



DRAFT FOR CONSULTATION – 21/10/19

This practice direction is issued by the State Planning Commission under section 42 of the *Planning, Development and Infrastructure Act 2016* for the purposes of section 144 to require certain councils to carry out inspections of certain developments in their respective areas.

Introduction

Section 144 of the Act requires the Commission to issue a practice direction that requires councils to carry out inspections of development in their respective areas. A separate practice direction has been issued in relation to inspections of developments not within an area of a council.

Section 156 of the Act the Commission may also issue a practice direction that requires councils to carry out inspections of swimming pools and associated buildings to ascertain compliance with safety requirements. This practice direction has been issued separately.

In issuing this direction, the Commission has taken into account the matters set out in section 144(3) of the Act. These are:

- (a) the financial and other resources of councils;
- (b) the impact that a failure to inspect a certain number of developments over a period of time may have on local communities;
- (c) the various sizes of the areas of councils and differences in population;
- (d) the amount of development undertaken in the various areas of the State;
- (e) the type of development that predominates in the various areas of the State;
- (f) in relation to building work, building conditions in the various areas of the State; and
- (g) the public interest in ensuring that development is undertaken in accordance with the requirements of this Act.

While the Act envisages that the Commission may require councils to carry out inspections relating to 'development', as that term is defined in the Act, more broadly, this practice direction is limited to mandating inspections directed towards securing the objects stated in clause 3 of Part 1 of this practice direction.

The public interest in protecting public safety and in maintaining confidence and integrity in the development control system within the State has been balanced against other matters outlined in s 144(3).

The Commission has sought to identify the risks posed by certain building types. This practice direction reflects the Commission's view that the risks associated with certain buildings, particularly in relation to safety, including, for example fire protection and other safety features, should be treated equally irrespective of where they are constructed in the State and that this approach reflects community expectations.

Associated with the above, while this practice direction mandates certain inspections, councils should continue to appropriately address broader compliance issues, whether these are detected during an inspection that is required under this practice direction or otherwise.

This may include inspections related to planning consent matters, which councils may choose to undertake through a separate council policy or on an as-needs basis.

Practice direction

Part 1 – Preliminary

1 – Citation

This practice direction may be cited as the *State Planning Commission Practice Direction (Council Inspection Policies) 2019*.

2 – Commencement of operation

This practice direction will come into operation on the day on which it is published on the SA Planning Portal.

3 – Objects of practice direction

The objects of this practice direction are to, in relation to areas within a council, require councils to undertake inspections so as to:

- (a) provide for occupant and public safety; and
- (b) maintain confidence and integrity in the development control system.

4 – Interpretation

- (1) In this practice direction, unless the contrary intention appears –

Act means the *Planning, Development and Infrastructure Act 2016*;

Accredited Professionals Regulations means the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*;

authorised officer has the same meaning as within section 3(1) of the Act;

balustrade means a barrier to prevent falls;

Building Code has the same meaning as within section 3(1) of the Act;

Building Rules has the same meaning as within section 3(1) of the Act;

building work has the same meaning as within section 3(1) of the Act;

Note: building work includes any work or activity that results in a change to the classification of a building under regulation 3E of the Regulations.

Chief Executive has the same meaning as within section 3(1) of the Act;

construct has the same meaning as within section 3(1) of the Act, and **construction** has a corresponding meaning;

council has the same meaning as within section 3(1) of the Act;

designated building product has the same meaning as within regulation 3(1) of the Regulations;

farm buildings and farm sheds have the same meaning as within the Building Rules;

fire authority has the same meaning as within section 3(1) of the Act;

floor area has the same meaning as within the Building Rules;

performance solution means a performance solution under the Building Code;

private bushfire shelter has the same meaning as within regulation 3(1) of the Regulations; and

Regulations means the *Planning, Development and Infrastructure (General) Regulations 2017*.

Note: The terms above have been included merely for ease of reference. Section 14 of the Acts Interpretation Act 1915 provides that an expression used in an instrument made under an Act has, unless the contrary intention appears, the same meaning as in the Act under which the instrument was made.

Part 2 – Inspection Policy

1 – Application

- (1) Subject the terms of this practice direction, upon commencement this practice direction applies to the councils listed at **Appendix 1 Part 1**.
- (2) This practice direction does not apply to the councils listed at Appendix 1 Part 2.
- (3) This practice direction does not apply to development not within a council area.

Note: The practice direction will be varied, at a later date, to also apply to the councils listed in Appendix 1 Part 2, once the Act is operational state-wide. This is necessary to ensure the introduction of the practice direction mirrors the phased introduction of the Act.

