

Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019

Draft Practice Directions February 2019

Submission

March 2019

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**Submission on Draft Planning, Development and Infrastructure (General) (Development Assessment)
Variation Regulations 2019 and Draft Practice Directions February 2019
March 2019**

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1. Introduction

The Local Government Association of South Australia (LGA) welcomes the opportunity to provide a response on the following documents:

- Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations (the Draft Regulations) 2019
- Draft Practice Direction – Conditions
- Draft Practice Direction – Deemed Planning Consent Standard Conditions
- Draft Practice Direction – Notification of Performance Assessed Development
- Draft Practice Direction – Restricted and Impact Assessed Development

The LGA is a membership association representing the State's 68 councils. The LGA's mission is to provide leadership support, representation and advocacy on behalf of South Australian councils, for the benefit of the community.

The LGA has consulted with councils on the development of this submission, has held a briefing session with local government planning representatives and met with key groupings of councils to assist in the development of the submission.

In summary, in response to the documents provided for consultation, the LGA recommends that:

1. DPTI reconsider its consultation approach to enable integrated consideration of related planning reforms, in turn allowing meaningful and constructive feedback focused on the reform objectives and quality planning outcomes
2. The Planning and Design Code for Greater Adelaide and Regional South Australia and Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations be provided for consideration prior to the final approval and gazettal of the *Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019*
3. A CAP be required to delegate to an Assessment Manager in the circumstance where there is no third party response to a notice of application
4. The range of applications for which a council's Assessment Manager is the relevant authority be expanded in consultation with metropolitan and regional councils
5. Monetary value of development be removed as a trigger for determining the relevant authority for a development application
6. Timeframes be reconsidered or subject to flexibility in respect of the resources available to smaller and regional councils and growth councils responsible for complex applications which require significant negotiations with developers to achieve positive outcomes
7. Regulation 50(4) be amended to enable a relevant authority to determine whether it wishes to place a notice on the land on behalf of an applicant
8. Where the relevant authority undertakes placing the sign on the land on behalf of the applicant, the fee is to be determined by the council

9. Land surveyors be excluded from the professional accreditation scheme
10. The State Government develop and implement a rigorous and appropriately resourced scheme for the regulation of privately accredited professionals to ensure effective operation of the system and satisfactory development outcomes
11. In their role as the relevant authority, private accredited professionals be treated like a council relevant authority in all respects including the application requirements
12. The Regulations clarify that the creation of an electronic development application and its existence online is the sole responsibility of the applicant
13. DPTI engage in proactive communication with councils on issues of the practical integration and use of the portal
14. The future protection of current Historic (Conservation) Zones be clarified, including detail on how these areas will be protected from demolition without development approval under Schedule 4 of the draft Regulations
15. DPTI engage in proactive communication with councils on the practical implications of costs to councils in delivering the new planning system, and seek fair and equitable solutions to cost sharing
16. DPTI provide a comprehensive response to comments provided on the draft regulations with a clear explanation as to how comments have been addressed and where no changes have been proposed, why not.
17. Amendments to draft Regulations and Practice Directions be made as described in Appendices A and B attached.

The following sections elaborate on the significant issues for councils raised by the draft documents provided for comment. The LGA's position on individual clauses of the draft Regulations and the Draft Practice Directions are included in Appendices A and B respectively.

2.Planning reform process

The LGA wishes to again express both its concern and disappointment with the process that has been undertaken relating to these significant aspects of our new planning system.

As the LGA has noted in response to previous consultations, the manner in which key documents have been released, with different but interlinked components of the system being dealt with separately, makes their content highly theoretical and difficult to respond to in a meaningful way. For example, the real impact of several aspects of the Draft Regulations is impossible to gauge in the absence of a Planning and Design Code (the Code) applicable to councils.

Councils are the level of government closest to their communities, but are currently unable to provide those communities with clear answers about the changes that will apply in their local areas – the full picture is simply not available. The approach taken is counter to good engagement practice, which would engage respectfully with stakeholders on issues that directly affect them, and seek meaningful input prior to major decisions being made.

Throughout the reform process, the substantial number of changes to the planning system, and limited timeframes for stakeholder consultation and implementation, risks poor planning outcomes in the future, as no time has been allowed for pilot testing and real-world application.

A preferable approach would be to stage reforms in cohesive modules that can be comprehended and tested as a suite of changes. This type of process would enable:

- Integrated consideration of the suite of planning reforms, allowing the LGA and councils to work through examples and case studies to develop meaningful and constructive feedback
- Identification of issues raised by the interplay of the Regulations and the Code that are of concern to councils and their communities
- Greater clarity and reduced contradiction both within the regulations and with the PDI Act itself
- Identification of gaps and deficiencies with the regulations, prior to gazettal, which would negate the need for practice directions
- Identification of any issues with the provisions in the PDI Act, which could be addressed prior to the July 2020 implementation date.

Recommendations

1. DPTI reconsider its consultation approach to enable integrated consideration of related planning reforms, in turn allowing meaningful and constructive feedback focused on the reform objectives and quality planning outcomes
2. The Planning and Design Code for Greater Adelaide and Regional South Australia and Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations be provided for consideration prior to the final closing of public comments on the Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations

3. Relevant authorities

Clause 22 of the Draft Regulations in effect allocates a large range of development applications to a Council Assessment Panel (CAP). For example, performance assessed development applications, even where there may be no representations following public notification (22(1)(a)(ii)(f)).

Currently, many councils delegate these decisions to professional staff. While the Draft Regulations allow for a CAP to delegate to an Assessment Manager, there is no requirement to do so, and no best practice delegations, practice directions, or advice on delegations has been provided.

An assessment undertaken by a number of councils based on current applications lodged and their exiting delegations has identified that the number of applications to be considered by a CAP could increase tenfold under the Draft Regulations, resulting in increased costs to councils and potential delays through the requirement to hold additional CAP meetings.

Based on this concern, the LGA has canvassed its members to better understand the possible financial impacts for councils. Regional councils are particularly vulnerable, as demonstrated by the following examples:

- A council that currently averages one CAP meeting every two years estimates an increase to 10 to 12 meetings per year, with associated costs increasing from around \$2,500 per annum (inclusive of member travel costs) to in excess of \$50,000 per annum
- Two councils in different parts of the state that each estimate additional costs in excess of \$30,000 per annum to operate its CAP inclusive of sitting fees, travel costs, accreditation scheme requirements, administration of the CAP, and additional meetings to accommodate all performance assessed applications.

A council within Greater Adelaide expects an additional 200-300 applications to be assessed by the CAP under the Draft Regulations as they stand.

There are increased costs to developers with the increased timeframe (thirty days) for applications considered by a CAP. Applicants may seek to circumvent CAP using the thresholds in clause 22, for example splitting a subdivision of 400 allotments into multiple applications of 19 allotments, potentially leading to a poor outcome.

Even if advice on delegations were provided, different CAPs are likely to manage delegations differently, compromising the goal of greater consistency and certainty in the planning system.

To avoid an unnecessary burden on councils, an Assessment Manager, as a qualified and competent professional, should be the relevant authority for performance assessed development where no public representations are received.

The Draft Regulations (22(ii)(b)) require that all developments over \$5m are to be assessed by the CAP. For consistency and transparency, the relevant authority should be determined through the Code and Regulations, without exception on the basis of cost. Monetary value is an insufficient indicator of the complexity or impact of a proposed development, and prescription of monetary values in regulation inhibits the ability of the system to respond to economic change. Should the provision remain, further definition of “total amount” and “work” in this provision is required to provide procedural clarity for councils.

Under the Draft Regulations, all developments within the City of Adelaide over \$10m are to be assessed by the State Commission Assessment Panel (SCAP) (Schedule 6(3)). This legacy from the previous system is not supported by the LGA.

As stated above in relation to decision by CAPs, for consistency and transparency, the relevant authority should be determined through the Code and Regulations, without exception on the basis of cost. Monetary value is an insufficient indicator of the complexity or impact of a proposed development, and prescription of monetary values in regulation inhibits the ability of the system to respond to economic change.

If an application in the City of Adelaide is performance assessed, it should be assessed by the relevant CAP or Assessment Manager, both of which are required to be accredited professionals under the Draft Regulations. It is noted that the accreditation scheme is not applicable to SCAP, further undermining the case that SCAP should assess larger, more significant development (if that is the intention of the development value trigger).

Recommendations

- A CAP be required to delegate to an Assessment Manager in the circumstance where there is no third party response to a notice of application
- The range of applications for which a council's Assessment Manager is the relevant authority be expanded in consultation with the LGA and local government
- Monetary value of development be removed as a trigger for determining the relevant authority for a development application

4. Timeframes

Assessment timeframes proposed in the Draft Regulations do not give adequate consideration to the resources available to councils, particularly regional and smaller councils. Nor do the timeframes consider those councils that strive for best practice, or growth councils that are required to consider multiple complex applications at once, requiring significant expertise on hand to work closely and negotiate with developers.

The proposed timeframes will result in reduced opportunities for negotiated best practice outcomes and encourage a more adversarial assessment environment, at the expense of the best possible planning outcomes.

Further, concurrent timeframes for public notification and referrals is unrealistic particularly where the referral agency may require amendments to the application requiring additional notification. It is suggested that the referral period for a referral body be reduced to 15 business days.

Advice from the Commission to a relevant authority (regulation 82) is 30 business days, while advice from a council CEO to the Commission (regulation 23) is only 15 days and is heavily constrained. For consistency they should both be 30 business days and CEO should be able to provide to the Commission information on all matters they consider relevant.

Recommendations

- Timeframes be reconsidered or subject to flexibility in respect of the resources available to smaller and regional councils and growth councils responsible for complex applications which require significant negotiations with developers to achieve positive outcomes

5. Public notification

Councils are experiencing concern amongst their communities around proposed changes to public notification. There is a view that people feel they have the right to be informed, for example of telecommunications towers.

Notification is an important tool for informing communities and the provisions relating to public notification should enable appropriate notification in both metropolitan and regional contexts.

In addition to the above the requirements in the Draft Regulations and Practice Direction are overly prescriptive, and place a large burden on the relevant authority, generally the council.

Further, there is inconsistency in what is required where a CAP or where SCAP is the relevant authority, with the SCAP requirements being less burdensome.

The relevant authority should have the discretion as to whether it places the sign on the land. Should a council seek to provide the service of placing the sign on the land, it should be at the applicant's cost, and the cost be determined by the council considering not only the production of the sign, but also the time it takes to place a sign on the land (staff cost and travel times).

Recommendations

- Regulation 50(4) be amended to enable a relevant authority to determine whether it wishes to place a notice on the land on behalf of an applicant
- Where the relevant authority undertakes placing the sign on the land on behalf of the applicant, the fee is to be determined by the council.

6. Accreditation scheme

In response to previous consultations, the LGA has recommended against the accreditation of land surveyors to act as a relevant authority for land division applications. The LGA is both concerned and disappointed that the proposed accreditation of land surveyors did not appear in the draft accredited professionals regulations which were consulted on and subsequently appeared in the gazetted regulations without explanation.,

Concerns remain in relation to private accredited individuals acting as the relevant authority. Appropriate regulation of private certifiers in the current system has not occurred. Feedback received from councils by the LGA indicates that a number of councils have experienced an unacceptable number of instances where developments had been certified under the Residential Code in areas where the Code does not apply, or the development did not satisfy the criteria. Examples were also provided of private certifiers exercising considerable discretion in the judgement of a 'minor' departure from the criteria.

It is likely that communities will continue to perceive councils as responsible for planning decisions, and councils will continue to hold significant interest in all local development outcomes. Yet councils have no formal responsibility nor resources to oversee privately assessed applications and may be legally vulnerable if they do so. Under the new system then, private accredited professionals must be effectively regulated by the State Government in their role as a relevant authority to ensure the proper operation of the system, and the quality of planning outcomes on the ground.

To ensure procedural fairness and transparency, clause 30 of the draft Regulations should be amended to ensure private accredited professionals be treated like a council relevant authority in all respects, and the receipt and consideration of all applications should be through the SA planning portal.

Recommendations

- Land surveyors be excluded from the professional accreditation scheme
- The State Government develop and implement a rigorous and appropriately resourced scheme for the regulation of privately accredited professionals to ensure effective operation of the system and satisfactory development outcomes

- In their role as the relevant authority, private accredited professionals be treated like a council relevant authority in all respects including the application requirements.

7.e-Planning portal

Several clauses of the Draft Regulations are at odds with the intent to transition to an integrated, online, paperless planning system. Each of these instances are noted in Appendix A and should be amended.

The Regulations must further clarify that the creation of an electronic development application and its existence online is the sole responsibility of the applicant. Councils may continue to support their communities by providing public use computers, scanners, and internet access to facilitate applicants' use of the system, but will not be responsible for uploading or otherwise processing applications.

Councils maintain significant digital datasets used in the assessment of applications, including local environmental and council infrastructure mapping. This information supplements State Government mapping which can be incorrect, out of date, or lack relevant detail. Further clarification is sought on whether this information will be integrated with the portal, and if not, how the information will be accessed by relevant authorities outside the council to allow a complete and diligent assessment, particularly in relation to deemed to satisfy development.

A range of further questions require clarification in terms of the practical use of the portal, including:

- How internal council processes in the course of an assessment will be efficiently recorded (e.g. internal consultation with council engineers)
- Responsibility for *State Records Act* compliance
- Responsibility and process for requests under the *Freedom of information Act*
- How much information will be publicly accessible to the applicant, and the public in the case of notified applications
- How fee refunds will be managed

Recommendations

- The Regulations clarify that the creation of an electronic development application and its existence online is the sole responsibility of the applicant
- DPTI engage in proactive communication with councils on issues of the practical integration and use of the portal

8. Demolition control in Historic Conservation Zones

Local government is the level of government closest to the community and experiences firsthand the great extent to which their communities value local heritage, and the value local heritage contributes to their streets, suburbs and beyond.

