🕮 Published in state-wide newspaper ? Methods determined by Minister (regard to CEC)

Performance Assessed – Notification

The relevant authority will be responsible for giving notice of the application to an owner or occupier of adjacent land in accordance with the Act.

The applicant will be responsible for giving notice of the application to members of the public by notice placed on the relevant land (either personally or by engagement of a contractor) in accordance with the Act.

Upon lodgement of a performance assessed development application that requires notification, the applicant must either:

- confirm they accept the responsibility of placing a notice on the land in relation to the application (either personally or by engagement of a contractor) on or before the notification period in accordance with the relevant requirements of the Act, Regulations and this practice direction (noting that the applicant will be notified of the notification period commencement date by the relevant authority at least four business days prior to that date)
- except in cases where the Commission is the relevant authority, request that the relevant authority place the notice on the land, and if so requested, pay the relevant fee prescribed by the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019.

Should the applicant request the relevant authority to place the notice on the land and pay the relevant fee, the relevant authority will be responsible (either personally or by engagement of a contractor) for giving notice of the application to members of the public by notice placed on the relevant land in accordance with the Act.

Notification Period

The notification period commences the day on which the notice under the Act would be expected to be received by the owner or occupier of land in the ordinary course of postage (i.e. four business days), in accordance with the Regulations.

Preparing for notification

If the applicant has confirmed they accept responsibility to place a notice on the land, at least four business days prior to the commencement of the notification period, the relevant authority must:

- give notice of the anticipated commencement date and of the notification period to the applicant
- provide the applicant with a copy of the content of the notice to be placed on the relevant land in PDF format
- advise the applicant of the position and number of notice(s) to be erected on the land.

Notice to adjacent land owners/occupiers

For giving notice to owners of properties adjacent the relevant land in accordance with the Act, the relevant authority will send a notification to all owners or occupiers of adjacent land, either:

- by post
- by email, if the owner or occupier has given specific consent to receive correspondence from the relevant council via email.

The notice will contain the following details:

- date when the notification period is to commence
- date when submissions must be received by (in accordance with timeframes prescribed by the Regulations)
- development application number (as it appears on the relevant PlanSA portal application record)
- the nature of the proposed development (as it appears on the relevant PlanSA portal application record)
- applicant name (as it appears on the relevant PlanSA portal application record)
- address of the relevant land (including street address, lot number, plan reference and certificate of title volume and folio number)
- where the plans and application will be available for inspection during the notice period
- identify any deemed-to-satisfy or accepted elements of the proposed development that may not be subject to comment under the Act.

A template of the submission form to be provided with the notice to owners or occupiers of adjacent land.

Notice on land

In relation to placing a notice on the relevant land in accordance with the Act, the notice must be:

- placed on, or within a reasonable distance of, the public road frontage of the relevant land, ensuring that it is visible and legible to members of the public from the public road
- mounted at least 600 millimetres above ground level, and no more than 1.5 metres above ground level
- made of weatherproof material (e.g. laminated print attached to fence/building, corflute print on star droppers, or other)
- at least A3 size.

The relevant authority shall determine the most appropriate position for the notice on the land in order to provide for maximum visibility from a public road. In cases where the relevant land has more than one frontage to a public road, the relevant authority may determine that more than one notice must be erected on each of the public road frontages to ensure that notice of the development is reasonably apparent to members of the public.

Availability of plans

Plans and documentation are to be made reasonably available for inspection by the public The relevant authority must ensure that the application and any supporting at the principal office of the relevant authority for the period commencing on the day on which notice of the application is first given and ending on the day on which representations must be lodged with the relevant authority under the regulations.

In addition, the relevant authority must ensure that the application documentation is made available via the PlanSA portal during the notification period. Access to those plans shall be made available via a unique URL or QR Code listed on both the letters to adjacent land owners/occupiers and the notice on the relevant land.

Confirmation of public notification

The entity responsible for erecting the notice on the relevant land shall ensure the following information is uploaded to the relevant application record on the PlanSA portal:

- within one business day after erecting the notice on the land, a photograph clearly displaying the notice on the land, with details of the location, date and time the photograph was taken; and
- within two business days of the end of the notification period, a written statement confirming that the notice on the relevant land was undertaken in accordance with the relevant requirements of the Act, Regulations and Practice Direction 3.

Response to representations

If a representation is made, the relevant authority must forward to the applicant a copy of the representation and allow the applicant to respond, in accordance with the regulations and within a period prescribed by the regulations, to those representations.

The subject matter of any representation, must be limited to what should be the decision of the relevant authority as to planning consent in relation to the performance based elements of the development as assessed on its merits (and a relevant authority should limit the matters that it will take into account in the same way).

A representation that is not made in accordance with any requirement prescribed by the regulations is not required to be taken into account.

Where to look:

Act: Section 107
Regulations: Regulation 47, 49, 50, 51

Restricted Development – Notification

The commission will be required to publish a practice direction setting out the circumstances under which it will be prepared to assess restricted development, and if it determines that an assessment is to be undertaken, how it is to proceed. Notification requirements will be specified in the regulations, with a right for those who make representations to appeal against the commission's decision.

Notice of the application for planning consent must be given, in accordance with the regulations to:

- an owner or occupier of each piece of adjacent land
- any other owner or occupier of land which would be directly affected to a significant degree by development if it were to proceed
- any other person of a prescribed class
- the public generally including by notice placed on the relevant land.

A person who is interested in doing so may make representations to the Commission during the notification period in relation to the granting or refusal of planning consent.

At the conclusion of the notification period, the Commission must provide the applicant with a copy of each representation and allow the applicant to respond to the representations within the timeframe prescribed by the Regulations.

This response may include the provision of any further information requested by the Commission in order to address any issues raised throughout the public notification period.

Where a representor wishes to appear before the Commission, a meeting must be held to which the representor is invited to be heard in support of their representation and the applicant is invited to respond.

If a person is to appear personally or by representative before the Commission to be heard in support of a representation made, the Commission must, at least five business days before the appearance, ensure that a copy of the application and any accompanying documents, plus a copy of any report prepared by or on behalf of the Commission in relation to the application, are published on the PlanSA portal and are available for inspection and download without charge.

The Commission must take into account the relevant provisions of the Planning and Design Code but is not bound by those provisions. The Commission may also choose to take into account the following guidelines/legislation/documents/matters:

- any relevant design standard issued by the Commission
- any expert advice received in relation to the proposed development. Any comments or report from the relevant council
- the content of any representation received under section 110(2)(b) of the Act
- the *Principles of Good Design* issued by the Office for Design and Architecture South Australia
- any other Act relevant to the proposed development

- any other document the Commission believes to be relevant to the assessment of the development application.

When considering matters outside the Planning and Design Code in accordance with section 110(10) of the Act, the Commission must document the specific documents, legislation, matters taken into account in its assessment.

The Commission, acting through its delegate, may refuse an application that relates to proposed development classified as restricted development without proceeding to make an assessment of the application. If a decision is made to refuse an application without proceeding to make an assessment is, on application by the applicant, subject to review by the Commission itself.

An application for review of the decision must be made in a manner and form determined by the Commission and must be made within one month after the applicant receives notice of the decision unless the Commission in its discretion, allows and extension of time.

The Commission may, on review:

- affirm the decision of its delegate
- refer the matter back with a direction that the application for planning consent be assessed (and that direction will have effect according to its terms).

No appeal to the court list against a decision of the delegate or the Commission itself.

An appeal against a decision on a development classified as restricted development by a person who is entitled to be given notice of the decision (representor) must be commenced within 15 business days after the date of the decision.