2 – Mandatory inspections

- (1) A council must comply with the requirements set out at **Appendix 2** relating to:
 - (a) the kinds of development which require inspection;
 - (b) the proportion of developments which require inspection in each council area;
 - (c) the timing of any inspection required in relation to each building; and
 - (d) the number of inspections required in relation to each building,
(mandatory inspection requirements).
- (2) A council must take all reasonable steps to ensure that each inspection carried out under this practice direction includes an inspection and assessment of the adequacy of each of the following elements, as may be present:
 - (a) primary structural elements;
 - (b) structural framing and roof trusses;
 - (c) balustrades;
 - (d) cladding;
 - (e) egress provisions;
 - (f) bushfire protection systems;
 - (g) passive and active fire safety elements;
 - (h) private bushfire shelters; and
 - (i) performance solutions.
- (3) In this clause, 'passive and active fire safety elements' includes, but is not limited to, the following elements, as may be applicable in the circumstances:
 - (a) fire rated construction;
 - (b) fire safety elements, including, but not limited to, smoke alarms; and
 - (c) fire protection systems, including, but not limited to, bushfire protection systems.

3 – Additional inspections

- (1) Clause 2 of Part 2 is not an exhaustive statement as to the requirement of a council to carry out an inspection.
- (2) A council should undertake an inspection in addition to any specified in clause 2 of Part 2 (**additional inspection**) if it has information to indicate that the circumstances warrant it, having regard to the objects of this practice direction.
- (3) Circumstances that may warrant an additional inspection, having regard to the objects of this practice direction, include, building work in relation to:
 - (a) a building intended for use or occupation by large numbers of people, particularly simultaneously;

- (b) a building intended for use of or occupation by disabled or vulnerable persons;
- (c) a building in respect of which the council has been made aware of a complaint or regulatory issue, whether directly or indirectly, relating to the building or any person involved in the building work;
- (d) a building with energy efficiency requirements where risks associated with non-compliant installation, including a failure to install, present a threat to human safety that is not trivial;
- (e) a building constructed by a person who is not a licensed building work contractor under the *Building Work Contractors Act 1995*;
- (f) a building subject to local environmental conditions in respect of which additional measures are required to protect the environment, the building and its occupants or users including, by reason of increased risk of: bushfire, high to moderate winds, flooding or soil movement; or
- (g) a building incorporating construction properties or products, including but not limited to fire-rated construction, fire safety elements or designated building products, where risks associated with non-compliant installation, including a failure to install, present a threat to human safety that is not trivial.

Part 3 – Authorised officers

1 – General requirements

- (1) Only authorised officers appointed by a council may carry out inspections for the purpose of this practice direction.
- (2) A council must ensure that an inspection under this practice direction and subsequent assessment of each of the applicable elements in Part 2 clause 2(2) is carried out by a person who has the appropriate qualifications, skills, knowledge and experience to carry out an inspection assigned to that officer under this practice direction.

Note: A person with the qualifications prescribed by r 112(1) of the Regulations may carry out an inspection under this practice direction. However, an assessment of the adequacy of applicable elements may require a person to hold particular knowledge, skills and qualifications.

Part 4 – Other matters

1 – Record keeping

- (1) Records of inspections carried out by councils where this practice direction applies must be maintained and kept in a central register and made available for inspection upon 7 days' notice from the Commission.
- (2) Records of inspections should include, but not necessarily be limited to, each of the following details: date and time of an inspection, type of inspection, elements inspected, breaches, issues, or faults found, rectification required, requirements for re-inspections (including timing) and enforcement action, as is appropriate in the circumstances.
- (3) This clause does not derogate from any authorisation to dispose of records under the *State Records Act 1997*.

2 – Counting inspections

- (1) The first inspection of a building under the mandatory inspection requirements is to be counted as one inspection.
- (2) Where a building is inspected at a particular stage, and any issue is detected requiring further inspection, any further inspection related to the particular issue is to be taken to be part of the prior inspection related to that issue.
- (3) Except as provided by clause 2(2) an inspection of a building at a later stage is to be counted as a separate inspection, even if the building was inspected at an earlier stage.

3 –Review

- (1) This policy will be reviewed after two years of operation.

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Appendix 1 – Application

Part 1 - Councils subject to this Practice Direction

This practice direction applies to the following 35 councils.

Note: The practice direction will initially only apply to the councils below, to mirror the phased introduction of the Act (phase 2).

Berri Barmera Council
Clare & Gilbert Valleys Council
Coorong District Council
District Council of Barunga West
District Council of Ceduna
District Council of Cleve
District Council of Coober Pedy
District Council of Copper Coast
District Council of Elliston
District Council of Franklin Harbour
District Council of Grant
District Council of Karoonda East Murray
District Council of Kimba
District Council of Lower Eyre Peninsula
District Council of Loxton Waikerie
District Council of Mount Remarkable
District Council of Orroroo Carrieton
District Council of Peterborough
District Council of Robe
District Council of Streaky Bay
District Council of Tumby Bay
Kangaroo Island Council
Kingston District Council
Municipal Council of Roxby Downs
Naracoorte Lucindale Council
Northern Areas Council
Regional Council of Goyder
Renmark Paringa Council
Southern Mallee District Council
Tatiara District Council
The Flinders Ranges Council
Yorke Peninsula Council
Wakefield Regional Council
Wattle Range Council
Wudinna District Council

Part 2 – Councils not subject to this Practice Direction

This practice direction does not apply to the following 33 councils.