Heritage has a significant local economic benefit. As well as implementing planning and heritage controls, Councils invest in local heritage through grants programs, advisory services, promotions and education, and research. The strength of this investment is borne out by studies that demonstrate the economic significance of cultural heritage and its important role in tourism attraction and expenditure.¹ There is also strong evidence to demonstrate that heritage has a strong employment multiplier and creates jobs.

Under Schedule 4 of the draft Regulations, demolition of a single storey building (other than a heritage building or a building in a specified area) is exempt from development approval, and the specified area(s) will be determined by the Code. In the absence of the Greater Adelaide volume of the Code, there is significant concern with the future protection of current Historic (Conservation) Zones (HCZ)s.

The LGA has emphasised on many occasions the importance of securing HCZs through an enhanced version of the existing policy mechanism. Options for consideration include:

- Converting HCZs to Local Heritage Areas (LHA), bringing existing and new areas under the *Heritage Places Act 1993*; or
- Retaining HCZs as a heritage protection mechanism in the future Planning and Design Code and developing updated criteria for HCZs and CIs.

Recommendation

- The future protection of current Historic (Conservation) Zones be confirmed, including detail on how these areas will be protected from demolition without development approval under Schedule 4 of the draft Regulations.

9. Increased costs to councils

Various aspects of the new planning system will result in increased costs to councils, specifically:

- Increased cost of CAP as a result of additional meetings (CAP fees + staff time + council resources)
- Additional system costs as a result of the e-Planning portal
- Additional staff resources to assist applicants to lodge applications electronically
- Additional resources to achieve mandated timeframes, compliance, public education of the new system, implementation of the building policies
- Accredited professional accreditation and ongoing training.

To date there is not clear understanding of where cost savings can and will be achieved as there has been no regulatory impact assessment undertaken that considers the costs to councils. It will be important that local government is engaged with the fee schedule to ensure that the fees to be established enable reasonable cost recovery for councils. The LGA believes that it is inappropriate for all ratepayers to continue to subsidise 70-80% of the costs of undertaking statutory planning and building assessment functions.

¹ Adelaide City Council (2015) *Economic Value of Heritage Tourism*; Commonwealth of Australia (2015) *Australian Heritage Strategy*; Presentation by the National Trust at LGA workshop "Tourism and Heritage – a Winning Combination" October 2014; The Allen Consulting Group 2005, *Valuing the Priceless: The Value of Heritage Protection in Australia, Research Report 2*, Heritage Chairs and Officials of Australia and New Zealand, Sydney.

Clarification is required as to how fees are passed on to councils. It is currently not clear who collects the relevant fees, as the Draft Regulations refer to the 'relevant authority' and not specifically to councils. A further concern is that should councils not directly collect fees, a further administrative burden, and associated costs, will be borne by councils to reconcile this.

Recommendation

- DPTI engage in proactive communication with councils on the practical implications of costs to councils in delivering the new planning system, and seek fair and equitable solutions to cost sharing

Appendix A: LGA Position Clause by Clause

LGA POSITION - CLAUSE BY CLAUSE SUMMARY

Draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019

Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Part 1 - Preliminary				
1	Short Title	<i>Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019</i>		
2	Commencement	1 July 2019		
3	Variation provisions	A provision under a heading referring to the variation of specified regulations varies the regulations so specified.		
Part 2 - Variation of <i>Planning, Development and Infrastructure (General) Regulations 2017</i>				
4	<i>Variation of regulation 3—Interpretation</i>	This Regulation contains defined terms to be inserted into the existing General Regulations.	4(1) To simplify drafting in the regulations, consider including following definitions in this section: <i>Notification Period</i> - see comments below at Regulations 50 and 99. <i>Bush fire zones</i> - while flood zoning is recognised, bush fire zones are not. This requires amendment. Make the following corrections: <i>designated building</i> and <i>designated building product</i> to be replaced with "Schedule 8, clause 9(1)(j)" Question whether the definition of <i>Metropolitan Adelaide</i> should be replaced by the <i>Greater Adelaide Region</i> as constituted under section 5 of the Act. If not, we question why there is a need for two reference maps within the Regulations. The Greater Adelaide definition could be used across	Refer to comments. Refer to comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			all of the Act and Regulations such that various obligations under the Act do not apply differently within Council areas. See for example comments at Regulation 99. 4(2)(3) This regulation implies that flood risk development policies will be restricted to zones, subzones or overlays. Will all (internal GIS) Council flood mapping data layers be transferred to a flood overlay in the Code? If the Code relies only on existing floodplain overlays established in the Council's Development Plan, this will not provide any opportunity to apply flood risk policies to properties within this Council area. The Code and Regulations should also refer to, and define the Annual Exceedance Probability (AEP) as the preferred terminology in current standards and by hydrologists.	Refer to comment.
5	<i>Insertion of regulations 3A to 3I</i>			
Reg 3A	Application of Act (section 8)	Consistent with Regulation 5 of <i>Development Regs 2008 (Development Regs)</i>	There are more sections of the Act than those listed at Regulation 3A(1) that need to be cross referenced (re classification and occupation of building).	Refer to comments.
Reg 3B	Additions to definition of development	This Regulation replaces Development Reg 6 and Schedule 2	Refer to comments made at Schedule 3 below.	
Reg 3C	Exclusions from definition of development	This Regulation replaces Development Reg 7 and Schedule 3	Refer to comments made at Schedule 4 below.	
Reg 3D	Colonel Light Gardens Heritage Area	This Regulation replaces Development Reg 8 and Schedule 3A. It is generally consistent with	No Planning and Design Code so unable to comment on any changes made.	The Planning and Design Code should be provided for review



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
		previous Reg 8, but refers to "Colonel Light Gardens Overlay" in the "Heritage overlay of the Planning and Design Code" rather than "the Colonel Light Gardens State Heritage Area...established by the Development Plan".		prior to the final closing of public comments on these Regulations.
Reg 3E	Change in classification of buildings	This Regulation prescribes that work resulting in a change to the classification of 'a building' under the Building Code, is building work.	No comment.	No comment.
Reg 3F	Significant trees	This Regulation replaces previous Development Reg 6A. It is generally consistent with the existing wording, but refers to "significant tree overlay" rather than a "designated area".	Headings throughout these Regulations need to be either more specific, or Regulations that relate to similar topics, grouped together. This is a good example: the title of this regulation should include "Regulated Trees" however this then duplicates similarly titled Regulations 40 and 65. Unless one refers back to the Act, these titles are very confusing. What is a "significant tree overlay"? It is assumed that there will be no regulated trees outside of a significant trees overlay? As there is yet no Planning and Design Code, it is impossible to tell. 3F(1) Is there a drafting error in this Regulation (ie should it not refer to a "designated regulated tree overlay" given this subregulation relates to the categorisation of regulated trees?)? 3F(2) Why don't significant trees need to be in an overlay like regulated trees?	3F(1) "significant tree overlay" should be amended to say "regulated tree overlay". 3F(2) Significant trees should be marked with an overlay under the Planning and Design Code.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			3F(4)(a) The drafting of this Subregulation does not solve problems with measuring a 10 metre distance where the tree within that distance of a dwelling or swimming pool on a neighbouring property or where a new dwelling is constructed on a neighbouring property. 3F(4)(b) This Subregulation should be moved to Schedule 4, which lists all manner of exclusion to the definition of 'development', including to regulated and significant trees. It is confusing having exclusions in two places in the Regulations. 3F(6) This Subregulation should be amended to reduce the 30% threshold. Often a tree damaging activity that removes 30% of a tree ultimately results in the death of the tree and subsequent complete removal. There should be an increase to the required replacement tree fee. The current fee of \$89.50 is not reflective of the true costs incurred by the council to plant and maintain a tree, in addition to the administration costs of the Urban Tree Fund. A figure of at least double the current amount is considered to be more appropriate to go some way to genuinely contributing to the cost of the replacement tree, without imposing unrealistic costs on the tree owner.	Refer to comment. 3F(4)(b) should actually be found in Schedule 4 (Exclusions to 'development'). Refer to comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Reg 3G	Aboveground and inflatable pools	This Regulation replaces Development Reg 6B - same wording.	There is in congruency between the limitations of above ground "swimming pools" (only capable of being filled to a depth of 300mm before considered development) and spa pools (which, under this Regulation 3G are also considered "swimming pools". Sch4(4)(1)(d) states that a spa pool in association with a dwelling and does not exceed 680L is not development. What if 680L in a spa pool produces a depth of more than 300mm? Is it still exempt? Clarification on this point is required and it is recommended that there be some consistency in development triggers between pools and spas.	Refer to comment.
Reg 3H	Public notice	This Regulation replaces Reg 4 of <i>Planning, Development and Infrastructure (General) Regulations 2017</i> . Public Notice is now required to be published in newspaper and on SA planning portal.	3H(1)(d) This Subregulation suffers from a lack of detail. As no other regulation is cross-referenced, all the Commission would be required to do to satisfy this requirement is put a notice on the relevant land. It would not be required to stay there, or be put in any particular location. This Subregulation should cross-refer to regulation 50(2) which outlines further requirements to satisfy notification under the regulations.	Refer to comment.
Reg 3I	Prescribed period (section 44(12)(b))	This Regulation prescribes a period of 21 days after failure of an entity to comply with the Community Engagement Charter, to correct its failure, following a direction by the Commission.	The prescribed period is 21 days to rectify non-compliance, but under the Community Engagement Charter, some requirements to satisfy notification are 4 weeks. The prescribed period needs to be extended otherwise it may be impossible to comply. Also, throughout regulations, business days are referred to.	Increase the prescribed period to a minimum of 21 business days .
6	Revocation of regulation 4	This Regulation deletes the definition of Public Notice (replaced by 3H above).	No comment.	No comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
7	Variation of regulation 18—Other matters	This Regulation notes that except as prescribed by the Act, the procedures of an assessment panel in relation to the conduct of its business will be as determined by the assessment panel (and an assessment panel is accordingly a specified body for the purposes of section 246(6)(d) of the Act).	No comment.	No comment.
8	<i>Insertion of Parts 4 to 18 and Schedules 1 to 19</i>	<i>See below summary of new provisions to be inserted.</i>		
Part 4—Statutory instruments				
Reg 19	Incorporation of material (section 71(b))	This Regulation provides a list of "prescribed bodies" from which material may be incorporated into a <i>designated instrument</i> (ie, a state planning policy; or a regional plan; or the Planning and Design Code; or a design standard.)	No comment.	No comment.
Reg 20	Notice of Code amendment (section 73(6)(d))	This Regulation prescribes information to be included in a notice in connection with a proposed amendment to the Planning and Design Code that will have a specific impact on 1 or more particular pieces of land in a particular zone or subzone.	No comment.	No comment.
Reg 21	Minor or operational amendments (section 76)	This Regulation provides a prescribed list of documents (ie, a coastal management plan, an environment protection policy etc) in accordance with which the Minister may amend a <i>designated instrument</i> .	No comment.	No comment.
Part 5—Relevant authorities and accredited professionals				
Reg 22	Prescribed scheme (section 93)	The Regulation prescribes developments for which accredited professionals may act at the relevant authority. Applies to assessment managers, Accredited professionals - planning level 3 and 4 and Accredited professionals.	There is a general concern that this provision will result in a substantial amount of applications being considered by a assessment panel, rather than applications remaining with an assessment manager. The exclusions at Subregulation	The range of applications to be considered by a CAP, should be reduced and the range considered by an Assessment panel be expanded. These