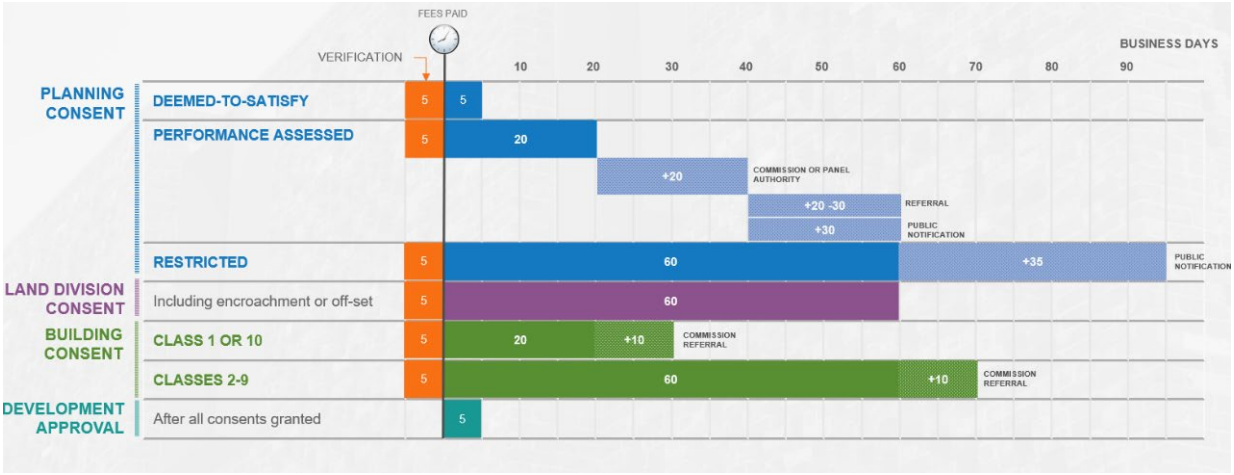
Where to look:

Act: Section 109, 110
Regulations: Regulation 47, 49, 50, 51, 52

Making the Decision – Assessment Timeframes

The new Act and Regulations set out revised timeframes for the assessment of developments in South Australia. These timeframes have been derived from those currently set out under the previous Act, the median time authorities currently take to assess development application and feedback received from relevant authorities and key stakeholders.

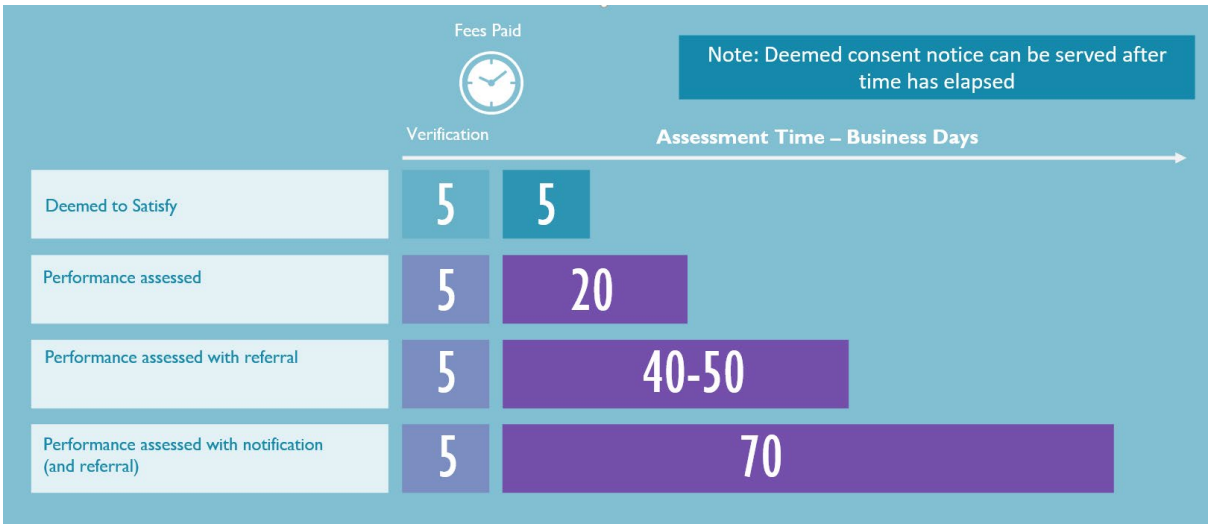
Fundamental changes to assessment timeframes will ensure the overall planning system is more efficient and that high- quality and innovative development can happen more easily. An overview of the new assessment timeframes is shown below.



Schedule of Timeframes

A relevant authority should deal with an application under Part 7 of the Act (other than where the Minister is the relevant authority) within the following periods, calculated from the relevant day:

- The application seeks planning consent and the proposed development is of a kind prescribed as deemed-to-satisfy development under the Planning and Design Code - five business days.
- The application seeks planning consent and the proposed development is to be assessed as a Performance assessed development under section 107 of the Act - 20 business days.
- The application seeks planning consent and the proposed development is to be assessed as a restricted development under section 110 of the Act - 60 business days.
- The application seeks building consent and the building falls within the Class 1 or 10 classification under the Building Code - 20 business days.
- In any other case - 60 business days.



Where an Assessment Panel is the authority for a Performance Assessed development there is an additional 20 business days added to the assessment timeframe.

Where to look:

Act: Section 125(1)
Regulations: Regulation 53

Deemed Consent Notice

A relevant authority should deal with an application as expeditiously as possible and within the time prescribed by the regulations.

If a relevant authority does not decide an application within the time prescribed in respect of the provision of planning consent, the applicant may, before the application is decided, give the relevant authority a notice in the prescribed manner and form (a deemed consent notice – Deemed Planning Consent Notice) that states that planning consent should be granted.

The process for a seeking a deemed planning consent is, as follows:

- where a timeframe is not met, the applicant may serve notice on the relevant authority
- on receipt the authority will be taken to have granted the consent
- the authority has up to 10 business days to issue its own consent with or without conditions, which—if issued—supersedes the deemed consent
- if the authority fails to issue its own consent, the standard conditions specified by a practice direction will apply to the deemed consent.

The authority then has one month within which to apply to the court for an order quashing the consent.

The ability for an authority to apply to the court for the consent to be quashed will guard against administrative mistakes that could lead to undesirable outcomes.

A deemed planning consent will not be available for impact assessable development, building consent or land division consent.

A deemed consent notice may be given to the relevant authority by:

- notice lodged on the PlanSA portal (and in accordance with any relevant requirements applying under Part 4 Division 2 of the Act)
- by registered post.

Where to look:

Act: Section 125
Regulations: Regulation 54

Deferral of (Reserving) Matters

Matters may be reserved at the initiative of the assessment body or on application by the applicant.

An assessment body must reserve a matter for later decision on application if the matter is specified in the Planning and Design Code for this purpose. The Code may also set limits for matters which should not be reserved, although generally any matter that is not fundamental to the nature of a development may be reserved for later decision.

This will provide greater certainty to applicants and councils in determining those matters that can or should be reserved for later decisions, helping to address the ‘detail first’ approach that has become entrenched in practice across the system as a result of court judgements over the years.

Where to look:

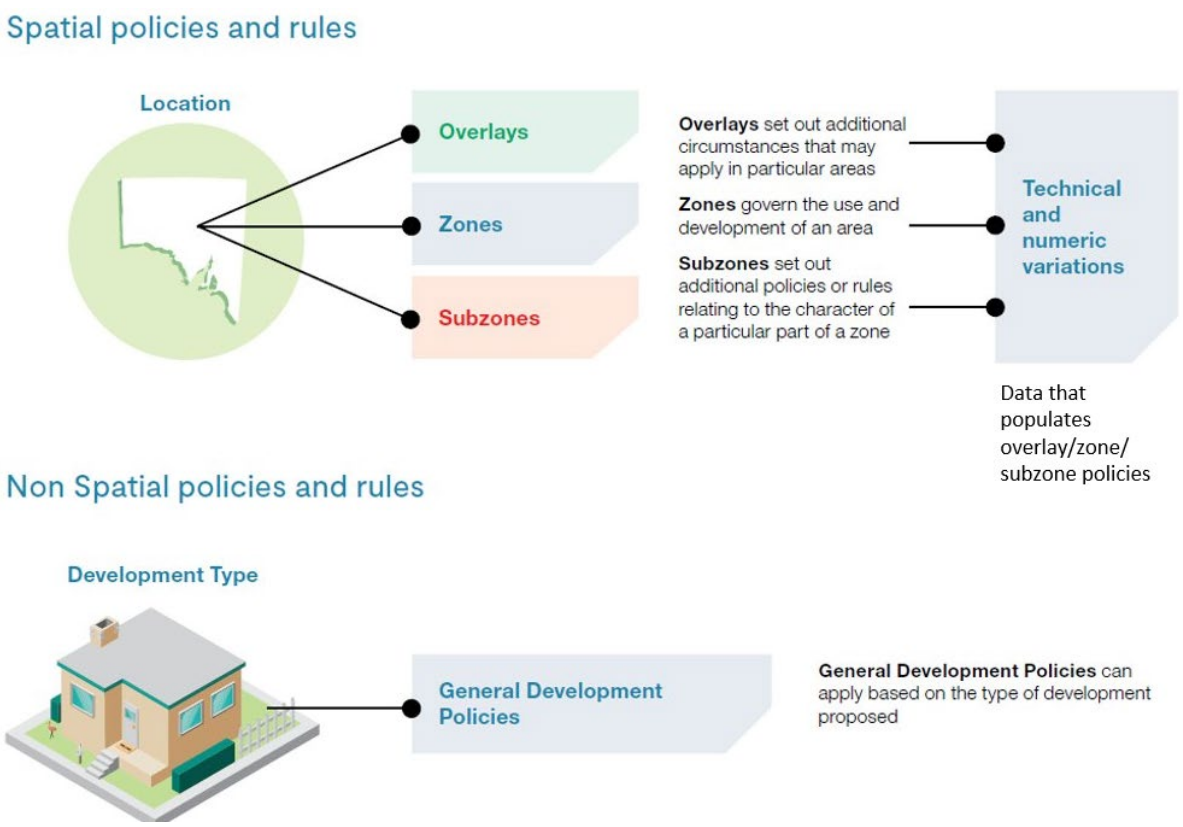
Act: Section 102(3)