Note: Once the Act is operational for the councils below, the practice direction will also apply to these councils, to mirror the phased introduction of the Act (phase 3).

Alexandrina Council
City of Adelaide
Adelaide Hills Council
Adelaide Plains Council
Barossa Council
City of Burnside
City of Campbelltown
City of Charles Sturt
Town of Gawler
City of Holdfast Bay
City of Marion
Mid-Murray Council
City of Mitcham
District Council of Mount Barker
City of Mount Gambier
Rural City of Murray Bridge
City of Norwood Payneham & St Peters
City of Onkaparinga
City of Playford
City of Port Adelaide Enfield
City of Port Augusta
City of Port Lincoln
Port Pirie Regional Council
City of Prospect
City of Salisbury
City of Tea Tree Gully
City of Unley
Town of Walkerville
City of West Torrens
City of Victor Harbor
City of Whyalla
District Council of Yankalilla
City of Whyalla

Appendix 2 – Mandatory Inspection Requirements

Table 1. Domestic dwellings

The inspection requirements in Table 1 apply to building work in relation to a class 1a building under the Building Rules.

Timing of inspection	Minimum number of inspections for each relevant building	Proportion of developments in council area to be inspected
<p>During construction or on completion</p> <p>(a) Except where clause (b) applies, inspection must be carried out any time during construction.</p> <p>(b) If the building work involves:</p> <ul style="list-style-type: none"> (i) passive and active fire safety elements and the building is located in a medium or high bushfire risk area; or (ii) balustrades; or (iii) performance solutions <p>a council may give consideration to carrying out an inspection on completion.</p> <p>An inspection on completion must be carried out within 1 business day of receipt of the completed Statement of Compliance.</p>	<p>At least one inspection of each relevant building.</p>	<p>66%</p>

Table 2. Small commercial or public buildings

The inspection requirements in Table 2 apply to building work in relation to:

- (a) a class 5, 6, 7, 8, or 9 building under the Building Rules with a floor area of 500m² or less; or
- (b) a farm building or farm shed,

under the Building Rules.

Timing of inspection	Minimum number of inspections for each relevant building	Proportion of developments in council area to be inspected
On completion Inspection must be carried out within 1 business day of receipt of the completed Statement of Compliance.	At least one inspection of each relevant building.	100%

Table 3. Medium size commercial buildings

The inspection requirements in Table 3 apply to building work in relation to a:

- (a) class 1b or 4 building;
- (b) class 2 building of 2 storeys or less;
- (c) class 3 building of 1 storey;
- (d) class 5, 6, 7 or 8 building, of 2 storeys or less, and with a floor area more than 500m²; or
- (e) class 6 building with a floor area less than 2000m²,

under the Building Rules.

Timing of inspections	Minimum number of inspections for each relevant building	Proportion of developments in council area to be inspected
<p>During construction or on completion</p> <p>Inspection must be carried out any time during construction or on completion.</p> <p><i>Note: To be determined by council when setting mandatory notification stages under s 146(1) of the Act and r 93(1) of the Regulations.</i></p> <p><i>It is recommended that this be set at a stage either to enable the inspection of primary structural elements or structural framing and roof trusses (as applicable) or at completion to enable the inspection of the overall construction (audit inspection), including the following elements (if any) that are present: passive and active fire safety elements, balustrades, or performance solutions.</i></p> <p>An inspection on completion must be carried out within 1 business day of receipt of the completed Statement of Compliance.</p> <p><i>Note: May be combined with other inspections required by the Act or other Acts to be undertaken at completion of building work.</i></p>	<p>At least one inspection of each relevant building.</p>	<p>100%</p>

Table 4. Large commercial or public buildings

The inspection requirements in Table 4 apply to building work in relation to a:

- (a) class 2 building over 2 storeys;
- (b) class 3 building over 1 storey;
- (c) class 5, 6, 7 and 8 building over 2 storeys in height;
- (d) class 6 building with a floor area of 2000m² or over; or
- (e) class 9 building with a floor area over 500m²,

under the Building Rules.

Timing of inspections	Minimum number of inspections for each relevant building	Proportion of developments in council area to be inspected
<p>During construction or on completion</p> <p>Inspection must be carried out any time during construction or on completion.</p> <p><i>Note: To be determined by council when setting mandatory notification stages under s 146(1) of the Act and r 93(1) of the Regulations.</i></p> <p><i>It is recommended that this be set at a stage either to enable the inspection of primary structural elements, or at completion to enable the inspection of the overall construction (audit inspection), including the following elements (if any) that are present: passive and active fire safety elements, balustrades, or performance solutions.</i></p> <p>An inspection on completion must be carried out within 1 business day of receipt of the completed Statement of Compliance.</p> <p><i>Note: May be combined with other inspections required by the Act or other Acts to be undertaken at completion of building work.</i></p>	<p>At least one inspection of each relevant building.</p>	<p>100%</p>