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			22(1)(a)(ii) are too broad. 22(1)(a)(ii) The use of "code assessed" is confusing here - should be altered to "performance assessed" to align with PDI Act definitions. 22(1)(a)(ii)(B) Using a monetary benchmark only for what applications should and should not be determined by an assessment manager is not useful; limits on this should be determined by reference to application type or floor space. There is no definition of what comprises "total value" or what comprises "work", which leaves provision open to interpretation 22(1)(a)(ii)(C) Use of the term "storeys" within this Subregulation requires specification. There are no clear limits to the definition of a "storey" and it is not clear how below ground or partially below ground storeys should be treated. We recommend a maximum height limit be inserted within a definition placed at the front of these Regulations. 22(1)(a)(ii)(D) Applicants wanting to avoid a panel assessment may submit a series of smaller applications to avoid the 20 allotment limit for assessment manager decision-making. There is a need for	changes to occur in further consultation with local government Subregulation 22(1)(a)(ii)(B) to be amended to refer to the form of development, or to a floor space limitation. Refer to comment. Refer to comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			drafting in this regulation to avoid this. 22(1)(a)(ii)(F) This requirement could substantially increase the number of applications that must be considered by an assessment panel. There are numerous circumstances in which these applications could appropriately be considered by delegation. There should be a requirement that applications for full demolition be considered by assessment panels and less than full demolition applications be delegated. This will more evenly distribute work load and avoid "red tape". 22(1)(b) 'Accredited professional' needs lowercase 'a' throughout to accord with definition in the Act. 22(1)(d) Accredited professional – surveyor is the relevant authority for planning consent for DTS land divisions (no minor variations). It was understood by Councils that this was not going ahead given that even simple land divisions can have complex planning considerations.	Refer to comment. Amend all references to reflect the Act. Delete draft subregulation 22(1)(d).
Reg 23	State Planning Commission (section 94)	This Regulation sets out procedural requirements for Councils to provide information to the Commission in connection with a proposed development which the Minister calls in for assessment by the Commission and specifies certain developments that are excluded from these requirements.	23(2)(a) In accordance with one of the main aims of this reform being to create a centralised and paperless planning system, applications should only be able to be made electronically (and to Council standards (e.g. in terms of clarity and detail)) and all parties to be able to access them from the SA planning	23(2)(a) should be amended to factor in the use of the SA planning portal and an extension of compliance time to 10 business days.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			portal. The only circumstances in which any paper documents should exchange hands is if there are complex plans that are required to be deciphered in hard copy. If this system is in place, 10 business days to forward any remaining documentation is sufficient time (but there should be very little). When documentation is uploaded onto the SA planning portal site, or forwarded from the Minister, it is unclear how any IP, confidentiality, privilege or privacy etc. issues is to be dealt with. 23(2)(b) It is unrealistic that a report could be produced by the Chief Executive of a Council on an application and be released in 15 working days. It may need to go to Committee, depending on the Council's delegations. Under regulation 82 the State Planning Commission is provided with 30 days for a similar requirement 23(3) An additional criteria be inserted to allow Council to make submissions on any other matters that Council considers to be relevant. The current criteria unfairly limits Councils' roles and ability to impact decision-making in their local area. 23(4) Refer to our comments at Schedule 6 below.	DPTI to advise. 23(2)(b) should be amended to provide at least 30 business days for the Council to produce a report. Refer to comment.
Reg 24	Assessment managers (section 96)	This Regulation prescribes further development (encroachments) in relation to which an assessment manager may act as the relevant authority (in addition to the developments in	While section 102(1)(e) largely reflects section 33(1)(e) of <i>Development Act 1993</i> , the altered drafting at the end of the section seems to move	DPTI to confirm.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
		Reg 22).	the onus from the existing s221 of the <i>Local Government Act</i> in which one is required to obtain a permit for encroachments to obtaining planning consent for same. Is this what is intended? How are other property rights factored into this consideration? Can it be said that property ownership is now a planning issue?	
Reg 25	Accredited professionals (section 97)	This Regulation specifies the types of development in relation to which accredited professionals may act as the relevant authority. Applies to: Accredited professional - building level 1; Accredited professional - building level 2; and Accredited professional—building level 3.	No comment	No comment
Reg 26	Requirement to obtain advice of accredited professional	This Regulation states that if the Commission or an assessment panel does not refer a development that involves building work to a Council or a building certifier under the Building Rules, it is required to seek and consider the advice of an accredited professional who would be qualified to give building consent, was the accredited professional the relevant authority in that case in assessing the development.	It is unclear in what circumstances an assessment panel would be the relevant authority for assessing building rules consent, given they are not designated as a relevant authority under the Act for building rules assessment. To be clarified. Comments at Regulation 118 below are repeated here.	Refer to comment.
Part 6—Development assessment - key principles				
Reg 27	Elements of development	This Regulation notes that where a development involves 2 or more elements, the relevant authority should clearly identify each element for the purposes of assessing the development against the Planning and Design Code.	While it is accepted that defining an 'element' has historically posed challenges, it is suggested a Practice Direction on the term be released such that the lay-person can get a feel for what an 'element' is as a concept. The Regulations provide no definition or further guidance on this issue currently. This leads to confusion in making and	Refer to comment.



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			deciding on applications; what if, for example, the applicant prepared the application premised on what it understood to be 2 elements, but the relevant authority held there to be 3 elements which required separate assessment? This may not be helpful to the applicant as it may present the application in an unfavourable way to the decision-maker. Also, councils will be responsible for ensuring all elements have received consent prior to issuing full approval, however the council may not have been the relevant authority and have identified different elements to that relevant authority. Is the council then required to rely on the earlier decision of the relevant authority or undertake its own assessment as to what it considers to be missing elements? This Regulation definitely needs some clarity.	
Reg 28	Impact assessed development - categorisation	This Regulation specifies the sections of the Act and the prescribed principles that apply to a project that is declared by the Minister to be an impact assessed development.	28(2) It is noted that these prescribed principles are duplicated from Regulation 63 of the <i>Development Act 1993</i> , but there is room for definitions of a number of the terms used in this Regulation. In relation to 28(2)(a) for example, what is the "receiving environment"? Is the Minister only required to consider the properties that immediately abut the relevant property or the wider local area? In relation to 28(2)(c), what 'change'? Is 'the environment' in this subsubsection, the actual environment or the planning environment or both? While we applaud this provision for its breadth, are some of the requirements so broad as to be confusing. This issue could be lessened by providing some definitions.	Refer to comment.



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Reg 29	Complying building work	This Regulation provides that building work assessed as being in the form specified in Schedule 7 must be granted building consent.	No comment.	No comment.
Part 7—Assessment—processes and assessment facilitation				
Division 1—Applications				
Reg 30	Application to relevant authority	This Regulation notes the required methods of lodgement of applications for development authorisation to a relevant authority or accredited professional.	30(1)(b) In accordance with one of the main aims of this reform being to create a paperless planning system, applications should only be able to be made electronically with the onus being on the applicant to ensure that all plans and documents are uploaded to standard requirements (e.g. in terms of clarity and detail). If a member of the public is struggling with this, there should be the ability to seek assistance from the relevant authority, using a public computer and scanner. Lodging paper applications only creates more work for relevant authorities and then leaves the relevant authority responsible for the veracity of how the documents are uploaded. The application and its existence online should be wholly the responsibility of the applicant. The only circumstances in which any paper documents may be required is if there are complex plans which are unable to be read adequately on a computer. It is still not clear who is responsible for uploading documents and information to the SA planning portal. The applicant should be responsible for the lodgement of the application by uploading. This is not an obligation that should fall to Councils.	Delete Regulation 30(1)(b) or amend it such that only complex plans that are otherwise unable to be fairly deciphered online are submitted in hard copy. Refer to comment.



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			30(2) This provision is strongly opposed. The accredited professionals should be treated like a relevant authority in all respects and the receipt and consideration of all applications should be through the SA planning portal. It is the only means of ensuring procedural fairness and transparency in relation to the application. The accredited professional can be notified by email and can view all submissions on the SA planning portal, as would any other relevant authority. If there are paper plans, this can be noted alongside the online application.	Delete Regulation 30(2)
Reg 31	Plans, fees and related provisions	This Regulation states that all applications must be accompanied by plans, drawings, specifications and other documents, as well as information and fees, in accordance with Schedule 8.	31(1) While it is supported that the upmost transparency be promoted in relation to the application and supporting documents, by lodging them electronically through the SA planning portal, this may raise real issues for developers in terms of privacy, legal privilege, IP ownership, confidentiality and conveyance of a commercial advantage etc. 31(2) The comments in relation to regulation 30(1)(b) above in relation to a paperless planning system are repeated here. 31(3) As the relevant provisions to the <i>Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019</i> have not yet been	To be further considered by DPTI. It may be that this provision requires further clarification in relation to documents that fall under the categories mentioned, whilst still seeking to maintain the highest transparency possible in relation to the application details. Planning applications should only be permitted to be made on the SA planning portal, in which case Regulation 31(2) should be deleted. Refer to comment. The additional Fee Regulations should be provided for review prior to the final closing of



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			released, it is not possible to ascertain the impact of this subregulation. Clarification is required as to how fees are passed on to Councils. It is currently not clear who collects the relevant fees etc., as the Regulations refer to the 'relevant authority' and not specifically to Councils. A further concern is how Councils will reconcile the collection of such fees etc. if they are not collected directly. It is anticipated that an increased administrative burden, and associated costs, will be borne by Councils in the event that Councils do not directly collect fees. 31(4) This Regulation should be reworded - there should simply be a tracking record/reminder on the SA planning portal which confirms what is missing from the application.	public comments on these Regulations. Refer to comment. Refer to comment.
Reg 32	Lodging application on SA planning portal on behalf of an applicant	A relevant authority must lodge an application in the SA planning portal if the application is received at the office of the relevant authority or by an accredited professional.	Should it remain that the relevant authority lodge an application on behalf of an applicant a lodgement fee should be payable	Refer to comment.
Reg 33	Notification of acting (accredited professionals—planning)	Accredited professionals (other than assessment managers) to give notice of an application for planning consent to the assessment panel for the area via the SA planning portal within 5 days of receipt of the application, together with a copy of the application and relevant supporting documents. The relevant fee is payable to the assessment panel at the time the notice is given.	The comments made at Regulation 30 above are repeated here. There should be no requirement to provide copies of the application documentation - everything is available on the SA planning portal. There may be administrative and reporting complications in an accredited professional providing the notice and fee (particularly the fee), to the assessment panel rather than the council. Would this fee need to be paid into a designated account or budget line for the assessment panel? If	Refer to comment.



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			so, this would be unnecessarily complicated given the fee would ordinarily be used for administrative costs associated with council staff and resources at an officer level, rather than a Panel. It is assumed the assessment panel has been nominated on the basis they are the 'default' relevant authority for planning consent (as per Section 93 of the PDI Act). As the council will be the relevant authority for final Development Approval (as per Section 99(3)) and the assessment panel won't actually have any administrative responsibilities, it is recommended that regulation 33 is amended so that notifications and fees are directed to the council.	
Reg 34	Notification of acting (accredited professionals—building)	Accredited professionals (other than assessment managers) to give notice of an application for building consent to the Council for the area via the SA planning portal within 5 days of receipt of the application, together with a copy of the application and relevant supporting documents. The relevant fee is payable to the Council at the time the notice is given.	The comments made at Regulations 30 and 33 above are repeated here.	Amend Regulation 34 to reflect comment.
Reg 35	Verification of application and determination of nature of development	This Regulation requires the relevant authority to assess received applications as to the completeness of information and the determination of the correct entity to assess the application (and to refer or assess accordingly) within 5 days of receipt of the application.	5 days is too short a period for consideration, cross checking and allocation and does not reflect resource availability. A minimum 10 business days would be more reasonable for what could be a large task (depending on the application size/complexity). 35(3) Comments at Regulation 30(1) in relation to creating a paperless planning system are repeated here. If all relevant authorities are operating through the SA planning portal, transmission of the	Amend provision to reflect minimum 10 business days. Refer to comment.



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			application and supporting documents is not required to take place; the relevant authority simply logs on and proceeds to consider the application as uploaded by the applicant. Notification by the (Council) to the relevant authority by email that there is an application may have to take place, but that is all.	
Reg 36	Application and further information	This Regulation prescribes developments in relation to which requests for further information may be made and relevant timeframes for making such requests.	36(1)-(3) It is not possible to tell what the impact of these subregulations will be without the Planning and Design Code. 36(5) The specified period of ten (10) business days is considered insufficient for complex development applications. The existing Development Regulations currently prescribe fifteen (15) business days which is considered more appropriate.	Refer to comment. Refer to comment.
Reg 37	Period for additional information and other matters	This Regulation prescribes period within which an applicant is required to respond to a request for further information or documents etc.	37(2) This Regulation would be more logically placed under Regulation 41. Is this Subregulation provided for the purpose of justifying a decision to lapse an application? If not, we question its utility.	Refer to comment. DPTI to confirm.
Reg 38	Amended applications	This Regulation prescribes the relevant start date of an application made, where the application has been varied (unless the variation is not substantial in which case, it has no effect).	38(1) Does time start running on receipt of the original application or the varied application? It is assumed, given the drafting of (2), that this is supposed to be receipt of the <u>varied</u> application? 38(2) What is a 'substantial' variation? The relevant case	The last line of subregulation 38(1) needs to be amended to " <i>receipt of the variation to the application.</i> " Refer to comment.



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			law should be considered and guidance provided by way of Practice Direction on this point.	
Reg 39	Certification of building industry insurance	This Regulation replaces Development Reg 21 - same wording.	39(3) To provide more weight to this provision it should be an expiable offence to commence building work without the certificate of insurance being provided.	No comment.
Reg 40	Regulated and significant trees	This Regulation prescribes qualifications of a person providing expert of technical report in relation to a significant tree.	The cross reference to the Act in this regulation 40 is incorrect. Section 39 of the Act relates to subsidiaries. Also, query whether there is a Diploma in Arboriculture available to undertake in South Australia. Question how "comparable or higher qualification" is assessed against something that may not exist (or if it does, may have different requirements at different institutions).	Reference to "subsections (7) and (8) of section 39" should be changed to "subsections 119(7) and (8) of the Act". Refer to comment.
Reg 41	Withdrawing/lapsing applications	This Regulation has replaced Development Reg 22. The wording is the same with the exception that the timeframe for a relevant authority to lapse an application has been reduced to 1 year (from 2 years).	Albeit this Regulation is carried across from the existing Development Regulations, there should be more structure - not simply one of timing - around when a council can lapse an application. This would help avoid possible appeals to such a decision.	Refer to comment.
Reg 42	Contravening development	Regulation 42(1) is the same as Development Reg 23(1). Reg 56(1)(k) and Reg 56(3) below are the same as Development Regulation 23(2).	No comment.	No comment.
	Division 2—Referrals			
Reg 43	Referrals	This Regulation seeks to specify the prescribed bodies to which a relevant authority must refer prescribed classes of developments within	The required table at Schedule 9 has not been provided with the draft regulations so it is impossible to understand the impact of Regulation	Refer to comment. Unable to advise. The content of Schedule 9 should be provided



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		prescribed periods (all defined in Schedule 9 of the Regulations).	43.	for review prior to the final closing of public comments on these Regulations.
Reg 44	Form of response	The Regulation states that prescribed bodies may provide a joint response to referrals. This replaces Development Regulation 26(1) but notes that the response may be provided via the SA planning portal.	44(2) Further to comments made in relation to Regulation 30 above, "may" should be changed to "must".	Refer to comment.
Reg 45	Additional information or amended plans	This Regulation replaces Development Regulation 27 and reflects the same wording.	44(1) There should be specific timeframes placed on the relevant authority to notify the prescribed body of the receipt of additional information onto the SA planning portal, so that the prescribed body has as much time as possible to consider that information (and there are fewer abortive costs). There should be no need to provide the prescribed body the additional information - it should be available on the SA planning portal, having been uploaded by the applicant.	Refer to comment.
Reg 46	River Murray	This Regulation replaces Development Reg 28(1) and (2) - same wording.	No comment.	No comment.
Reg 47	Appeals	This Regulation states that no appeals are permitted against a condition imposed by a relevant authority in accordance with a direction by the Commissioner for Highways or against a refusal or condition in accordance with a direction by the Technical Regulator.	The heading of this Regulation is misleading. It does not relate to appeals generally. 47(1) It is not possible to tell what the impact of Regulation 47(1) is without the table/information which will comprise Schedule 9.	Regulation should be retitled - "Appeals to highway conditions" - or something similar. Unable to advise. The content of Schedule 9 should be provided for review prior to the final closing of public comments on these Regulations.