Planning and Design Code

The creation of a new Planning and Design Code is based on a more design-oriented style of zoning that focuses on built form and mixed use development.

The Commission will be responsible for preparing and maintaining the Code and, in consultation with councils, industry and communities, in accordance with the Community Engagement Charter. It is envisaged councils will be able to initiate amendments to the Code with the agreement of the Minister acting on the advice of the Commission.

The Code will set out a comprehensive set of planning rules for development assessment purposes classified into zones, subzones and overlays. These will be applied in each region in a manner consistent with the relevant regional plan. This will make the Code the single point of reference for development assessment.



The following principles will apply to the content of the Code:

- Zones will govern the basic use and form of an area.
- Subzones will be able to include additional rules relating to local character.
- Overlays will allow common issues that may apply across different zones and subzones to be addressed (e.g. flood or bushfire risk).
- Specified provisions within the Code will be able to be adapted or modified within pre-determined parameters if agreed by the Minister.
- The Code will be able to include performance requirements and design techniques.
- Use classes and land use definitions will be incorporated in the Code.

The Code will contain a register of local heritage and significant trees based on the same provisions as the current Act. There are new requirements to identify the significant heritage components of the place to be listed, and for land owners to be consulted, in accordance with the Community Engagement Charter, regarding: the inclusion of a place under the Code as a place of local heritage value; or any proposed amendment would apply a heritage character or preservation policy having a similar intention or effect as a local heritage listing.

Where to look:

Act: Section 65, 66, 67, 68

Use of Design Standards

To increase the emphasis on design in the planning system, the Act enables the Commission to prepare design standards relating to the public realm and infrastructure. This is an important innovation and represents the first time a system-wide approach to public realm design has been provided for in planning legislation.

Design standards may:

- specify design principles and standards
- provide design guidance in relation to infrastructure and public realm.

In any location, for the purposes of any infrastructure delivery or off-set contribution scheme under the Act (see below), for the purposes of a zone, subzone or overlay in the Code, or for the purposes of enabling ‘as of right’ development of essential infrastructure.

This will ensure that developers and the community share consistent expectations regarding the design of infrastructure and the public realm in a given area, while also providing protection from gold-plating and price-gouging. It will also assist with the integration of development between private land and the public realm.

Where to look:

Act: Section 69

Conditions

Similar to the previous Act, provision is made for conditions to be placed on assessment decisions. However, to address complex and unnecessary conditions that assessment bodies often apply, the Commission will be given the power to issue practice directions which:

- set out requirements and provide guidance for the application of conditions
- prohibit certain conditions or classes of conditions
- and/or require certain conditions to be imposed.

A new capacity is provided to enable conditions to be attached to ‘deemed-to-satisfy’ decisions where needed to ensure Code compliance.

Where to look:

Act: Section 127

After the Decision

Notification of the decision

Once a decision has been made, the relevant authority must give notice of the decision in accordance with the regulations. The decision notification form is used for this purpose.

The relevant authority will be required in accordance with the regulations, issue the completed decision notification form to various parties including the applicant and the owner and where required any representatives and prescribed bodies.

The relevant authority is to ensure that completed decision notification form must be provided on the PlanSA portal within two business days of the decision

Notification to Applicant

The relevant authority is to give notice of the decision notification form to the applicant within two business days of the decision and issue the applicant any approved plans, drawings or other documentation related to the consents or approval in accordance with the regulations.

Notification to Prescribed bodies

The relevant authority must issue a copy of the decision notification form to the prescribed body within two business days of the decision.

Notification to Other Relevant Authorities

A relevant authority is to issue the notice to any other relevant authority that has already given another development authorisation that relates to the same development or that is considering an application for another development authorisation that relates to the same development within two business days of the decision.

Notification to Land owner

In the case of a development application where the owner of the land was not a party to the application, the relevant authority must issue the decision notification form to the owner. This advice must be provided to the owner within two business days of the decision.

Notification to Representors and the ERD Court – Restricted Development

Developments that are assessed as Restricted Development in accordance with Section 110 of the Act will be determined by the Commission.

If a person makes a representation in relation to a development that is assessed in accordance with the Act, the Commission must give the person notice of its decision, the date of the decision and the person's appeal rights under this Act.

Also the Commission (where representation/s are received) is to give to the court notice of its decision on the application for development, the date of the decision and the names and addresses of the person or persons who made representations to the Commission.

An appeal against a decision on a development classified as restricted development by a person who is entitled to be given notice of the decision must be commenced within 15 business days after the date of the decision.

If an appeal is lodged against a decision on a development classified as restricted development by a person who is entitled to be given notice of the decision, the applicant for the relevant development authorisation must be notified by the court of the appeal and will be a party to the appeal.

A decision by the Commission in response to a development classified as restricted development, of which representations have been made, does not operate:

- until the time when the person making representation may appeal against a decision to grant the development authority has expired
- if an appeal is commenced:
    - Until the appeal is dismissed, struck out or withdrawn

- Or until the questions raised by the appeal have been finally determined (other than any question as to costs).

Where to look:

Act: Section 107, 110, 126
Regulations: Regulation 47, 49, 57

Lapse of Consent or Approval

Consents or approvals granted prior to 12 November 2020

For all types of development, including land division, a consent will lapse at the expiration of 12 months from the operative date of the consent or approval unless the development has substantially commenced. In addition, the consent or approval will lapse three years from the operative date of the approval unless the development has been substantially or fully completed.

Consents or approvals granted on or after 12 November 2020

For all types of development, including land division, a consent will lapse at the expiration of 24 months from the operative date of the consent or approval unless the development has substantially commenced. In addition, the consent or approval will lapse three years from the operative date of the approval unless the development has been substantially or fully completed.

Where to look:

Act: Section 126(2)
Regulations: Regulation 67

Extension of Time

The applicant must submit a written request to the relevant authority when seeking an extension of time for a consent. Such an application must be lodged prior to the consent lapsing. The reasons given for seeking extensions commonly include delays in arranging finance or difficulties in establishing construction agreements.

Where to look:

Act: Section 126(3)

Record of Applications – Register

A relevant authority must ensure that the following matters are recorded on the PlanSA portal in respect of each application for a development authorisation in accordance with the Act:

- name and contact details of the relevant authority
- name and address of the applicant (or of each applicant)
- date on which the application was lodged under section 119 of the Act
- date on which the application was verified under regulation 31

- date (or dates) on which the fees relating to the application were paid in accordance with these regulations and the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019
- a description of the land which is the subject of the application
- a brief summary of the matters, acts or things in respect of which any consent or approval is sought
- details of any referral or concurrence on the application
- details of any other decision made on the application by another entity exercising a power under this Act that has been notified to the relevant authority in accordance with these regulations
- any decision on the application (including the date of the decision and any conditions that are imposed)
- date of the commencement of any building work, and the date of the completion of any building work, as notified under regulation 93
- if any decision on the application is the subject of an appeal, the result of the appeal.

An accredited professional must keep a register and record, in respect of each application made to the accredited professional under the Act:

- name and address of the applicant (or of each applicant)
- date of the application
- a description of the land which is the subject of the application
- a brief summary of the matters, acts or things in respect of which any consent or decision is sought
- details of any referral or concurrence on the application
- any decision on the application (including the date of the decision and any conditions that are imposed)
- if any decision on the application is the subject of an appeal, the result of the appeal.

An accredited professional must keep a record required for not less than five years after the date on which the relevant application is determined by the accredited professional.

Nothing in this regulation requires a document to be included on the PlanSA portal, or otherwise made available to the public, if to do so would—

- in the opinion of a relevant authority, or an accredited professional acting in any capacity, unreasonably jeopardise the present or future security of a building
- involve an infringement of copyright in matter contained in a document
- constitute a breach of any other law.

Applications lodged into the online assessment system will be automatically uploaded into the Public Register (with the relevant documentation).

Where to look:

Act: Section 102
Regulations: Regulation 120, 121

Applications decided by the State Planning Commission

The State Planning Commission is responsible for deciding development applications for:

- the classes of development listed in Schedule 6 of the Regulations
- development where the Minister, Acting at the request of a council, has directed it to Act as the relevant authority
- development that has been 'called in' by the Minister
- development located, wholly or in part, outside of council areas
- major developments or projects in which the Minister has delegated the decision-making authority to v Commission.

The Minister can direct the Commission to Act as authority for a development at council's request or can 'call in' an application under the criteria set out in Section 94 of the Act.

Where the Minister exercises a 'call in', the Commission becomes the authority instead of the council but must apply the same process as a council would apply.

State Planning Commission declared to be the relevant authority

The Commission may be declared to be the relevant authority where this is normally the responsibility of a council if:

- the council requests to the Minister that it wishes the Commission to Act as the relevant authority for the proposed development
- the Minister agrees because:
    - there is a matter of State significance involved
    - the proposed development straddles a council boundary or significantly affects a neighbouring council and the two councils are not in agreement about the process for dealing with the proposed development
    - a council has an interest in the land.

Alternatively, Section 94 enables a 'call–in' to be exercised where:

- council has a publicly declared conflict of interest
- the development impacts on more than one council
- the council has delayed the application beyond decision time limits.

Within **five business days** of the receipt of the Minister's notice the council must forward to the Commission:

- the completed development application form
- any supporting information and plans
- a report describing the Action taken by the council on the application up to the date of the notice by the Minister.

If, on the application, the relevant authority has undertaken:

- public notification and consultation

- referral to one or more prescribed bodies
- consultation with one or more State agencies.

The Commission may, and at its discretion, decide to adopt, disregard or reject any action or decision of the council relating to the assessment of the application.

In any case relating to development within the area of a council— the Commission must give the chief executive officer of the council for the area in which the development is to be undertaken a reasonable opportunity to provide the Commission with a report (on behalf of the council) on any matter that is relevant to the particular case (but if a report is not received by the Commission within 15 business days after the request is made to the chief executive officer, or within such longer period as the Commission may allow, the Commission may presume that the chief executive officer does not desire to provide a report).

Where to look:

Act: Section 94
Regulations: Regulation 23

Council or building certifier taken to be the relevant authority for building rules assessment

While the Commission or a regional development assessment panel may be constituted as the relevant authority for a proposed development, the council for the area in which the development is to be undertaken can become the relevant authority for the building rules assessment.

In addition, where a proposed development is to be undertaken within the area of a council then, subject to the regulations, the council will be the relevant authority for the purposes of, if appropriate, granting the final development approval after all elements of the development have been approved by one or more relevant authorities under this section.

Where to look:

Act: Section 99

Impact Assessed Development by the Minister

Development will be ‘impact assessed’ if:

- it is specified in the regulations as requiring impact assessment
- it is specified in the Code as ‘restricted’, and the Commission has determined that it should be impact assessed
- the Minister otherwise determines that it should be impact assessed.

Rather than being assessed against the Code, impact assessed development is subject to a scalable environmental impact assessment process. To provide guidance, the Commission is required to prepare a practice direction setting out assessment guidelines for impact assessment, including the preparation of an environmental impact statement (EIS).

The final decision on an impact assessed development is to be made by the Minister, based upon an EIS undertaken in accordance with directions of the commission. An EIS will be scalable based upon the level of detail required by the commission. As part of the EIS process, the following will apply:

- There must be consultation with the Environment Protection Authority and other government agencies.

- Consultation will be undertaken with councils and members of the public.
- The Commission will prepare an assessment report to inform the Minister's decision.
- The Minister's decision will be subject to judicial but not merit review.

These steps mirror provisions in the current Act, with the exception of the existing privative clause intended to preclude judicial review—which is to be repealed. This exclusion will respond to case law and enable the state to align with federal environmental laws.

In line with the previous Act, there are no applicant or third party appeals against the Minister's decision in the new Act.

For the purposes of section 111(2)(a) of the Act, a relevant authority must ensure that all relevant documentation (including the application and any accompanying documentation or information lodged by the proponent with the relevant authority) is available to the Minister via the PlanSA portal:

- In a case where section 108(1)(b) of the Act applies—within five business days after being requested to do so by the Minister.
- In a case where section 108(1)(c) of the Act applies—within five business days after the notice is published on the PlanSA portal.

A relevant authority must, at the time that documents are provided to the Minister under also transmit to the Minister any fees that have been paid by the proponent under the Planning, Development and Infrastructure (Fees, Charges and Contributions) (Miscellaneous) Variation Regulations 2020 (less any amount that the Minister determines should be retained by the relevant authority).

Where to look:

Act: Section 110, 111
Regulations: Regulation 68

Land Division

Under the new Act, relevant authorities will now be responsible for the lodgement of land division applications and the administrative tasks of the assessment including the issuing of referrals and the collection of fees. In regards to the assessment of land division application there is some changes to the assessment time frames.

A development approval involving land division will usually be comprised of only two consents: the planning consent and a land division consent for the statement of requirements. The planning consent signifies that a land division has been assessed in relation to the Code. The land division consents refer to two different statements of requirements: one in relation to the division of land into allotments, the other in relation to the division of land by strata plan.

Advice from Commission

If an application relates to a proposed development that involves the division of land, the relevant authority must not, make a decision on the application until it has received a report from the Commission in relation to the matters under section 102(1).

If a report is not received from the Commission within 20 business days from the day on which the application is lodged under regulation 29 or within such longer period as the Commission may require by notice to the relevant authority, it may presume that the Commission does not desire to make a report.

A notice may be given via the PlanSA portal or by other means deemed appropriate by the Commission.

The Commission may, in relation to an application which relates to a proposed development involving the division of land, consult with any other agency and may impose a time limit of 20 business days for a response from that agency.

Making the Decision

In making a decision in relation to a proposed division of land —the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under this Act):

- requirements set out in the Code are satisfied
- any relevant requirements set out in a design standard has been satisfied
- the requirements of a water industry entity under the Water Industry Act 2012 identified under the regulations relating to the provision of water supply and sewerage services are satisfied
- where land is to be vested in a council or other authority—the council or authority consents to the vesting
- any other requirements set out in regulations are satisfied.

In relation to a division of land under the *Community Titles Act 1996* or the *Strata Titles Act 1988*—the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under this Act):

- requirements set out in the Code are satisfied
- any relevant requirements set out in a design standard has been satisfied
- any encroachment of a lot or unit over other land is acceptable having regard to any provision made by the Code or a design standard
- where land is to be vested in a council or other authority—the council or authority consents to the vesting
- a building or item intended to establish a boundary (or part of a boundary) of a lot or lots or a unit or units is appropriate for that purpose
- the division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 is appropriate having regard to the nature and extent of the common property that would be established by the relevant scheme
- the requirements of a water industry entity under the Water Industry Act 2012 identified under the regulations relating to the provision of water supply and sewerage services are satisfied
- any building situated on the land complies with the building rules
- requirements set out in the regulations made for the purposes of this provision are satisfied.