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Reg 48	Building matters	This Regulation replaces Development Reg 28(3) - (7) inclusive - same wording.	The heading of this Regulation is misleading. It does not relate to building matters generally.	Regulation should be retitled - "Referrals to fire authority" - or something similar.
Reg 49	Preliminary advice and agreement (section 123)	This Regulation replaces Development Reg 31A - same wording.	No comment.	No comment.
Division 3—Notice requirements and consultation				
Reg 50	Performance assessed development and restricted development	This Regulation prescribes requirements for notices to be given to the public, who is responsible (the applicant in first instance) and penalties for damaging or destroying etc. a relevant notice.	50(1) (d) The relevant documents can be inspected on the SA planning portal and view there. No hard copy documents should be provided (except potentially complex plans that are sizeable and easier to decipher in hard copy). 50(2) There is no clear, minimum notification period outlined in the regulations (and s107 of the Act refers to the regulations in this regard). As the Regulations are drafted, for example, it is very difficult for any applicant to understand the period throughout which a notification sign must be erected on the land. What if it falls down midway through the notification period? The Regulations would benefit from a definition of "Notification Period" (or something similar). This Regulation 50(2) could then have an additional subregulation requiring the notice to stay in place for the whole of that period.	Amended to read "<i>where on the SA planning portal, when and the duration for which the application and supporting documents may be considered.</i>" Include "Notification Period" as definition within Regulation 4 - "a period of at least [xxx] business days, within which the public has the opportunity to consider a proposed development and make representations to the relevant authority." Proposed Regulation 50(2)(c) "(x) be erected for the whole of the Notification Period" and existing Regulation 50(2)(c) becomes (d).



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			50(4) The relevant authority should have the discretion as to whether it places a notice on the land on behalf of an applicant. Where a relevant authority agrees to place a notice on the land the fee payable should be determined by the relevant authority taking into account staff costs and travel costs. 50(7) Reference to "the Notification Period" can replace "the period that applies under section 107(3)(b)". Finally, it is unclear why the Minister and Commission are not subject to the same notification requirements as relevant authorities? All relevant authorities should be subject to the same processes.	Regulation 50(4) be amended to indicate the relevant authority can determine whether it wishes to post the notice . Refer to comment Amend the regulations to provide consistency
Reg 51	Notification of application of tree-damaging activity to owner of land	This Regulation replaces Development Reg 18 - same wording, with the exception that "reasonable time"(within which an owner may make submissions) is replaced with "10 business days" (after the giving of notice to the owner).	While this Regulation requires the relevant authority to give notice and consideration to submissions made, there is no direction on what process should be followed if the owner of the tree objects to the removal. The owner's refusal may render the application (in its current form) hypothetical.	Further provisions required.
Reg 52	Public inspection of applications	This Regulation replaces Development Reg 34 - same wording.	This Regulation could be deleted - public inspection should take place through the SA planning portal. The only documents that the relevant authority may have to hold in hard copy is sizeable and very complex plans, if the information in them is virtually impossible to view online.	Refer to comment.



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Reg 55	Representations	This Regulation replaces Development Reg 35 - similar drafting. It notes procedural requirements for representations to be made to a relevant authority including the timeframe for lodgement, details of the representor to be provided, ability for relevant authority to allow a representor to appear to be heard and the response from an applicant.	53 This Regulation should make clear how satisfactory representations can be made which will be acceptable to the Council. Question whether there is any scope for representations to be uploaded via the SA planning portal? This would simplify the process for Councils in making the representations available to the applicant in accordance with section 107(3)(c) of the Act, and section 110(2)(c)(i). 53(1)(b) This provision notes that the name and address of the person/people making the representation must be provided. The template representation form attached to the Practice Direction seeks email and telephone number as well. There should be alignment between the two. In short, the person making representation needs to be easily contactable. The more information they can provide, the better for the relevant authority. The Practice Direction may want to confirm that any personal details in relation to the application will be redacted prior to representations being placed on the SA planning portal. 53(2) Change ordinary course of post to 5 business days (especially necessary for regional areas).	Regulation 53(4) should be amended to reflect comment. Regulation 53(1)(b) amended to state that "a representation must include the name and contact details..." Refer to comment.
			53(5) and (6) There is a lack of clarity around how	Reference should be made in the Regulations to such details



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			representations will be heard by the relevant authority under these provisions. We recommend that a Practice Direction be compiled which clarifies details about such issues as format of proceedings; permitted time for each party to make a representation (maximum 5 minutes, irrespective of the number of parties a person is representing) etc.	to be found in a Practice Direction.
Reg 54	Response by applicant	This Regulation replaces Development Reg 36 - same wording.	54(1) Representations should not need to be forwarded to the applicant - they should be uploaded on SA planning portal within 5 days and the applicant notified.	Refer to comment.
Reg 55	Notice of hearing of submissions	This Regulation replaces Development Reg 37 - same wording.	No comment.	No comment.
Division 4—Determination of application				
Reg 56	Time within which decision must be made (section 125(1))	This Regulation provides the prescribed timeframes (including some additional periods to apply in certain circumstances) within which a relevant authority should deal with a planning application, calculated from when the relevant authority has verified the application and the relevant fee(s) have been paid. Regulation 56(1)(k) and 56(3) provide for an extension of the timeframe within which a relevant authority should deal with an application the subject of proceedings and permits the relevant authority to decline to deal with an application until such proceedings are concluded.	56(1) The point at which 'time starts running' in relation to an application is crucial - especially given the ability to obtain a deemed consent under section 25 of the Act. This date should be given a definition rather than being hidden in the wording of this subregulation.	Include "Verification Date" (or something similar) as definition within Regulation 4 - "being that date upon which the relevant authority has made its determination under regulation 35, lodged the appropriate notice on the SA planning portal and received the appropriate fee in full, in relation to the application." Then, amend Regulation 56(1) by replacing the above wording with "calculated from the Verification Date".



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			56(1)(b) 20 business days should be amended to 30 business days. Due to being merit based, these applications can be complex particularly if there are 'internal' referrals such as to council traffic engineers, arborists or heritage advisors. If building consent under (d) is 20 business days, 30 business days for merit-based applications is more reasonable. There is a concern, particularly in regional areas where resourcing can be challenging, that the proposed timeframes are too limited. 56(f), highlights the issue raised with Regulation 22, an increase in the number of applications being considered by a CAP will result in a further delay of 20 days. 56(h) the timeframe for referring applications to prescribed bodies should be reduced to from 30 business days to 15 business days. In addition public notification and referral timeframes should not run concurrently. Often the requirements of a referral body require amendments to an application. This should occur prior to notification.	Refer to comment.
Reg 57	Deemed consent notice (section 125(2))	This Regulation states that a deemed consent notice will be in a form determined by the Commission, published on the SA planning portal and issued to the relevant authority by lodgement via the SA planning portal or by registered post.	57(2)(b) Comments at Regulation 30(1)(b) are repeated here. Subregulation 57(2)(b) should be deleted. The process of deemed consents is considered to pose considerable risks, as the relevant authority has no ability to appeal deemed consents relating to private accredited professionals. It is appreciated that deemed consents are anticipated	Refer to comment.



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			by the PDI Act and this cannot be changed without legislative reform, however it is recommended that the transition regulations do not 'switch on' this part of the Act in the initial stages of the new planning system to avoid unnecessary complications or confusions as all stakeholders adjust to the new system. Further to this, it is understood that a deemed consent notice will operate as the 'evidence' that a consent is in place for the development rather than a formalised DNF. However, it is unclear how the standard deemed consent conditions would then be applied to the deemed consent, or how the consent or conditions would be communicated through s7 searches or for other record keeping purposes. A formal DNF is required.	



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Reg 58	Notification of decision—accredited professionals (section 89)	This Regulation states that an accredited professional must give notice of a decision to grant, or approve a variation to, a planning consent or a building consent in relation to a proposed development within a council area, to the council for that area. The Regulation also prescribes information to be provided with such notification. An accredited professional must also give notice to the council when the accredited professional: assigns a classification or a new classification to a building; issues a certificate of occupancy; and receives a Statement of Compliance.	58(3) Comments at Regulation 30(1)(b) are repeated here. There should be no need for an accredited professional to provide documentation to the prescribed body - all documents should already be uploaded and available for viewing on the SA planning portal. An accredited professional's endorsement of plans etc can be provided by simply listing them as endorsed on the planning authorisation granted (which should also be uploaded onto the portal upon issue). Comments at Regulation 30(2) are also repeated here in relation to accredited professionals.	Regulation 58(3) amended to simply note that the accredited professional needs to notify the prescribed body of where the information/documents is on the SA planning portal.
Reg 59	Issue of building consent by other bodies	This Regulation provides that notice is to be given to the council for the relevant area in the event that the Minister, the Commission, or an assessment panel issues a building consent.	Comments at Regulation 58 are repeated here. The Council need only be notified of the building consent being granted (by email, ideally). All documents should be on the SA planning portal.	Amendments recommended for Regulation 58 can be also applied here.
Reg 60	Notice of decision (section 126(1))	This Regulation largely reflects the provisions under Development Reg 42. It prescribes timing for a notice of a decision on an application and details to be included in such notice.	60(2)(b) This should be 5 business days for consistency. 60(4) Comments at Regulation 30(1)(b) are repeated here. The endorsed plans can simply be listed as 'endorsed' on the planning authorisation granted, listed by document number, date etc, and copies of each plan kept available on the SA planning portal. Furthermore, the manual stamping of endorsed plans is a substantial and time-consuming job for Councils and should be avoided. 60(6) In a paperless planning system, as this submission supports, this subregulation is unnecessary.	Refer to comment. Amend subregulation 60(4) as per comment. Delete subregulation 60(6).
Reg 61	Notice of decision to	This Regulation states that a copy of a notice	61(1)	Amend subregulation 61(1) as



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	another relevant authority	issued by a relevant authority to be given to any other relevant authority as prescribed in the regulation.	Comments at Regulation 58 are repeated here. The relevant authority need only be notified by email; a copy of the development authorisation will be available on the SA planning portal.	per comment.
Reg 62	Notice of decision to a prescribed body	This Regulation notes the requirement for notice of decision by a relevant authority to be provided to a prescribed authority.	62(1) Comments at Regulation 58 are repeated here. The prescribed body need only be notified by email; a copy of the development authorisation will be available on the SA planning portal.	Amend subregulation 62(1) as per comment.
Reg 63	Notification of decision to owner of land	This Regulation states that a notice of a decision on an application is to be given by a relevant authority to the owner of the land if the owner is not a party to the application.	63(1) Comments at Regulation 58 are repeated here. The owner of the land need only be notified of the development authorisation; a copy of the development authorisation itself will be available on the SA planning portal.	Amend subregulation 63(1) as per comment.
Division 5—Conditions				
Reg 64	Notice of conditions	This Regulation states that a notice of a decision on an application must be accompanied by details and the reason for the imposition of the condition (including receiving directions from a prescribed body).	If certain conditions are directed by state agencies (as a result of referrals), will the agency give its own reasons, or will Councils have to infer why?	DPTI to confirm.
Reg 65	Regulated and significant trees	This Regulation replaces Development Reg 117(2)-(4) - same wording.	65(1) and (2) What is the expectation in terms of replacement trees – that they be saplings or mature trees? Councils or the relevant authority should be able to determine whether there should be a minimum planting height and a minimum mature height of replacement trees. 65(3) There is an 'x' noted for the amount payable for each replacement tree not planted. The LGA would seek to be engaged in relation to	Refer to comment. Unable to advise. The additional Fee Regulations should be provided for review