The decision notification form for the development approval will need to contain:

- any conditions and notes (where applicable) resulting from the assessment of the proposal against the Code
- a statement of requirements (where applicable) from the relevant authority in relation to a land division consent.

Notification of decision

If a relevant authority (other than the Commission) issues a development authorisation in relation to development which involves (wholly or in part) a proposed division of land, the relevant authority must provide a copy of its notice of the decision to the Commission via the PlanSA portal within five business days after the notice is given to the applicant.

Where to look:

Act: Section 102
Regulations: Regulations 75, 76

Land Division Requirements

Open Space contribution scheme

If the plan of division is dividing land into more than twenty allotments (including by community title) and one or more of the allotments is smaller than one hectare in area, the relevant authority shall, at its discretion, either:

- require up to 12.5 per cent of the land being divided to be vested in the relevant council as open space (if the land is outside of a council area and the Commission is the relevant authority, the land becomes Crown land)
- require a once–only monetary contribution for each new allotment not exceeding one hectare in area
- require a combination of part land and part money to develop land as open space in accordance with the following formula:

$$P = \frac{PC\ [(12.5 - OS) \times NA]}{12.5}$$

Where:

P = the contribution payable

PC = the prescribed contribution in respect of open space

OS = the area of land (expressed as a percentage of the land delineated on the plan of division) to be vested in the council or the Crown as open space.

NA = the number of new allotments delineated on the plan of division that do not exceed one hectare in area.

The relevant authority has full discretion as to land or a contribution, except that a council must require land as reserve where the Code delineates reserve, unless the council and the Commission agree otherwise. However, if land is to be vested in a council that council must consent to the vesting.

The monetary contribution for each new allotment is set out in Section 198 of the Act. This contribution may be varied by the Minister, on advice from the Valuer General and by notice in the SA Government Gazette, in proportion to the average variation in the market value of land during the previous financial year. This ensures the real value of such contributions does not decline through the passage of time.

Money received by a council under this provision (Section 198) is to be paid into a council trust fund for use in acquiring and developing land as open space.

If all allotments are more than one hectare in size, no open space requirement applies but if twenty allotments or less are proposed, the Commission may require a monetary contribution instead of open space or, if the council agrees, accept land in accordance with the above formula to vest in council as reserve. Money paid under these circumstances is paid into the Planning and Development Fund administered by the Minister for the purposes set out in Section 195 of the Act.

In the case of a strata plan under the Strata Tiles Act or Community Titles Act, the Commission will require the applicant to pay a monetary contribution for each unit shown on the plan of division. The monetary contribution for each unit is the same amount as for each new allotment as set out in Section 198 of the Act. Also, the Minister may vary the amount in accordance with land value movement as described above.

Where to look:

Act: Section 198
Regulations: Regulation 89

Water supply and sewage disposal

The relevant authority must ensure water supply and sewage disposal facilities and easements are satisfactory. Generally, these requirements will be determined by the SA Water Corporation.

Electricity supply and underground mains

A council must ensure electricity supply details are satisfactory and the supply is to be installed in accordance with recognised engineering practice. A council has the authority to declare an area of land as an ‘underground mains area’. Before making the declaration it must consult the relevant electricity authority responsible for distribution of electricity in the area.

If the land concerned is the subject of a current application for land division, at the time the council decides to consult the electricity authority, the authority has up to eight weeks to provide a report to the council. If no report is forwarded to the council by the electricity authority within the statutory period, the council may presume that the authority has no report to make.

Even if an area becomes affected by such a declaration after a development application involving land division over the land has been lodged, the relevant authority can impose a condition on its decision on the application requiring any electricity mains to be laid underground.

Roads and drainage

A council must ensure that the construction of roads, bridges, drains and services are satisfactory and meet with the requirements of the regulations.

Condition of building

When a proposal is for a community title division, the council must ensure the building containing the proposed units complies with the fire resistance requirements of the Building Code. Furthermore, a council must be satisfied that each unit is appropriate for separate occupation.

Where to look:

Regulations: Regulation 77, 79, 81, 82, 83, 84

Land Division Certificate

A land division certificate is required in relation to a development that involves the division of land under this Act.

A certificate can be issued once the Commission is satisfied that the prescribed conditions have been satisfied, or that the applicant has, by virtue of an entitlement under the regulations, entered into a binding agreement, supported by adequate security and, if the regulations so require, in a form prescribed by the regulations, for the satisfaction of any such condition.

The Commission must consider the advice of any prescribed bodies in relation to the satisfaction of the land division requirements being met. These may include local matters such as roads, storm water drainage and recreation reserves.

Before the Commission issues a certificate it may require the applicant, the council for the area in which the land is situated (if any), or any other person or body, to furnish it with appropriate information as to compliance with a particular condition, or to comply with any requirement prescribed by the regulations.

The Commission must, as soon as practicable after issuing a certificate that relates to land within the area of a council, furnish the council with such information as the regulations may require.

In accordance with the Act, a certificate in respect of the division of land is not required if the division comprises a lease or licence to occupy part only of an allotment. Note - A certificate is also not required in a case involving a Crown development approved by the Minister under section 131 of the Act (see section 131(24)).

Binding Agreements

The Regulations allow the Commission and prescribed bodies to enter into binding arrangements with the applicant to allow a land division certificate to be issued before all of the land division requirements are completed.

The Commission can agree to binding arrangements with the applicant on the completion of the land division requirements that may include:

- formation of a roadway
- construction, paving and sealing of a roadway
- construction of any bridge, culvert or underground drain or inlet
- construction of any footpath, water table, kerbing, or drain
- any works associated with a strata plan.

The water authority can agree to binding arrangements with the applicant in relation to the provision of water supply and sewerage services where they have been listed as land division requirements.

Where the provision of electrical services is listed as a land division requirement, and the requirement has not been fully satisfied, the applicant can agree to binding arrangements with electricity authority.

A document approved by the Minister for the purposes of this regulation by notice published on the PlanSA portal (and any alterations or amendments to any such document approved by the Minister from time to time by notice published on the PlanSA portal) is recognised as a model for binding arrangements, be taken to be a sufficient agreement, and to provide adequate security, for the purposes of section 138(1) of the Act in its applications to the division of the land.

Where to look:

Act: Section 138

Regulations: Regulation 87, 89

Building Consent – Private Certification

Private certification is the process that enables assessment of an application involving proposed building work against the building rules by an appropriately qualified person instead of the relevant authority.

A key element of the new Act is the creation of a new head of power for the Minister to establish a professional accreditation scheme that will lift the performance of, and improve confidence in, professionals undertaking functions across the planning system.

A person holding accreditation will be known as an 'accredited professional' and will be able to undertake assessment functions prescribed by regulation. It is envisaged this will see a substantial increase in the use of privately contracted professionals to certify deemed-to-satisfy applications, reducing costs for councils and time delays for applicants. At the same time, assessment panels will consist of accredited professionals able to objectively apply their relevant skills and knowledge to the decision making process.

The accreditation scheme itself will be administered by the Commissioner for Consumer Affairs, as the state's primary occupational licensing regulator. The scheme, to be created by regulations, will have the capacity to enable peak professional bodies to undertake accreditation of their members directly, under the supervision of the Commissioner.

The Act requires the Minister to develop the details of the accreditation scheme in association with the Commissioner. By providing an independent registration authority, this approach will help address the recommendations of the House of Assembly select committee into private certification.

The new accreditation scheme will:

- allow for different classes of accreditation based on professional qualifications and standing
- specify ongoing training requirements linked to periodic renewal of accreditation
- require the holding of professional indemnity insurance
- include arrangements for regular auditing of accredited professionals
- provide grounds for suspension or cancellation of accreditation
- enable provision of accreditation by peak professional groups, subject to appropriate cost recovery arrangements.

Related to their accreditation, professionals will be subject to statutory duties that regulate their behaviour and ensure they are obliged to act ethically and in the public interest. Codes of conduct will govern issues in more detail, such as when a conflict of interest should preclude a professional from acting as a relevant authority. To assist in ensuring an adequate pool of panel members is available to serve in regional areas, the scheme will include simplified provisions for 'basic' panel membership.

Action by a private certifier

A private certifier must notify the relevant authority as soon as practicable after being engaged to perform any of the authorised functions listed in the regulations.

When a private certifier makes a decision to grant a building rules consent in relation to building work they must:

- notify the relevant authority in writing of the decision

- if required, present evidence to the relevant authority that he or she holds a current Certificate of Registration
- provide the relevant authority with:
    - endorsed copies of the plans, drawings and technical details forming the application
    - if relevant, a list of the schedule of essential safety provisions in the appropriate form
    - a certificate that the building consent is consistent with the planning consent and any applicable conditions and notes (if such consent is relevant).

When an applicant engages a private certifier, a relevant authority must accept the building rules consent granted by the certifier. If all other consents have been granted, once a relevant authority has been notified in writing of the decision to grant a building rules consent, it cannot refuse or delay the issuing of a development approval.

The decision of a private certifier in relation to an assessment against the building rules is subject to appeal to the Environment, Resources and Development Court in the same manner as a decision by a council or the Commission. Alternatively, if a private certifier refuses an application for building consent the applicant may submit a new application to the relevant council.

Where to look:

Act: Part 6, Division 4 and Schedule 3
Regulations: Regulation 25

Certificate of Building Works

On any application involving a building rules consent, the relevant authority or building certifier (if engaged):

- cannot grant a building consent until it has seen evidence of payment of the levy or that no levy is payable under the *Construction Industry Training Fund Act 1993*.
- must obtain from the landowner a certificate of building indemnity insurance for domestic building work.

A person must not commence domestic building work unless a certificate of insurance has been supplied to the relevant authority. A certificate of insurance for domestic building work ensures the owner has protection against:

- non–completion of the work by the builder
- failure by the builder to rectify faulty work
- disappearance or death of the builder
- bankruptcy of the builder.

Where to look:

Regulations: Regulation 36

Consultation

In the interests of public safety, specific classifications of buildings may require the provision of fire detection and control devices. A relevant authority must refer proposals for building work to the fire authority:

- where the proposal incorporates fire–safety devices which do not comply with the building rules or at variance with a performance requirement
- the relevant authority considers special fire fighting problems could arise of a kind described in Section E of the Building Code
- the site is subject to a bushfire risk as described in Regulation 45.

In such cases a relevant authority must refer the application for building work to the fire authority and must not make its decision on the application until it has given consideration to the report of the fire authority. If the fire authority, after being consulted by the relevant authority, has not provided its report to it within 20 business days from the time the consultation request was made, the relevant authority may assume there is no report to make and proceed to make a decision on the building consent.

Where to look:

Regulations: Regulation 45

Making the Decision – Building Consent

Where a proposed development complies with the building rules, a relevant authority must grant building consent. The consent may be issued subject to certain conditions in accordance with the regulations.

In the case of a proposed development that seeks a variation of the building rules, a relevant authority may agree to a modification in the application of the rules only when one or more conditions in Section 118(2) of the Act are satisfied.

In the case of a State Heritage Place or a Local Heritage Place, where there may be an inconsistency with the relevant development plan, a relevant authority may modify the application of the building rules but must also ensure safety standards are ‘as good as can reasonably be achieved in the circumstances’. The Act provides liability protection is such circumstances.

A relevant authority must seek and consider the advice of the Commission before imposing or agreeing to a requirement for state or local heritage places that would be at variance with the performance requirements of the Building Code or a Ministerial building standard.

Essential Safety Provisions

Where applicable, when making its decision on an application for development, a relevant authority must issue a list of:

- essential safety provisions for the building or structure that are required to be maintained
- requirements for maintenance and testing in regard to each of the safety provisions.

The list of safety provisions must be issued on a copy of the form located on the PlanSA portal - Schedule_of_essential_safety_provisions Form.

A Ministerial Building Standard on Maintaining the performance of essential safety provisions (MBS 002) is also available on the Portal. This Standard may assist in determining applicable ESPs - MBS 002 - Maintaining the performance of essential safety provisions

Assignment of a building classification

When granting a building consent to a proposed development, a relevant authority must assign a classification for the whole of or the parts of buildings and/or structures comprising the development. The building classification(s) given by a relevant authority must be filled out on the decision notification form.

The classification helps to determine the requirements for fire safety, weatherproofing, sanitary facilities, room sizes and other matters. The assignment of a building classification is not applicable to development owned, occupied or carried out by the Crown, its agencies or instrumentalities.

The owner of a building must not permit the building to be occupied unless the building is constructed, maintained and operated in accordance with the classification appropriate to its use.

Where to look:

Act: Section 118, 151
Regulations: Regulation 94

Commencement and Completion of Building Work

Notification of Building Work

Following the receipt of development approval, a person can make arrangements to commence the building work. Before commencing building work, a person must give a council:

- one business day'' notice of the intended commencement of the building work (mandatory)

Further notifications are then required throughout and at the completion of construction, including:

- one business day's notice of the intended completion of the building work (mandatory)
- one (within Metropolitan Adelaide) or two (outside Metropolitan Adelaide) business day's of the of the intended commencement of any stage of building as specified by the council
- One business day's notice of the intended completion of any stage of building work specified by the council
- One business day's notice of the intended commencement of the installation of a designated building product on a designated building (if applicable)

All required notifications will be set out on the final decision notification form issued by council.

The appropriate method for giving notice to a council is by:

- notice via the PlanSA portal
- telephone or email, using the main telephone number or email address (as the case may be) of the council
- by leaving a written notice with a duly authorised officer of the council.

Action by a council

Following receipt of a notice that building work is about to commence, the first step by a council must be to verify the development approval has not lapsed.

The builder must then continue to provide the required notifications throughout construction as set out on the decision notification form. Councils are then responsible for receiving and entering (if received by phone, email or notice) any notification received by the builder during and at the completion of construction.

A builder must stop work, if directed to do so by a council, when a mandatory notification stage has been reached, pending an inspection. Any such inspection must be carried out within 24 hours.

Where to look:

Act: Section 146(1)
Regulations: Regulation 93

Completion of Building Work

Application for certificate of occupancy

A certificate of occupancy may be issued either by a council or the building certifier who issued the building consent for that building. A certificate of occupancy is required for all building classes except for Class 10 buildings under the Building Code.

The entity responsible for issuing the certificate of occupancy will be set out on the decision notification form when final development approval is issued.

When approved building work has been completed the owner must apply for a certificate of occupancy to be issued by the entity identified on the decision notification form.
Link here - Certificate of Occupancy Form.

It is an offence to occupy a building without a certificate of occupancy for any building that requires on under the Act. A certificate of occupancy can apply to part or all of a building and may be required for an extension or addition, at the discretion of the relevant authority issuing the building rules consent.

A council or building certifier may also require the owner of the completed building work to provide specific documentation to support the application for a certificate. This may include:

- the fee prescribed by Fees Regulations
- a written statement by the licensed building work that the building work has been carried out in accordance with the development approval (Statement of Compliance), along with any other documentation specified as required at approval stage (see Regulation 57(8)(c))
- a written statement by the contractor that the infrastructure connections have been carried out in accordance with the requirements of the various public utilities
- a statement from the fire authority confirming they have been installed and operate satisfactorily (if specific fire safety facilities are required)
- a certificate of compliance for each of the provisions notified in the form contained in Schedule 16 of the Regulations and endorsed by the installer, and a plan showing the location of each of the essential safety provisions which have been installed (if essential safety provisions are required).

Where there is no licensed building work contractor, the written statement that is required to be submitted prior to issuing a certificate of occupancy must be signed by a registered building work supervisor or building certifier.

In the above, if there is no licensed builder, then a person must prepare a written statement with the prescribed qualifications listed in Regulation 87(5).

Following receipt of all of the documentation it has requested, a council has five business days in which to make its decision on the application. The Certificate of Occupancy will be issued by the Plan SA portal.

After the decision

On making its decision to approve or refuse the request for a certificate of occupancy, a council must:

- in the case of approval, notify the applicant in writing
- in the case of refusal:
    - notify the applicant in writing
    - advise of the reasons for the decision
    - advise the applicant of the right of appeal and the time within which an appeal has to be commenced.