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			establishing an appropriate fee structure. Furthermore, no comment can be made on how such funds are received and used thereafter as the relevant provisions of the <i>Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019</i> are yet to be released.	prior to the final the final approval and gazettal of these regulations.
Division 6—Other matters				
Reg 66	Consideration of other development authorisations	This Regulation requires the relevant authority to take into account any prior development authorisation, and applicable conditions or notes, when considering the proposed development.	No comment.	No comment.
Reg 67	Certificate of independent technical expert in certain cases	This Regulation replaces Development Reg 85 and 88 - same wording.	No comment.	No comment.
Reg 68	Requirement to up-grade building in certain cases	This Regulation lists prescribed cases when a requirement for building up-grading may and may not apply.	No comment.	Amend first line of 68(2) – change full stop into a comma.
Reg 69	Urgent work	This Regulation states the method of notification of urgent work to the relevant authority - replaces Development Reg 113. Prescribes timeframes within which such notice must be given.	No comment.	No comment.
Reg 70	Building work affecting other land	This Regulation replaces Development Reg 75 - same wording.	No comment.	No comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Reg 71	Variation of authorisation (section 128)	This Regulation replaces Development Reg 47A - with amendments to provide that an application for variation of a development authorisation is not required where the authorisation was granted by an accredited professional. Includes requirements for a relevant authority to endorse notice of the minor variation and make other consequential amendments.	71(2) Comments in relation to Regulation 30(2) are repeated here in relation to accredited professionals. Furthermore, this provision needs to be amended to ensure that it is clear that variations to development authorisations issued by accredited professionals still require consent by a relevant authority. It is understood that 71(2) was intended to apply to when an accredited professional was no longer operating and therefore the applicant cannot go back to them for a variation, or perhaps where the variation would change the category of development (in which case the variation may be more appropriate processed as a new application). 71(2) should be amended such that it only applies when the relevant variation cannot be processed by the accredited professional because the accredited professional is no longer operating or due to the category of the development. 71(4)(a) This subregulation lifts any limit on the number of minor amendments able to be applied for. Is this potentially a 'backdoor' means of obtaining what would, in one application, simply be a major variation which would require development authorisation?	Amend 71(2) to state the following (or words to this effect): “An application to vary a development authorisation granted by an accredited professional must be made with an alternative relevant authority.” Make amendments in accordance with comments. 71(4)(a) Place a reasonable limit on the number of minor amendments permitted to be sought.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			71(4)(b) No comment can be made on how fees are to be received and used thereafter as the relevant provisions of the <i>Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019</i> are yet to be released.	Unable to advise. The new Fees Regulations should be provided for review prior to the final approval and gazettal of these regulations.
Reg 72	Scheme descriptions—community titles	This Regulation replaces Development Reg 45 - same wording (terms of notice have been moved to Schedule 11).	No comment.	No comment.
Reg 73	Lapse of consents or approvals (section 126(2))	This Regulation replaces Development Reg 48 - same wording.	No comment.	No comment.
Part 8—Impact assessed development				
Reg 74	Procedural matters (section 111(2))	This Regulation lists requirements and timeframes for a relevant authority to transmit relevant documentation (including the	No comment.	No comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
		application, and accompanying documentation and information) to the Minister and, in the case of Building Rules assessment, copies of plans etc to the council or building certifier.		
Reg 75	Level of detail—EIS (section 112(b))	This Regulation lists the prescribed bodies whose views are to be taken into account by the Commission in determining the level of detail required in an EIS.	The heading of this Regulation and regulation 76 could be more descriptive to ensure they are not easily confused.	Refer to comment.
Reg 76	Level of detail—EIS (section 112(c))	This Regulation requires the Commission to invite the proponent to express views on the level of detail required in an EIS.	See above comments in relation to Regulation 75.	Refer to comment.
Reg 77	EIS processes (section 113(5))	This Regulation provides the timeframe within which the Minister must refer an EIS to other relevant bodies (including council).	The heading of this provision should refer to 113(5)(a) – it is a long provision.	Refer to comment.
Reg 78	Consultation (section 113(6))	This Regulation states that the Minister to have regard to the Community Engagement Charter for public participation in planning processes.	No comment.	No comment.
Reg 79	Notification of decision	This Regulation states that the Minister is to give notice of the outcome of the Minister's decision to council and, in certain circumstances, the EPA.	79(3)(b) Comment at Regulation 30(1)(b) in the creation of a paperless system is repeated here. With the view to consistency, notices should be given by email or via the SA planning portal only.	Refer to comment.
Reg 80	Cancellation of development authorisation (section 115(9))	This Regulation provides a prescribed timeframe of 2 years within which development must be commenced.	No comment.	No comment.
Part 9—Special provisions relating to land division				
Division 1—Preliminary				
Reg 81	Interpretation	The definition of council broadened in this Part to refer to the Commission in relation to any division of land that is not wholly within the area of a council.	No comment.	No comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
	Division 2—Advice from Commission			
Reg 82	Advice from Commission	This Regulation replaces Development Reg 29 - same wording (timeframes updated to refer to business days).	82(3)(b) Comment at Regulation 30(1)(b) in the creation of a paperless system is repeated here. With the view to consistency, notices should be given by email or via the SA planning portal only.	Delete Regulation 82(3)(b).
	Division 3—Presumption in respect of division of certain buildings			
Reg 83	Presumption in respect of division of certain buildings	This Regulation replaces Development Reg 5A - same wording.	No comment.	No comment.
	Division 4—Underground mains areas			
Reg 84	Underground mains areas	This Regulation replaces Development Reg 30 - same wording with the exception that the timeframe for a report to be provided by an electricity authority has been removed.	No comment.	No comment.
	Division 5—Assessment requirements—water and sewerage			
Reg 85	Assessment requirements—water and sewerage	This Regulation replaces Development Reg 118 - same wording (updated to refer to <i>Planning, Development and Infrastructure (Fees, Charges and Contribution) Regulations</i> .)	85(5) No comment can be made on how funds relating to this provision are received and used thereafter as the <i>Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019</i> are yet to be released.	Refer to comment. The additional Fee Regulations should be provided for review prior to the final approval and gazettal of these regulations.
	Division 6—Prescribed requirements—general land division			
Reg 86	Prescribed requirements	This Regulation replaces Development Reg 50 - same wording	Telecommunications should be included as a prescribed requirement under this Regulation (section 102(1)(c)(v) of the Act).	Refer to comment.
Reg 87	Width of roads and thoroughfares	This Regulation replaces Development Reg 51 - same wording	No comment.	No comment.
Reg 88	Road widening	This Regulation replaces Development Reg 52 - same wording	No comment.	No comment.





Local Government Association

of South Australia

Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Reg 89	Requirement as to forming of roads	This Regulation replaces Development Reg 53 - same wording	89(5) This regulation should be expanded to also refer to lighting, street furniture and landscaping.	Refer to comment.
Reg 90	Construction of roads, bridges, drains and services	This Regulation replaces Development Reg 54 - same wording	No comment.	No comment.
Reg 91	Supplementary provisions	This Regulation replaces Development Reg 55 - same wording	No comment.	No comment.
	Division 7—Certificate in respect of division of land			
Reg 92	Exclusion from requirement to obtain a certificate	This Regulation replaces Development Reg 57 - same wording	No comment.	No comment.
Reg 93	General land division	This Regulation replaces Development Reg 58 - same wording, with the exception that documents approved for the purposes of the Regulation are to be published on the SA planning portal		
Reg 94	Division of land by strata title	This Regulation replaces Development Reg 59 - same wording, with the exception that documents approved for the purposes of the Regulation are to be published on the SA planning portal		
Reg 95	General provisions	This Regulation replaces Development Reg 60 - same wording, with the exception that documents approved for the purposes of the Regulation are to be published on the SA planning portal		
	Division 8—Notification of decision			
Reg 96	Notification of decision	A relevant authority (other than the Commission) must notify the Commission of a development authorisation in relation to a development involving a proposed division of land via the SA planning portal.	96(2) The time for compliance in this Regulation should be written as a "must" rather than a "should". If a relevant authority fails to comply with this deadline, we assume it is not liable under	<u>Refer to comment.</u>



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			Regulation 129(1) due to the presence of Regulation 129(3).	
Part 10—Special provisions relating to buildings and building work				
Division 1—Preliminary				
Reg 97	Interpretation	Definition of <i>council</i>		
Reg 98	Commission to act outside council areas	For this Part, the Commission is prescribed for the definition of Council	No comment.	No comment.
Division 2—Notifications				
Reg 99	Notifications during building work	This Regulation replaces Development Reg 74 - generally same wording with the exception that differing notice periods apply for intended commencement of any stage building work in and outside Metropolitan Adelaide. Notice to be provided via the SA planning portal and details of the work contractor, as well as the proposed signatory of the Statement of Compliance are to be provided.	99(1) There is a need for Councils to be given greater notice if road closures and other preparatory tasks are required to take place in support of and pursuant to other Acts. Ultimately, public safety should be put first and these notification periods extended. In addition to our comments above at Regulation 3, the term <i>Metropolitan Adelaide</i> should be replaced with <i>Greater Adelaide</i> to avoid different timeframes applying within the same Council area. This is likely to cause confusion and difficulty in administering the notifications in accordance with the Regulations. 99(1)(d) It is difficult to assess the impact of this regulation when the meanings of <i>designated building product</i> and <i>designated building</i> are yet to be confirmed. 99(3) Comment at Regulation 30(1)(b) in the creation of a paperless system is repeated here. With the view	Extend notification periods to at least 5 business days.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			to consistency, notices should be lodged on the SA planning portal only.	
Division 3—Safety, health and amenity				
Reg 100	Essential safety provisions	This Regulation replaces Development Reg 76 - it is generally consistent with the exception that "reasonable" timeframes have been replaced with specified business days for compliance. Penalties for non-compliance have been included in this Regulation.	100(5) Under this subregulation, the SA planning portal must be accessible to the installer to upload the Certificate of Compliance, once signed. No paper need change hands.	No comment.
Reg 101	Fire safety requirements—smoke alarms in dwellings	This Regulation replaces Development Reg 76B - same wording with the exception of the introduction of an Expiation Fee of \$150.	101(5) This Regulation notes that an Expiation Fee will be issued on an owner who fails to install smoke alarms in relevant buildings. Under Regulation 131, 'authorised officers' are designated to issue Expiation Notices. See comments at Regulation 131 which apply here also.	Refer to comment.
Reg 102	Health and amenity	This Regulation replaces Development Reg 77 - same wording with the exception that the reference to the <i>Sewerage Act 1929</i> for the purposes of the definition of <i>public sewer</i> has been replaced with a reference to the <i>Water Industry Act 2012</i> .	102(1) 'Public sewer' is not defined in the <i>Water Industry Act 2012</i> . Consider replacing defined term with <i>sewerage service</i> or other relevant term. 102(2) This should be an expiable offence.	Refer to comment. Refer to comment.
Division 4—General				
Reg 103	Building Rules: bushfire prone areas	This Regulation replaces Development Reg 78(1) - same wording	No comment.	No comment.
Reg 104	Construction Industry Training Fund	This Regulation replaces Development Reg 79 - same wording		
Reg 105	Fire safety relating to existing class 2 to 9	This Regulation replaces Development Reg 80ABA - same wording with the exception that		



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
	buildings	the Regulation relates to buildings in existence on 19 September 2019.		
Part 11—Classification and occupation of buildings				
Reg 106	Preliminary	Definition of council and designated relevant authority		
Reg 107	Classification of buildings	This Regulation replaces Development Reg 82 - same wording with the exception that an Accredited professional - Level 1, 2 or 3 may also assign classifications.	No comment.	No comment.
Reg 108	Certificates of occupancy	This Regulation replaces Development Reg 83 - same wording with the exception that a Certificate of Occupancy is now required for a class 1a building; the council must undertake an inspection before dispensing with the requirement to provide a Statement of Compliance; and the form of certificate of occupancy will be available on the SA planning portal.	Why do Class 1a buildings now require a Certificates of Occupancy, when previously these types of building were excluded?	DPTI to comment.
Reg 109	Statement of Compliance	This Regulation replaces Development Reg 83AB - same wording	109(3) It is not clear how the Statement of Compliance is to be given to the relevant authority under this provision. Assuming a paperless system, will the contractor and/or land owner be required to upload the document onto the SA planning portal?	DPTI to confirm.
Part 12—Crown development				
Reg 110	Exclusions from the definition of State agency	This Regulation replaces Development Reg 66 - same wording	No comment.	No comment.
Reg 111	Developments excluded from approval and notice	This Regulation replaces Development Reg 67 - same wording	No comment.	No comment.
Reg 112	Development in Riverbank Zone	This Regulation replaces Development Reg 67A - same wording	No comment.	No comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Reg 113	General scheme	This Regulation replaces Development Reg 70 - same wording with the addition of provisions relating to public notification by placing a notice on the land and in relation to a building certifier being an accredited professional who would be qualified to give building consent.	113(5) Comments at Regulation 30(1) in relation to a paperless system are repeated here. Notices should be given by email or via the SA planning portal.	The need to provide copies of documents should be deleted.
Reg 114	Lapse of approval	This Regulation replaces Development Reg 71 - same wording	No comment.	No comment.
Part 13—Mining				
Reg 115	Mining production tenements	This regulation replaces Development Reg 84 - same wording	No comment.	No comment.
Part 14—Land management agreements				
Reg 116	Register of land management agreements (section 192)	Requirement for designated authorities (including councils) to provide copies of land management agreements to the Minister and for a register of land management agreements to be kept on the SA planning portal and copies to be available for inspection at the Department.	116(2) With a view to a paperless planning system, the agreements referred to in this regulation should be uploaded onto the SA planning portal, and the SA planning portal should replace the need for an agreements register.	Refer to comment.
Reg 117	Register of land management agreements (section 193)	Replaces Development Reg 100 - same wording	117 Similarly, LMAs should be available to the public on the SA planning portal, which replaces the need for an LMA register. Working towards a paperless planning system, hard copies should not be required to be held by Councils. At the most, a computer should be available at each Council through which members of the public can access the portal and any required LMA, should they need.	Refer to comment.
Part 15—Performance of certain functions relating to buildings and building work				
Reg 118	Authorised officers and inspections	This Regulation requires the appointment of an 'authorised officer', with requisite accreditation,	118(1) Each Council is going to need to appoint (or have	