Inspection policies

The Commission must issue a practice direction that will require councils to carry out inspections of development undertaken in their respective areas. A council must comply with the requirements of the practice direction as they relate to the council.

Councils undertake inspections in accordance with two approved practice directions: Practice Direction 8 in relation to swimming pools (section 156) and Practice Direction 9 in relation to all other building classes (section 144). This requirement gives the community a clear understanding of the role a council will play in checking ongoing compliance.

Revocation of certificate of occupancy

A council can revoke a certificate of occupancy where:

- a request has been made for the issue of a certificate of occupancy on a building and there is an existing certificate for that building or any part of that building
- the owner of the building has failed to show that the essential safety provisions of the building have been regularly maintained and tested as required by Regulations 94(7) and 103(7).

Where to look:

Act: Section 144, 152, 156
Regulations: Regulation 87(5), 103

Advertisements

Approval for outdoor advertisements

The erection or alteration of advertising structures and signs is defined as development, and as a result these may require development approval. A number of advertisements are listed as not being development. These are set out in Schedule 4 of the Regulations and do not need development approval.

The definition of development can include commencing the display of an advertisement not involving any structural work (e.g. the painting or sticking of an advertisement on a window or a wall). Therefore, unless the relevant authority is of the opinion that the display of a particular advertisement is exempt from the definition of development, development approval is necessary for the display of the advertisement. However, the replacement or renewal of advertisements on existing buildings or structures does not involve seeking a separate development approval as it is only the commencement of the display of an advertisement that may be considered as development.

Licences

The new Act states that where a development approval is given under the Act for an outdoor advertisement, no further licence or other authorisation is required under the *Local Government Act 1999* or the *Local Government (Elections) Act 1999*.

This means that the new Act must be used to control the erection of new advertising hoardings and the commencement of advertisement display. Licensing under the Local Government Act will be confined to the renewal of licences for advertisement hoardings existing when the new Act commenced and the licensing of the display of new advertisements that do not require development approval.

Removal of existing advertisements

The Act, (together with the Local Government Act), empowers a council or the Commission to remove or take down advertisements or advertising hoardings that, in its opinion:

- disfigures the natural beauty of the locality or otherwise detract from the amenity of the locality
- is contrary to the character desired for the locality under the Planning and Design Code.

The council or the Commission may serve a notice on the person using the advertisement, or the owner or occupier of the land, ordering the advertisement hoarding to be removed or the advertisement obliterated within a period specified on the notice. This period should not be less than one month.

However, no notice may be served if the advertisement is:

- authorised under the Local Government Act or the Local Government (Elections) Act
- required under some other legislation
- an advertisement for the sale or lease of the land on which the advertisement is situated.

Appeal provisions

The person on whom the notice is served may, within one month of service of the notice or such longer period as the Environment, Resources and Development Court may allow, appeal to the court, which may make such order or direction as it sees fit.

Failure to remove the advertisement

Where a person receives a notice and fails to remove the advertisement within the period specified, the relevant authority may carry out the requirements of the notice and recover the cost as a debt from the person on whom the notice was served. In addition, the person on whom the notice was served shall be guilty of an offence and liable to a penalty.

Granting approval to an advertisement

The Act enables the relevant authority to grant approval to an advertising hoarding subject to such conditions as it thinks fit to impose. Conditions concerning the maintenance, use and removal of the structure are particularly important, as the relevant authority will not be able to withhold the issue of a licence under the Local Government Act.

The relevant authority must give reasons on its decision notification form for imposing conditions. The reasons would usually be to prevent the advertisement hoarding from disfiguring the natural beauty of the locality, or detracting from the amenity of the locality and to prevent the land being used permanently for an advertising hoarding.

The policy that the relevant authority must have regard to when making decisions on individual applications is contained in the Code. That document sets out provisions and policies for regions and local areas.

Where to look:

Act: Section 231

Land Management Agreements

Existing provisions relating to land management agreements have been migrated into the Act from the current Act with minor adjustments to provide that the validity of an agreement is no longer dependant on its inclusion on a register in accordance with the regulations, but retain the provision that the agreement is of no force or effect until noted on the title of the property.

The Act empowers designated authority (Minister, council) to enter into a Land Management Agreement (LMA), relating to the development, management, preservation, or conservation of land, with the owner of the land.

An LMA can be particularly relevant to the preservation or conservation of indigenous vegetation cover that may be of scientific or historic significance or for walking trails or other public interest issues applying to the management of private land.

A designated authority must, in considering whether to enter into an agreement under this section have regard to—

- the provisions of the Code and to any relevant development authorisation under this Act
- the principle that entering into of an agreement under this section by the designated authority should not be used as a substitute to proceeding with an amendment to the Planning and Design Code under this Act.

In the case of a traditional LMA under s192, Regulation 110 provides that such LMAs must be provided to the Minister within 20 business days and that the Chief Executive of the Department must then ensure that the LMA is entered in the PlanSA portal within 10 business days. It is only in the case of a s193 LMA that Regulation 111 requires a council to establish its own and independent register of these LMAs.

Where to look:

Act: Section 192, 193
Regulations: 110, 111

Appeals and Enforcement

The Environment Resources and development Court

The *Environment, Resources and Development Court Act 1993* establishes the Environment Resources and Development Court to hear:

- appeals against decisions of a relevant authority on proposals for development

- enforcement proceedings initiated by either a relevant authority or private individuals and bodies
- proceedings brought under other legislation such as the *Environment Protection Act 1993* and the *Heritage Act 1993*.

As part of the judiciary, the court is independent of the Minister, the Commission and councils.

The court comprises:

- a Presiding Member, who is a Judge of the District Court and is responsible for the administration of the court
- other judges as required
- a number of magistrates
- a Master of the Court
- a number of Commissioners with experience in a range of disciplines relevant to the administration of the new Act
    - a Commissioner with the appropriate knowledge and experience may, for example, act as a building referee for the purpose of resolving a dispute relating to the building rules.

The court also has a Registrar, an Assistant Registrar and administrative and ancillary staff. It has public offices and courtrooms in Adelaide. However, appeals and enforcement proceedings involving development in country areas are usually held near the site.

Who can appeal?

Under the current Act, reviews of development authorisation decisions are made by the Environment, Resources and Development (ERD) Court through formal pre-hearing conferences or hearings.

The new Act will provide alternative options additional to this. Applicants will be able to apply for a review of an assessment manager's decision by the relevant assessment panel. A desktop review option will also be available from the court.

The court may hear the following matters:

- The owner of any land constituting a place that has been designated in the Planning and Design Code as a place of local heritage value may appeal to the court against the decision to make the designation.
- An appeal by a person (who has applied for a development approval) in respect of a prescribed matter, to the court against a decision of the assessment panel.
- An appeal by a third party (who has been given notice of the decision) against the decision under Section 110(6) in respect of development classified as restricted development by the Planning and Design Code may appeal to the court against the decision.
- An appeal by a person who has applied for a certificate of occupancy or an approval to occupy a building on a temporary basis against a refusal.
- An appeal by a person who has been served with any order for the completion of work.
- An appeal by a person in relation to matters under Part 11 (Building activity and use – special provisions) of the Act.
- An appeal by a person in dispute over the building rules and:
    - their effect
    - the manner in which they ought to be carried into effect
    - their modification

- their satisfaction
- the construction of a party wall and the apportionment of costs.

Appeal applications to Assessment Panel

An applicant who disagrees with the outcome of a development application that was assessed by an assessment manager can take the application to the assessment panel to review the decision.

The application must be made in the prescribed manner and form and must be made within one month after the applicant received notice of the decision constituting the prescribed matter, unless the assessment panel allows and extension of time. Link here for application form - Application to Assessment Panel.

An assessment panel may:

- affirm the decision being reviewed
- vary the decision being reviewed
- set aside the decision being reviewed and substitute its own decision.

Any decision of an assessment panel will then have effect according to its terms.

Applicant appeals

A person who applies for a development approval and disagrees with the decision of the relevant authority may appeal.

This appeal may be either against:

- a refusal to grant a development approval
- conditions attached to a development approval.

The appeal will be against the relevant authority that made the decision. If an applicant disagrees with a decision of the relevant authority, they may lodge an appeal with the court within two months from the day on which they were notified of the decision. The court may allow additional time for lodgement of appeals, but only in exceptional circumstances.