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
		who will be authorised to carry out inspections under section 144 of the PDI Act and act as a 'designated authority' under section 212 of the Act.	access to which means obtaining and paying external consultants) accredited professionals who meet one of the building levels 1 - 4. For some Councils, they may not have, within their workforce, such officers with these qualifications, much less have them sufficiently accredited. There is a concern with the resource implications of this requirement. Yet if Councils fail to comply with this Regulation 118, they will also struggle to meet the requirements of other regulations (eg Regulation 25). 118(2) The carrying out of inspections by accredited professionals - building levels 1-4 under this Regulation, is still subject to the required Practice Direction under section 144 of the Act.	Refer to comment.
Reg 119	Fire safety	This Regulation prescribes qualifications of an authorised officer who may carry out inspections in relation to fire safety and qualifications of a member of an <i>appropriate authority</i> constituted by a council.	No comment.	No comment.
	Part 16—Enforcement			
Reg 120	Civil penalties	This Regulation prescribes the form of notice to be served by a designated entity prior to making an application to the Court to recover an amount as a civil penalty for contravention of the PDI	There is no definition in the Regulations of a 'designated entity'. It is to be assumed that it has the same meaning as under s185 of the Act (even though the application of this definition is limited	Refer to comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
		Act.	to Division 2 of Part 13 of the Act). A definition should be provided in the Regulations.	
Reg 121	Offences by bodies corporate—responsibilities of officers	This Regulation prescribes offences for which officers of a body corporate will be guilty of an offence.	121(2) This Regulation is missing section references.	Section references to be added to Regulation 121(2).
Part 17—Rights of review and appeal				
Reg 122	Rights of review and appeal	This Regulation prescribes matters for which a person who has applied for a development authorisation may bring an application or proceedings under section 202(1)(b) of the Act.	122(c) According to this provision, only the 'imposition of conditions' on a development authorisation can be appealed. This drafting needs to be extended to include: 1. the imposition of a particular condition (not just all conditions); and 2. the drafting of a particular condition (ie the appellant may not disagree with the content of the condition but rather the breadth/timing/limitations of it).	Refer to comment.
Part 18—Miscellaneous				
Reg 123	Service of notices	This Regulation replaces Development Reg 94 - same wording with the exception that notices may be served by email and via the SA planning portal and notices served by fax have been removed.	No comment.	No comment.
Reg 124	Prescribed rate of interest	This Regulation replaces Development Reg 96 - same wording.	No comment.	No comment.
Reg 125	Application of Fund	This Regulation replaces Development Reg 111 - same wording with the exception that the reference to "Planning Strategy" has been replaced with "a state planning policy".	The LGA is concerned that the wording of regulation 125 implies the opening up of funds collected as open space contributions to be potentially applied by other State agencies to unrelated uses, rather than being applied for the specific purpose for which they are collected.	Refer to comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			125 Under section 198(11)(b) of the Act, open space contributions received by the Commission are required to be paid into the Planning and Development Fund (not a separate fund established for that purpose) or as prescribed by the Regulations. However, there is no other draft regulation that prescribes an alternative location for those contributions. Regulation 125, then, essentially authorises Treasury's use of the Fund monies (including any open space contributions obtained through schemes decided by the Commission) for much broader purposes than open space development. Local Government has a significant interest in accessing the fund for open space grants and programs (the purpose for which the land division contributions were originally conceived). If the Commissioner is the relevant authority for applications giving rise to open space contributions, then the core purpose (and amount) of these funds will be eroded by use in support of state policies. For example, could they be used for mineral resource infrastructure projects rather than providing open space in accordance with SPP 10.3.	Regulation 125 should be amended to reflect the need for open space contributions collected by the Commission to go into a fund that is not the Planning and Development Fund, but rather one created especially for that purpose such that the monies are used for their intended purpose.
Reg 126	Register of applications	This Regulation replaces Development Reg 98 - same wording.	Comments at Regulation 117 are repeated here (obviously relating to planning applications etc rather than LMAs). Local Government is not opposed to the concept of the keeping of a register, however this should be maintained on the SA planning portal and not kept	Refer to comment - Delete Regulation 126.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			separately.	
Reg 127	Documents to be provided by an accredited professional	This Regulation replaces Development Reg 102 - same wording.	Comments at Regulation 30(2) are repeated here. 127(1) There should be no need for an accredited professional to have to produce a number of the documents listed in this subregulation; they should be available on the SA planning portal. 127(3) Comments at Regulation 31(1) are repeated here. If this matter is resolved, there should be no need for an accredited professional to be exempt from producing documents as they will already be on the SA planning portal. Furthermore, the ability for an accredited professional to avoid producing documents raises the very real concern of who regulates the actions of an accredited professional?	Delete Regulations 127(1)(b)-(e), Regulation 27(2) and (3).
Reg 128	Accreditation of building products	This Regulation replaces Development Reg 105 - same wording.	No comment.	No comment.
Reg 129	General offence	This Regulation replaces Development Reg 112 - same wording.	Consider including an expiation provision within this Regulation to assist with enforcement.	Refer to comment.
Reg 130	Declaration of commercial competitive interest	This Regulation replaces Development Reg 114 - same wording.	No comment.	No comment.
Reg 131	Issue of expiation notices	This Regulation states that authorised officers are designated persons who may give expiation notices.	There is no definition for 'authorised officers'. One should be added to give this Regulation meaning. Our comments above at Regulation 31 also apply here with regard to the collection of expiation fees by Councils and the administrative and financial burden that will be placed on Councils in the event that such fees are not directly collected by Councils. Clarity around this process is required.	Refer to comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Reg 132	Limitation of time when action must be taken	This Regulation replaces Development Reg 97 - same wording.	There is a referencing error in this Regulation - the reference to section 8(3)(b) should be a reference to section 8(2)(b) of the Act.	Refer to comment.
Schedule 1 - Register of interest—primary return				
** There is a real need to include the Schedule number at the top of each page of the Regulations. Very hard to cross refer to different Schedules currently. This Schedule replaces Development Reg Schedule 26 - same wording.				
Schedule 2 - Register of interest—ordinary return				
This Schedule replaces Development Reg Schedule 27 - same wording.				
Schedule 3 - Additions to definition of development				
This Schedule replaces Development Reg Schedule 2 - drafting is generally consistent with the wording in the Development Regs. The detail of the Planning and Design Code is required to enable a meaningful assessment of Schedule 3.				
Sch 3, 1	Excavation or filling in identified zones or areas		No comment.	No comment.
Sch 3, 2	Excavation or filling—local heritage places			
Sch 3, 3	Excavation or filling in identified zones or areas subject to inundation or flooding			
Sch 3, 4	Levee, mound over 3 metres height			
Sch 3, 5	Excavating or filling—coastal land etc			
Sch 3, 6	Coastal protection structures			
Sch 3, 7	River Murray—			



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
	infrastructure			
Sch 3, 8	Display of advertisements		Sch 3(8)(2) No changes have been made to the fact that commencing an advertisement is 'development' but changing the contents of that advertisement is not. While this is generally accepted, consideration should be given to third party advertisement being 'development', even if it's on an existing sign which benefits from development consent. Also, clarification is required as to whether advertising displays which involve building work are also exempt under this schedule. This is especially needed where it is difficult to determine whether a sign involves building work or not, particularly signs such as metal plate signs which are stuck on, screwed onto or hanging from a building.	Refer to comment.
Sch 3, 9	Land division—certain Crown lands		No comment.	No comment.
Schedule 4 - Exclusions from definition of development				
This Schedule replaces Development Reg Schedule 3 - drafting is generally consistent with the wording in the Development Regs.				
Sch 4, 1	Advertising displays	Sch 4(1)(d) This clause confirms that advertisements displayed in relation to residential buildings do not require development approved (including advertisements displayed for a home activity) as long as they don't move, flash, reflect undue light or are internally illuminated. Sch 4(1)(e) Signs on the front of a building used primarily for retail, commercial, office or business purposes,	Sch 4(1)(d) It is noted that <i>home activity</i> will be defined in the Planning and Design Code, which has not yet been released. We suggest that interpretation of the Regulations would be assisted if the definition were included in the Regulations, rather than by reference to a separate document. Sch 4(1)(e) It is noted that signs on buildings in LHPs are still exempt under this provision. Justification on this is sought, as well as the extent of building work	The Planning and Design Code in its entirety should be provided for review prior to the final approval and gazettal of these regulations. DPTI to advise.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
		as long as they as they don't move, flash, reflect undue light or are internally illuminated. Sch 4(1)(h) Advertisements that constitute moveable signs under the LG Act and is placed on a road, public street or footpath are not development.	which can be undertaken in installing the signs which does not need approval. Sch 4(1)(h) As this clause reads, the same sign on a private land constitutes development. Therefore, if the same sign is moved from a footpath to the adjacent front yard, it is development.	Sch 4(1)(h) Amend this clause to permit one moveable sign on private land without approval being required.
Sch 4, 2	Council works	This regulation describes the types of council construction and maintenance works that are not development. Sch 4(2)(f) deals with the installation of playground equipment on or in a recreation area.	Sch 4(2) The drafting of what amounts to "Council works" should be clarified to include "people operating for or on behalf of a council under a works contract or lease". Sch 4(2)(1)(f) A definition of 'playground equipment' should be inserted for clarification. The concept of what may now constitute playground equipment is much broader and varied than ever before. For example, playground equipment may often include skate parks or "rage cages" and these common elements should form part of the definition.	Refer to comment.
Sch 4, 3	Land division		No comment.	No comment.
Sch 4, 4	Sundry minor operations	Sch 4(4)(1)(a) The construction or alteration or addition to an outbuilding (except in a LHP and subject to a number of requirements), is not development.	Sch 4(4)(1)(a) (1) The total floor in this clause should be 15m² in or out of HCs; and (2) Permitted construction methods should be clarified (e.g. can it be masonry? Can it be a Bali Hut? Does it need to be totally enclosed? etc) Sch 4(4)(1)(b) 'airport building heights are' should be 'airport	Amend as per comment. Amend as per comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
		Sch 4(4)(1)(d) A spa pool which is constructed in association with a dwelling and for primary use of the occupants of that dwelling and does not exceed set capacity, is not development. Sch 4(4)(1)(h) A structure which includes a retaining wall up to 1 metre + a fence if it is less than 3.1m is not development. Sch 4(4)(1)(j) Water tanks in Metropolitan Adelaide up to 10m² and 40000L and 4m high are not development. Sch 4(4)(1)(j)(ii)(B) Water tanks outside of Metropolitan Adelaide up to 15m² and 60000L are not development	building heights area' Sch 4(4)(1)(d) The spa pool requirements need review, especially in relation to pool fencing and safety (a spa pool up to 680L isn't development but it doesn't specify a requirement to have fencing or depth limits etc). Comments at Regulation 3G above are repeated here. Sch 4(4)(1)(j)(ii)(B) Some further consideration needs to be had for regulation of water tanks in regional areas in relation to the location/accessibility and connection requirements to ensure that such tanks	Further requirements be considered and appropriate amendments made to the regulations. Refer to comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
		Sch 4(4)(1)(m) A tree house (being a structure that is intended to be used primarily by children for recreational purposes) that is ancillary to a dwelling and that has a total floor area not exceeding 5 square metres, is not development. Sch 4(4)(3) Construction of a shade sail comprising specified materials, dimensions, height and visibility is not development (other than in a LHP or HCZ). Sch 4(4)(4) Certain repairs, maintenance or internal alterations of a building is not development (other than in respect of LHP).	Sch 4(4)(1)(m) The exemption of tree houses is supported. However, it would be improved by including reference to cubby houses also. Will they also be subject to "outbuilding" height restrictions if they are on stilts? Sch 4(4)(3) The maximum height for a building only shade sail should be measured above ground level only. Floor levels can be raised. Sch 4(4)(4) Consideration should be given to whether internal works to LHPs should require approval rather than being an exemption to development.	Further details around tree houses need to be considered and appropriate amendments made to the Regulations. "or floor level" should be deleted. Appropriate amendments to be made to the Regulations.
Sch 4, 5	Use of land and buildings		Sch 4(5)(a)(i) The meaning of 'domestic floor' is unclear and requires clarification/a definition. Sch 4(5)(2)(a) The definition of "home activity" has been removed from the Regulations and is proposed to be put into the Code. Sch4(5)(2)(a) should therefore refer to the carrying on of a "home activity (as defined in the Planning & Design Code)", otherwise the Regulations appear to miss a definition.	Refer to comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			Sch 4(5)(2)(d) This provision is interpreted as development approval being required for any circumstances in which the listed animals are kept, whether or not the animals are domestic pets and solely for the benefit of the person on the land. Please confirm this is correct.	
Sch 4, 6	Special cemetery buildings		No comment.	No comment.
Sch 4, 7	Inground sewerage pumping stations		No comment.	
Sch 4, 8	Inground water valve chamber		No comment.	
Sch 4, 9	Certain building work outside council areas		No comment.	
Sch 4, 10	Demolition of single storey buildings		While it impossible to tell what zones, subzones or overlays in the Code will be relevant to this provision, it is strongly recommended that demolition within a HCZ or overlay require planning approval (at least planning consent). As a broader comment on this provision, it will undoubtedly increase the risk of unlawful demolitions and local public dissatisfaction. Demolition can have a very real impact on local communities and adjacent infrastructure (eg footpaths and roads). Councils need to be able to monitor and control such impacts - and usually do so by keeping communication channels open with local communities. Permitting demolition, albeit only for single storey buildings, undermines that process. It also undermines the veracity of enforcement proceedings for unlawful demolition and will very likely result in high reparation costs for the council in relation to damaged	



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			infrastructure. It is recommended that DPTI undertake a thorough look at what kind of demolition can and cannot occur without council approval.	
			Finally, are structures such as masonry fences/walls also single storey buildings? If so, this should be clear in the drafting.	
Sch 4, 11	Dams		No comment.	
Sch 4, 12	Amalgamation of land		How can allotments separated by an adopted road or road reserve be amalgamated?	
Sch 4, 13	Aerials, towers etc		No comment.	
Sch 4, 14	Railway activities		No comment.	
Sch 4, 15	Gas infrastructure		No comment.	
Sch 4, 16	Solar photovoltaic panels		No comment.	No comment.
Sch 4, 17	Aquaculture development		No comment.	No comment.
Sch 4, 18	Removal of trees in certain cases	Removal of trees in certain cases	All exclusions from the definition of 'tree-damaging activity' should be contained within the Schedule (refer also to our comments above at Regulation 3F(4)(b)).	
Sch 4, 19	Cultana Training Area		No comment.	No comment.
Sch 4, 20	Recreation paths			
Sch 4, 21	Car parks etc in Osborne area of City of Port Adelaide Enfield			
Schedule 5 - Colonel Light Gardens Heritage Area				
Sch 5, 1	Advertising displays	This Schedule replaces Development Reg Schedule 3A - same wording.	No comment.	No comment.
Sch 5, 2	Council works			
Sch 5, 3	Retirement units			
Sch 5, 4	Sundry minor operations			
Sch 5, 5	Use of land and			

Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Sch 5, 6	Painting			
Schedule 6 - Relevant authority—Commission				
This Schedule replaces Development Reg Schedule 5 - significantly amended				
Sch 6, 1	Areas of all councils		No comment.	No comment.
Sch 6, 2	Adelaide Park Lands		No comment.	Refer to comment.
Sch 6, 3	City of Adelaide—developments over \$10m	Developments exceeding \$10million within the area of the Corporation of the City of Adelaide Council to be assessed by the Commission.	It is the view of local government that monetary figures are an inappropriate mechanism to determine assessment pathways. Monetary values are not indicative of the complexity of the relevant application to be considered and in any event, council assessment panels should be the relevant authority considering such applications. In addition, references to specific figures within the Regulations should be avoided as this does not take into account indexation and will become outdated.	Refer to comment.
Sch 6, 4	Inner Metropolitan Area—buildings exceeding 4 storeys		Subject to the contrary in the Planning and Design Code why are applications in relation to any building exceeding 4 storeys in height in any Adelaide Metropolitan Zone (as noted in the current Development Regs) remain out of their decision-making remit. With the adoption of Urban Corridor Zones, Local relevant authorities are best placed to decide on such developments.	Recommend the deletion of this provision or a significant increase in the building height noted in Schedule 6, clause 4.
Sch 6, 5	City of Port Adelaide Enfield—developments over \$3m in identified area	Developments exceeding \$3million within the City of Port Adelaide Enfield to be assessed by the Commission.	Comments at Schedule 6(3) are repeated here.	Refer to comment.
Sch 6, 6	City of Port Adelaide		No comment.	No comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
	Enfield—development in identified zone			
Sch 6, 7	West Beach Recreation Reserve		No comment.	No comment.
Sch 6, 8	Private Open Space		No comment.	No comment.
Sch 6, 9	City of Charles Sturt—developments over \$3m in identified area	Developments exceeding \$3million within the City of Charles Sturt are to be assessed by the Commission.	Comments at Schedule 6(3) are repeated here.	Refer to comment.
Sch 6, 10	Certain electricity generators		No comment.	No comment.
Sch 6, 11	Railways		No comment.	No comment.
Sch 6, 12	Show grounds		No comment.	No comment.
Sch 6, 13	Kangaroo Island—tourism development over \$3m in certain conservation areas	Development for the purposes of tourism exceeding \$3million within certain zones in the area of Kangaroo Island Council to be assessed by the Commission.	Comments at Schedule 6(3) are repeated here.	Refer to comment.
Sch 6, 14	University developments over \$10m	Development within Metropolitan Adelaide exceeding 10000m ² occupied by a university exceeding \$10million to be assessed by the Commission.	Comments at Schedule 6(3) are repeated here.	Refer to comment.

Schedule 7 - Complying building work

Council comment: This schedule includes some works which would not normally need approval but might be in in a heritage zone, flood area etc. They are identified as complying building work to avoid the need for a proper building assessment but why can't these just be made exempt from needing building assessment? It is an unnecessary step that is often neglected anyway.

Refer to 'Complying building work' still employed, despite the introduction of "deemed-to-satisfy" applications. Clarification on this is required.

Sch 7, 1	Dams		No comment.	No comment.
Sch 7, 2	Pergolas		No comment.	No comment.
Sch 7, 3	Alterations		No comment.	No comment.
Sch 7, 4	Building work outside council area		No comment.	No comment.
Sch 7, 5	Haysheds etc		Sch 7(5)(d)(viii) and (ix) These Councils no longer exist. Amend references to refer to Light Regional Council and Adelaide	Refer to comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			Plains Council.	
Sch 7, 6	Stockyards		No comment.	No comment.
Sch 7, 7	Sundry minor operations		No comment.	No comment.
Sch 7, 8	Aquaculture		No comment.	No comment.
Sch 7, 9	Aerials, towers etc		No comment.	No comment.
Sch 7, 10	Railways		No comment.	No comment.
Schedule 8 - Plans				
To assist members of the public upload information to the Portal, there may be a need to provide example site plans, elevations etc. as was illustrated in the Guide to the draft Regulations. If this is the case, it is important that site plans, floor plans etc. are generally representative of the relevant type of development. For example, an example site plan for a commercial development should illustrate car parking areas and waste storage and an elevation for a fence or retaining wall should be of that type of structure, rather than a house or verandah. Also, Schedule 8 does not appear to require a Certificate of Title for any form of development. Certificates of Title have been and will continue to be an important aspect of processing development applications. While it is understood that the ownership of land is not primarily a planning matter, key details such as correct site dimensions and rights of way are fundamental to an accurate assessment and any incorrect information, errors or non-disclosure to the relevant authority could very easily render a development incapable of being implemented. Without the opportunity for the relevant authority to check the Title, a development could progress to the commencement of site works (or further) before an issue becomes apparent, causing unnecessary costs and complications. It is considered logical and appropriate for Schedule 8 to require applications to provide a Certificate of Title.				
Sch 8, 1	Plans for certain types of development		No comment.	No comment.
Sch 8, 2	Plans for residential alterations, additions and new dwellings		Sch 8(2)(a)(ix) The plans requiring details of the amount and location of private open space should also be required to specify the location of rainwater tanks, air-conditioning units, storage sheds, clothes lines, external bin storage etc. Consider introducing a definition of "useable open space".	Refer to comment.
Sch 8, 3	Plans for development for non-residential purposes		Sch8(3) outlines a requirement for the location and dimension of car parking spaces on the site. In addition to this, it is recommended that the	



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			following be required: * any intended allocation of staff car parks or other car parking limitations such as timed parks or accessible parks; * for multi-tenancy sites: - details of any car parking arrangements, such as which car parks are available to which tenancies; - if car parks are shared, details of other tenancies such as operating hours and floor size so that the overall car parking demand of the site can be determined.	
Sch 8, 4	Plans for swimming pools		No comment.	No comment.
Sch 8, 5	Plans for retaining walls		No comment.	No comment.
Sch 8, 6	Plans for application for consent for tree-damaging activity		There is no requirement to provide an arborist report or a plan which includes the location of replacement trees?	Sch 8(6) should be amended to require: 1. the provision of an arborist report in support of an application for tree-damaging activities; and 2. A plan which specifies the proposed location for any replacement trees.
Sch 8, 7	Plans for development involving advertising signs		No comment.	No comment.
Sch 8, 8	Additional requirements for certain development in designated historic or conservation zone, subzone or overlay		Some of the requirements for development in historic zones is considered relevant to some residential development in other zones, including: * a drawing showing buildings on adjoining sites and streetscape – this may be required if the front setback requirements for new dwellings relate to	No comment.



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
			dwellings on adjacent sites and for character areas where the design of the dwelling should be consistent with other surrounding dwellings; * details of fences at the completion of the development (to determine if the fences provide sufficient privacy and potential impacts on neighbours of proposed fencing); * details of visible services and street furniture; and * landscaping plan and schedule. There will be numerous performance assessed developments where this information will be necessary. Sch8(8)(c) While the requirement to provide a character report is supported, no reference is provided as to who should prepare the report. A recommended alternative may be for the applicant to provide a broader streetscape plan to better illustrate the design context of the immediate locality. The relevant authority can then undertake their own assessment as to the appropriateness of the building design within the locality and in light of the relevant policies. Landscaping Note that when a landscaping plan is required, it should be accompanied by a landscaping schedule to clarify plant species (rather than ambiguous tree, shrub or ground cover icons). Stormwater It is recommended that stormwater plans be required for the construction of new structures.	



Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Sch 8, 9	Plans for building work		No comment.	No comment.
Sch 8, 10	Requirements for development near the coast			
Sch 8, 11	Statement relating to electricity infrastructure			
Sch 8, 12	Requirements for general land division applications for development approval—proposal plans			
Sch 8, 13	Additional requirements for community plans			
Sch 8, 14	Land division certificates—final plan			
Sch 8, 15	Activities of environmental significance			
Sch 8, 16	Water resources requirements			
Sch 8, 17	Referrals with respect to River Murray Protection Areas			
Sch 8, 18	Referrals with respect to the use of River Murray water within the Murray-Darling Basin			
Sch 8, 19	Additional requirements for bushfire protection areas			



Local Government Association of South Australia

Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Sch 8, 20	Additional requirements for certain electricity generators			
Schedule 9 - Referrals				
Sch 9, 1	Interpretation			
Sch 9, 2	Table		No table has yet been provided. This is significant limitation in the ability to give consideration to these draft Regulations.	This table at Schedule 9 should be provided for review prior to the final approval and gazettal of these regulations.
Schedule 10 - Work that affects stability of other land or premises				
This Schedule replaces Development Reg Schedule 16 - same wording.			No comment.	No comment.
Schedule 11- Form of endorsement of scheme description—community titles				
This Schedule replaces form of endorsement previously provided within Development Reg 45 - same wording.			No comment.	No comment.
Schedule 12 - Land division certificate—prescribed form				
This Schedule replaces Development Reg Schedule 12 - same wording.			No comment.	No comment.
Schedule 13 - Statement of compliance				
This Schedule replaces Development Reg Schedule 19A - same wording.			No comment.	No comment.
Schedule 14 - State agency development exempt from approval				
		This Schedule replaces Development Reg Schedule 14 - generally same wording.	No comment.	No comment.
Schedule 15 - Mining production tenements				





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Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
Sch 15, 1	Adelaide and Environs	This clause replaces Development Reg Schedule 20(1) - same wording	The references to District Council of Kapunda and Light and The District Council of Mallala should refer to Light Regional Council and Adelaide Plains Council.	Refer to comment.
Sch 15, 2	The Coast	This clause replaces Development Reg Schedule 20(2) - same wording		
Sch 15, 3	Other Areas	This clause replaces Development Reg Schedule 20(3) - same wording		
Schedule 16 - Civil penalties				
Sch 16, 1	Form of notice of right to elect to be prosecuted (regulation 120)		No comment.	No comment.
Schedule 17 - Activities of environmental significance				
Schedule not yet released for consultation.				This Schedule 17 should be provided for review prior to the final approval and gazettal of these regulations.
Schedule 18 - Activities of major environmental significance				
This Schedule replaces Development Reg schedule 22 - same wording				
	Part 1—Activities			
Sch 18, 1	Petroleum and Chemical		No comment.	No comment.
Sch 18, 2	Manufacturing and Mineral Processing			
Sch 18, 3	Waste Treatment and Disposal			
Sch 18, 4	Activities in Specified Areas			
Sch 18, 5	Animal Husbandry, Aquaculture and Other			





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Clause	Title	Content of draft Regulation (summarised)	LGA SA Comment	Amendment Sought
	Activities			
Sch 18, 6	Food Production and Animal and Plant Product Processing			
Sch 18, 7	Materials Handling and Transportation			
Sch 18, 8	Other			
	Part 2—Listed wastes			
Schedule 19 - Map of initial part of designated Osborne area				
Schedule not yet released for consultation.				This Schedule should be provided for review prior to the final approval and gazettal of these regulations.
Schedule 20 - Map of additional part of designated Osborne area				
Schedule not yet released for consultation.				This Schedule should be provided for review prior to the final approval and gazettal of these regulations.
9	Revocation of Schedules 1 and 2			

Appendix B: LGA comments on the Draft Practice Directions

The LGA comments and recommendations in relation each of the draft Practice Directions is set out below

Draft Practice Direction: Conditions 2018

This Practice Direction is made in connection with section 127 of the Act with regard to conditions imposed on a development approved under Part 7 of the Act.

Part 2, 5(4)(a):	Amend the last sentence of this provision to state (which corrects a currently incorrect reference to the Act and is also less misleading as to further requests for information): <i>Where sufficient information is not available on proposals, section 119 of the Act and regulation 36 of the Regulations provides that further information may be sought (depending on the type of planning application being made) and thereafter a final decision can be made.</i>
Part 2, 5(5):	As drafted, with the use of 'or' at the end of each sentence, this section may be interpreted to restrict relevant authorities to making only 1 of the listed conditions. Amend the first line of the provision to state: <i>A condition imposed on a development authorisation may do any one or more of the following:....</i>
Part 2, 5(5)(b)(i):	(a) What "other development permits" are being referred to here? If it is another development authorisation, it should say so. If it is an easement/licence/lease etc, it is a property right and 'development permit' is an incorrect description. This phrase is confusing and needs amendment. (b) This provision comes very close to conflicting with the requirement of a condition to be final and not require a further approval (see above) and directly conflicts with the provision at Part 2, 5(6)(i). Again, what is being referred to here needs to be clearly explained.
Part 2, 5(5)(e):	Is "deed" in this provision intended to refer to a requirement for payment of a security/bond? We suggest rewording this provision so that the intention is clearer (eg. "payment under a bond or other financial instrument" or something similar).



Part 2, 5(5)(f):	We query the point of this condition; the application to which the consent attaches has already been assessed as a deemed-to-satisfy with 1 amendment and the approval granted. We suggest this be deleted.
Part 2, 5(6)(g):	The ability of the Council to obtain a cash contribution to public works etc. should be listed under Part 2, 5(5). This paragraph then has some context.
Part 2, 5(9):	This condition applies to all types of development application and should be amended to reflect this.

2. Draft Practice Direction - Deemed Planning Consent - Standard Conditions 2019

This Practice Direction is made in connection with section 125(5) of the Act and lists the conditions that will apply to a deemed planning consent where conditions are not otherwise imposed by the relevant authority.

General comment	It is not possible to anticipate all situations, matters and development which be deemed, so there will inevitably be applications which fall outside of the developments for which such conditions are appropriate. There will also inevitably be interpretation issues with terms in these standard conditions.
Standard conditions:	The second general condition is going to be difficult to enforce as it is unclear what constitutes "good condition".
	The first car parking condition should include the provision for car parking layouts which are non-compliant with the Australian Standards in circumstances only where it is wholly justified on the planning merits.
	The first landscaping condition should require the submission <u>and approval</u> of a detailed landscaping plan prior to development approval being granted and thereafter maintained to an acceptable standard.
	It is unclear as to why the Site Management Conditions are restricted only to industrial and commercial applications. Keeping sites orderly should be a requirement of any development. This should be amended. The first stormwater condition should require stormwater to be directed to the Street Water Table where there is one available.
	The last stormwater condition should be amended to state: "A Stormwater Management Plan, to be drafted in consultation with the relevant council, must be submitted <u>and approved</u> by the relevant authority..."