Where to look:

Act: Section 202, 203

Third party appeals - Restricted Development

Where the Commission has given public notification with regards to a Restricted Development, any person may lodge written representations or comments to the Commission within the period specified in the notice.

The Commission must notify all persons who made representations on the proposal of its decision and of the date of the decision. Any person who made representations and received notice of the decision and disagrees with the decision may appeal to the court. The appeal must be lodged within 15 business days from the date of the decision of the relevant authority.

There is no provision for late appeals, except if the court, in its discretion, determines there is some extraordinary reason. A development approval or a planning consent given to an applicant does not take effect until the time for instituting an appeal by a third party has expired, or until any appeal under these circumstances has been determined.

Where to look:

Act: Section 110(6),(7)

Commercial Competitive Advantage

A person who participates in, or supports proceedings before a court must disclose any commercial competitive interest (Commercial competitive interest form). If a development proceeds despite opposition from persons with commercial competitive interest, the proponent can apply to the court for damages due to delays to the development to obtain commercial benefit.

The court in considering such loss must satisfy itself that the defendant's sole purpose in initiating the appeal was to prevent development to obtain commercial benefit.

Where to look:

Act: Section 207

Occupancy appeals

A person who applies for a certificate of occupancy for a building or approval to occupy a building on a temporary basis without a certificate of occupancy and disagrees with the decision of the relevant authority may appeal.

This appeal may be:

- against the refusal to issue a certificate of occupancy for a part or all of a building
- to obtain approval for temporary occupation of a building.

If an applicant disagrees with the decision of the relevant authority, they may lodge an appeal with the court within 28 days from the day on which they were notified of the decision. The court may allow additional time for the lodgement of appeals.

Completion of work appeal

Where a person has received a development approval and has legally commenced but not fully completed the work related to the approval within the prescribed time period, the relevant authority may, by notice, require the outstanding work to be completed. A person who receives such a notice may appeal against either:

- the requirement to carry out specific work in order to fully complete the development
- the time period specified by the relevant authority in which the work is to be carried out.

If an applicant disagrees with the notice issued by the relevant authority they may lodge an appeal with the court within 14 days from the day on which the relevant authority issued the notice. The court may allow additional time for the lodgement of appeals.

Where to look:

Act: Section 142, 152, 153

Contravening development appeal (Civil Enforcement)

If a person:

- undertakes work on a development in breach of a condition or conditions of the development approval
- undertakes work on a development in breach of the approved plans and specifications

- undertakes development without approval.

The relevant authority may, by notice, require the person to take any action necessary to correct the breach.

A person who receives such a notice may lodge an appeal with the court within 14 days from the day on which the relevant authority issued the notice. The court may allow additional time for the lodgement of appeals.

Emergency order appeals

Where the owner of a building has received notice of an emergency order from a relevant authority to do one or more of the following things:

- evacuate the building or land
- carry out building or other work
- not carry out a specific activity or to cease a specific activity.

The owner may appeal to the court against the requirements of the order. An appeal must be lodged with the court within 14 days from the day on which the notice was issued. The court may allow additional time for the lodgement of appeals.

Where to look:

Act: Section 155, 213

Lodging Appeals

An application to the court must be made in a manner and form determined by the court, setting out the grounds of the application, and, unless otherwise specifically provided under another provision of this Act, must be made within two months after the applicant receives notice of the decision to which the application relates unless the court, in its discretion, allows an extension of time.

A notice of appeal is to state, as briefly as practicable, a statement of matters leading up to the appeal, the grounds for the appeal and the detailed location of the land affected. The notice of appeal must be signed by the applicant(s) for approval or consent or, in the case of third parties, by the objector, an attorney under power or a solicitor or other representative. In the case of a company or incorporated body, the common seal must be affixed.

Where to look:

Act: Section 204

Building Referees

Special provision relating to building referees

The Act provides that a building dispute may be referred directly to a building referee for resolution. Such a referee can hear the matter, inspect the site where relevant, and issue appropriate orders. Such an order will take the place of a hearing and will be binding on the parties.

Where to look:

Act: Section 206

Incomplete Development and Enforcement

The Act provides for a range of new sanctions designed to improve compliance and provide greater deterrence to potential offenders.

Existing rights of civil enforcement (including by third parties) are continued, with power to enable the court to make various orders including payment of compensation for losses or damages incurred.

In addition to existing penalties and order-making powers carried over from the current Act, new enforcement options and penalties include:

- enforceable voluntary undertakings
- adverse publicity orders
- orders for recovery of economic benefit
- corporate multiplier penalties and directorial liability.

The commission will also have the ability to substitute civil penalties in lieu of criminal penalties.

Court proceedings

When a person or body contravenes the Act by commencing work in accordance with a development approval but fails to substantially complete that development within the prescribed time for the lapse of the development approval, the relevant authority may apply to the court for an order. In this case the relevant authority will be the council or Commission, but where the Governor has approved the development the relevant authority includes the Minister.

In the event that the work has been substantially but not fully completed within the prescribed time for the lapse of the development approval, the relevant authority can, by written notice, require the owner of the land to complete the development within a specified time. If the owner fails to carry out the work as required by the notice the relevant authority can arrange for it to be done. It can also recover any costs and expenses reasonably incurred as a debt due from the owner.

A person who is served with such a notice by a relevant authority can appeal to the court.

Application

Where the relevant authority for the order lodges an application, the court is required to give those persons who have an interest in the matter a reasonable opportunity to be heard at the hearing of the application by the relevant authority. Such persons may include:

- the applicant
- any owner or occupier of the land
- any other person who is able to satisfy the court they have a material interest in the proceedings.

The order

If, after the hearing, the court is satisfied that there has been a contravention of the Act, it may issue an order. This order is a direction of the court to the respondent and may:

- require the respondent to remove or demolish any building
- require the respondent to remove all structures and restore the land, as far as is practicable, to its condition before commencement of the development
- extend the period within which the development may be completed

- require any other work considered appropriate to the application

Any person who fails to comply with such an order is guilty of an offence with a maximum penalty (the court may also impose an additional penalty for default). In addition, the relevant authority may, with approval from the court, carry out any works required by an order and recover the costs of the works as a debt from the respondent.

Where to look:

Act: Section 141, 142

Development

If a person or body contravenes, or threatens to contravene, the Act, the relevant authority or any other person can take action to try to remedy or restrain a breach.

The relevant authority is empowered to direct a person to refrain from the act or course of action that constitutes the breach or to make good any breach. Such directions can be made by the relevant authority in the form of a written notice or, if the direction is required to be given urgently, orally by an authorised officer. In the latter situation, the oral direction must be confirmed in writing by 5pm on the following business day. The relevant authority can only give a direction if the breach has occurred within the previous 12 months.

The relevant authority can specify in the direction a time period for restraint or for remedying the breach. A person can appeal to the court against such a direction made by a relevant authority. Not withstanding an appeal, a direction remains operative pending the outcome of the appeal.

Application

Any person may apply to the court for an order to remedy or restrain a breach of this Act or a repealed Act (whether or not any right of that person has been or may be infringed by or as a consequence of that breach).

The application for an order may be made ‘ex parte’. This means the court can hear the application without the presence of the person alleged to have committed the contravention (that person is called the respondent). If the court decides there is a case to answer, it will summon the person to appear and present reasons as to why the order should not be made.

The court must first convene a conference between the applicant and the respondent and any other person who it decides has a proper interest in the matter to explore any possible resolution of the conflict.

Following the conference, the court may decide to issue an order or allow the respondent to make an application for development approval in order to remedy the breach.

The order, which is a direction of the court, may:

- require the respondent to refrain, either temporarily or permanently, from continuing the breach
- require the respondent to make good the breach within a specific period
- cancel or vary any development approval
- require the respondent to pay compensation to any person who has suffered as a result of the breach
- require the respondent to pay exemplary damages.

The court may make an interim order.

Timing

Proceedings may be commenced at any time within three years of the date of the alleged contravention or at any later time with the agreement of the Attorney-General.

Where to look:

Act: Section 213, 214

For more information visit

plan.sa.gov.au

Government of South Australia
Department for Trade
and Investment