	As it is currently drafted, only the submission needs to be made to the satisfaction of the relevant authority.
	An additional stormwater condition should be added which requires onsite stormwater retention provision for major planning applications, such as multi-dwelling residential developments.
	The first Construction Management condition should be amended to state: "A WMP that details the proposed waste minimisation and resource recovery practices during demolition and construction of the proposed development must be prepared and approved by the relevant authority prior to implementation of the approved development." As it is drafted, there is no requirement for the WMP to be of any quality and the relevant authority does not need to sign off on it.
	In the second and third Construction Management conditions, there is no requirement to get the relevant authority's sign off on either the CEMP or the SEDUM. While they each must comply with industry standards, there is no regulation of that requirement. We recommend making the needed amendments to these conditions.
	In the first condition (part (a)) of the Regulated/Significant Trees conditions should provide for the replacement of trees to be planted within the next available planting season, not within the next three months. Additionally, in (part (b)), there is an incorrect Regulations reference. Was the intention to refer to Regulation 65(5) of the Regulations? If so, was the intention that the monies acquired would go into the general fund rather than a specific fund for expenditure on Regulated or Significant Trees? If not, then the reference to the Planning and Development Fund in this condition needs to be altered.
	The first Privacy condition applies "Where the application proposes a building of 2 or more storeys on a site adjacent to a zone which envisages residential development." This clearly excludes circumstances in which the development site and the adjoining site are both within the same zone. Was this envisaged?
	Both Privacy conditions require 1.5m high screening. Many metropolitan councils require 1.7m high screening. This increased screening height should be referenced.



	The condition relating to Swimming Pools should be reworded to state "must be enclosed in a solid structure that will materially decrease the transmission of noise which emanates from the pump/filter/equipment to the satisfaction of the relevant authority" such that this requirement can be regulated. If the relevant authority knows that a certain type of casing works well, then attendance at the property to check the noise reduction is not required, but if not, the relevant authority can then at least regulate the issue.
	The condition relating to Land Division should be amended such that any heritage listed buildings or features on the land are not demolished.
	In the first condition under Electricity Substations, is 70dB(A) a maximum limit when standing at the property boundary? Confirm where the measurement is being taken.
	In the second condition under Electricity Substations, installation and operation should be to the satisfaction of the relevant authority.
	In the second condition under Animal Keeping, construction and maintenance should be to the reasonable satisfaction of the relevant authority (as are the following few conditions).
	The drafting of the fifth condition under Animal Keeping is vague and arguably unenforceable. It also misses the fact that attenuation measures may require planning consent in their own right. There needs to be a reasonable noise limit specified at a particular location (eg. noise emanating from the kennels should be kept to a [dB limit] at [the boundary of the property] to the reasonable satisfaction of the relevant authority).
	There is no condition under Animal Keeping which permits the relevant authority to undertake regular site visits at the property to ensure compliance with these conditions. This would be useful as it puts owners/occupiers on notice that they are likely to be regulated. In the first condition under Viticulture, we query how much growth is 'establishment'? How does one know that they are complying with this condition?
	In the last condition under Viticulture, the management plan should require approval by the relevant authority prior to the



	commencement of development, and it should thereafter be complied with. This condition needs to be amended.
	We repeat our comments at (I) above in relation to Viticulture. The relevant authority would need to come onto the property to ensure condition compliance.
	The third condition under Wineries refers to "wastewater thanks" rather than "tanks". This needs to be amended.
	In regard to the Display Home conditions, is there not a need for a landscaping condition?
	The fourth Display Home condition proposes a fence height of 1800mm. This may not be adequate for privacy, especially if finished floor levels are raised or on sloping areas.
2.2	The Advisory Notes provided after the standard conditions should be referred to in the Practice Direction and contained within a separate Attachment 2. They should also be referred to as reflecting appropriate provisions in the Act / Regs (as appropriate) otherwise it is not clear where the information is derived, nor whether it falls within the scope of s42 of the Act (which it must do in order to be lawfully included in this Practice Direction).

3. Practice Direction - Notification of Performance Assessed Development Applications 2019

This practice direction is drafted to support the operation of Section 107 of the Act (and draft Regulation 50 of the Regulations) in relation to Performance Assessed Development (being Code assessed development which is not deemed-to-satisfy development).

Part 4, Interpretation section:	"Adjacent land": What is "other land"? Should this definition not read "in relation to the subject land, means land that is not more than 60 metres from the subject land"? There is a lack of clarity throughout both the Regulations and this Practice Direction as to when the public notice period starts and ends. We have suggested a definition of "Notification Period" be added to the Regulations and also adopted in this Practice Direction. Ideally, "Notification Period" would be added to this definition section also.
Part 2, 5(2):	remove "on" in the third line.
	The ability to apply a "minor test" when notification is not considered necessary, is supported. However, as the assessment panel will be the relevant authority for performance assessed applications which require public notification (Regulation 22(1)(a)(ii)(A)) the above clause would require the assessment panel to determine whether the "minor test" applies to a development. This would require every application requiring notification to be referred to an assessment panel meeting for this decision in the first instance, then potentially back again at a later meeting following notification, to determine the application. Given this is highly impractical, it is anticipated that most assessment panels will (or at least should) delegate this decision to the assessment manager. To avoid unnecessary delay and work, decisions on what is "minor" should always be made by the assessment manager (as is currently the case).
Part 2, 5(3):	"has effect despite whether the development of the class" is poor drafting. Amend to read <i>"has effect, irrespective of whether the development is of the class"</i> .
Part 2, 7(3)(a):	"confirm they accept responsibility to place a notice on the land" is poor drafting. Amend to read "confirm they accept the responsibility of placing a notice in relation to the application on the subject land..."



	Delete all of paragraph 7(3)(a) following "on or before the notification commencement date....." and replace the deleted content by adding a new 7(4) which states: <i>"Should the applicant accept responsibility for placing a notice on the land in accordance with 3(a), the relevant authority will provide the applicant with at least 10 business days' notice of the commencement of the Notification Period, prior to which the notice must be erected."</i> This corrects confusing drafting and also provides the parties with sufficient time to produce the notices under provision 9. As per the LGA submission and comments regarding regulation 50(4), the relevant authority should have the discretion as to whether it will take responsibility for placing a notice. This should be made clear in the practice direction.
	Existing 7(4) is now 7(5).
Part 2, 8:	Amend "The period of notification commences" to <i>"The Notification Period commences..."</i>
Part 2, 9:	Change 5 business days to 10 business days to accord with comments at paragraph 3.4 above. Amend "commencement of public notification" to "commencement of the Notification Period".
Part 2, 9(a):	Amend "public notification period" to "Notification Period".
Part 2, 10(1):	(a) "to" needs to be added after "adjacent". (b) "adjacent" should assumedly be "Adjacent" as defined in the Interpretation section. (c) The definition of "Adjacent" needs to be further considered: 60 metres in a metropolitan area is likely to include a substantial number of properties, whereas 60 metres in a rural location may not even reach to the nearest boundary line. (d) Letters should be posted to "owners and/or occupiers".



Part 2, 10(3):	"to the occupier" needs to be altered to "to the owner and/or occupier" otherwise the owner of the land (if the land is leased out) is not required to be notified.
Part 2, 10(4):	"notice period" changed to "Notification Period".
Part 2, 11:	This whole clause would ideally form part of clause 9 or come directly after it.
Part 2, 11(1)(b):	A minimum and maximum height range for the erection of the sign should be specified to ensure it is easy to read
Part 2, 11(1)(d):	A2 size for notices is not practical; it cannot be printed on standard office printer. Larger formats would need purchasing which is impractical for many councils (especially regional). Similar requirements in <i>Liquor Licencing Act</i> only require A3.
Part 2, 11(2)	The requirements of this paragraph actually expand on the requirements of Part 2, 9(c). This should be referenced or Part 2, 9(c) and Part 2, 11(2) drafted as one clause. Separated out, they are confusing.
Part 2, 11(4):	Under this provision, if the Council is the entity responsible for putting the sign up, the Council is responsible for ensuring it is maintained. Maintenance should be the responsibility of the applicant. This is especially important in rural areas where driving out to the sign may take hours. If not, clause 4(11) should cease after "Regulations" in line 3 and a new 11(5) should be added which states: <i>"For the entirety of the Notification Period, it is the responsibility of the applicant to ensure that the notice on land is maintained in place and to a reasonable standard."</i>
Part 2, 12(1):	what are the "relevant plans"? This should be replaced with "application plans".
Part 2, 12(2):	Change "public notification period" with "Notification Period".



Part 2, 13:	What are the penalties for not confirming the placement of a notice on the land?
Part 2, 13(b) and (c):	Change "public notification period" with "Notification Period".
Attachment 1 - Template:	It does not make reference to the requirements of Reg 53, which state that the reasons for the representation being made must be set out with reasonable particularity.
Attachment 3 - Notice on land:	Regarding the image of the proposed development, it should be required to be confirmed as satisfactory by the relevant authority to avoid misleading images being used.

4. Practice Direction: Restricted and Impact Assessed Development 2019

This Practice Direction provides guidance on the operation of Subdivision 4 (Part 7, Division 2 of 6) of the Act, and provides support as to the proper assessment of the following types of development application:

restricted development (RD)

impact assessed development (AID).

It is impossible to understand the application of this Practice Direction in relation to RD, as the Planning and Design Code has not yet been released and what RD is, is specified in that Code.

Part 2, 5(1):	It should be stated that the Commission, whilst having the power not to assess the proposed development if it is classified as 'restricted', must give the application documentation submitted due consideration. The current drafting suggests that the application can simply be dismissed by a relevant authority without any real consideration of what the application contains. This could open up administrative law procedural fairness challenges. Reference to section 30(3) of the PDI Act in this paragraph and not in any other paragraphs to following in the Direction, raises the query of whether only the Commission's obligations under this Part 2,5(1) can be delegated, and no others. This confusion can be avoided by simply including a separate paragraph in this Practice Direction which states that all the Commission's powers listed therein can be delegated pursuant to section 30(3) of the PDI Act
Part 2, 5(2);	It should be made clear that even if all the requirements of Part 2, 5(2) are met, the Commission may still refuse to assess the application (otherwise, direction 5(2) would state that the Commission 'must' resolve to proceed to assess....").
Part 2, 5(2)(c):	Query the meaning of 'interface'. Relationships? Legal issues? Planning issues? Property issues? All of the above? This is particularly hard to decipher given there is no understanding of what a RD is under the Code.
5 Part 2, (3):	This paragraph is confusing; it raises the question of whether the Commission <i>must</i> delegate under direction 5(1); if not, the Commission is going to be reviewing its own decision. This is pointless; there needs to be objectivity to any review procedure to ensure veracity. Clarification on the Commission's decision-making and review powers and procedures needs to be more

	thoroughly considered than paragraph 5(3) suggests it has to date.
Part 2, 5(4)	Any extension of time should be provided in writing.
Part 2, 5(5)(b):	We refer to our comments above in relation to delegation. Under this provision, if referral occurs the Commission is referring the application for planning consent back to itself. Again, a third party decision-maker would help matters here.
Part 2, 5(5)(d):	It is our understanding that a condition cannot require a whole development to be completed sooner than the legislation permits (e.g. commenced in less than 1 year). If the development is the subject of an enforcement matter, it is the Council's opinion that any urgency in completing work should be dealt with through enforcement proceedings. It is assumed this clause may permit an applicant additional time to commence or complete work, or require particular aspects of a development to be completed by a particular time, e.g. privacy screening installed prior to occupation. This needs to be clarified.
Part 2, 6(1):	After 'restricted development', we recommend putting "under direction 5(2) above".
Part 2, 6(1)(a)(iii):	An "and" is required at the end of this provision.
Part 3, 7(1) and 7(3):	Ideally, the applications referred to in these paragraphs would be made through the SA planning portal, in the same way as Deemed-to-satisfy and Performance Assessed applications are made under the Act/Regs. There is substantial emphasis placed on creating a central, simplified planning system through this reform; the Minister and DPTI should also receive all documentation through this system. There should be no need for Part 3, 7(3) at all.
Part 3, 7(2):	Reference should be made to s111 of the Act here. It is where this paragraph obtains its powers and it lists requirements which tie in with the list of requirements stated in this paragraph.
Part 3, 7(2)(c):	Does the Minister have the power, as decision-maker in relation to IAD development applications, to seek certificates of title and other property related documents in order to make a planning decision?

Part 3, 7(2)(d)(iii) and (iv):	What is a "preliminary assessment"? The expectations in relation to this assessment should be made clearer.
Part 3, 8(1):	We would recommend increasing the required "quality" of any EIS produced by adding "fully" or some other similar term prior to "addresses the expected environmental...."
Part 3, 8(3):	This paragraph should list mandatory requirements - <i>"Such issues will include (but are not limited to), as relevant..."</i> The list of issues to be considered by the Commission pursuant to s112 of the Act, should also include 'Service requirements (including electricity, telecommunications etc)'.
Part 3, 8(6) and 10(1):	Our comments at paragraph 5.7 above are repeated here.
Part 3, 11(6):	Assuming this paragraph relates to the proposed amendment of an EIS (and not proposed amendments to the EIS requirements (ie Assessment Requirements)), it should come after paragraph Part 3, 11(1). Either way, there needs to be clarity on the timing and consultation requirements around the amendments of an EIS. As they are currently drafted, the amendment could be publicised for a day after which the Minister could make a valid decision.
Part 3, 11(5):	We repeat our comments at paragraph 5.7 above.

