

COUNCIL ASSESSMENT PANEL MEETING

13 January 2021

AGENDA

BUSINESS ITEM – 10.1

Originating Officer: Deryn Atkinson, Assessment Manager

Subject: New Provisions for Delegation of Powers & Functions of Council Assessment Panel (CAP) as a Relevant Authority under the Planning, Development and Infrastructure Act 2016 & Regulations – additional delegations to Instrument C

For: Decision

EXECUTIVE SUMMARY

The Council Assessment Panel (CAP) was established by the Council on 26 September 2017 under Section 83 of the *Planning, Development and Infrastructure Act 2016*.

Section 100 of the *Planning, Development and Infrastructure Act 2016 (PDI Act)* allows a relevant authority, other than an accredited professional, to delegate its powers and functions under this Act. The relevant authorities under the **PDI Act** are the Minister, the State Planning Commission, an assessment panel appointed by a joint planning board, an assessment panel appointed by a council, an assessment panel constituted by the Minister, an assessment manager, an accredited professional and a council. Thus the CAP, the Council and the Assessment Manager can all sub-delegate their powers and functions.

Delegations from the Council Assessment Panel to staff were adopted by CAP on 10 June 2020 in readiness for the full implementation of the **PDI Act** on the designated date. The delegations were based upon model delegations provided by the Local Government Association (LGA) at the time. The delegations included sub-delegation of powers and functions as a relevant authority to the Assessment Manager and sub-delegation of powers and functions in relation to building rules matters to the Council. Note, the building rules matters are assigned automatically by the **PDI Act and Regulations** to CAP. The Assessment Manager and Council in turn are able to delegate these functions to staff.

Since adoption of Instrument of Delegation under the *Planning, Development and Infrastructure Act 2016* and Regulations - Powers of an Assessment Panel (Instrument C) by CAP, the State Planning Commission has issued a number of Practice Directions which specify procedural requirements for the purposes of the **PDI Act**. These Practice Directions have necessitated the preparation of further new delegations in preparation for business readiness for the launch of the **PDI Act**, anticipated to occur in March 2021.

These new delegations for **the** Instrument of Delegation under the *Planning, Development and Infrastructure Act 2016* and Regulations - Powers of an Assessment Panel (Instrument C) are also based upon model delegations provided by the LGA. The new delegations have been drafted by staff for the consideration of CAP and are included as **Attachment 1** of this report. Other additional delegations related to Instruments A and B will be considered by Council at its 27 January 2021 meeting.

Note that all the **PDI Act** delegations will run concurrently with the delegations under the *Development Act 1993 and Development Regulations 2008*.

Staff recommend that the additional delegations specified for Instrument of Delegation (Instrument C), as contained in **Attachment 1** of this report, be adopted by the CAP.

RECOMMENDATION

1. In exercise of the power contained in Section 100 of the Planning, Development and Infrastructure Act 2016, the powers and functions under the Planning, Development and Infrastructure Act 2016 and Regulations made thereunder contained in the proposed New Provisions of the Instrument of Delegation under the Planning, Development and Infrastructure Act 2016 and Regulations - Powers of an Assessment Panel (Instrument C) (Attachment 1 of the Report dated 13 January 2021) and entitled New Provisions are hereby delegated by the Council Assessment Panel on this 13th day of January 2021 to the Assessment Manager subject to the conditions and/or limitations specified herein in the proposed Instrument of Delegation; and
 2. Such powers and functions may be further delegated by the Assessment Manager in accordance with Section 100(2) (c) of the Planning, Development and Infrastructure Act 2016 as the Assessment Manager sees fit, unless otherwise indicated herein in the proposed Instrument of Delegation.
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1. GOVERNANCE

➤ Legal Implications

The Council is required to have an Assessment Panel in place which is currently comprised of independent members and up to one Council Elected Member.

The *Planning, Development and Infrastructure Act 2016 (PDI Act)* was assented to by the Governor on 21 April 2016 after the passage through Parliament. It is being implemented over 5 years in stages. On 1 October 2017 the operation of Council Assessment Panel (CAP) pursuant to Sections 82 and 83 of the **PDI Act** commenced and the *Planning, Development and Infrastructure (General) Regulations 2017* [the **PDI (General) Regulations**] came into operation.

The full implementation of the **PDI Act** commenced for phase 2 councils on 31 July 2020. The designated date for phase 3 councils is likely to be in the first quarter of 2021. Just as a council is required to delegate its powers and functions under the *Development Act 1993* and the *Development Regulations 2008* to CAP and staff, there is a requirement under the **PDI Act and Regulations** for delegations. Existing delegations will need to run concurrently with the new ones until all the developments lodged under the Development Act and Regulations have been determined and approvals enacted or, until a designated date, should one be declared.

Pursuant to Section 100(2) (c) of the **PDI Act** the further planning functions and powers related to draft delegations in **Attachment 1** are recommended to be delegated to the Assessment Manager in anticipation of the operational date.

➤ **Customer Service and Community/Cultural Implications**

All applications which have been publicly notified and have representors who wish to be heard are reported to the CAP for consideration. This ensures that such members of the community have an opportunity to present their views about a specific development and its potential impacts to the CAP. Other types of development which do not require public notification, such as developments considered to be minor, are assessed by the staff of a Council.

➤ **Engagement/Consultation**

Community consultation on the Planning Reforms has been undertaken by the State Planning Commission and Council.

No community engagement or consultation is required for new legislation or the delegation of powers and functions, as this is the administrative part of the Planning Reforms.

2. **THE NEED FOR DELEGATIONS**

Under the **PDI Act**, there are more relevant authorities than exist currently (i.e. Council, private certifiers and the State Planning Commission). The relevant authorities under the PDI Act are the Minister, the State Planning Commission, an assessment panel appointed by a joint planning board, an assessment panel appointed by a council, an assessment panel constituted by the Minister, an assessment manager, an accredited professional and a council. The significant difference for the planning assessment function is that CAP and the Assessment Manager are the relevant authorities rather than the Council. Additionally the CAP is also the relevant authority for the building assessment functions.

The functions of an Assessment Manager as prescribed in Section 87 (e) of the **PDI Act** extend beyond acting as a relevant authority under the Act. They also include being responsible for managing the staff and operations of the CAP and providing advice to the CAP. Out of administrative necessity this requires that there are delegations to the Assessment Manager from CAP.

The CAP typically considers approximately 5% of the development applications lodged with Council and thus it is necessary for the CAP to delegate its planning functions and powers to Council staff for the assessment of the remaining 95% of development applications. As mentioned above under the **PDI Act** the building functions and powers are now bestowed on the CAP. Section 99(1) of the **PDI Act** permits a CAP to refer the building rules assessment function onto the Council, and only then can Council become the relevant authority. Out of administrative necessity, CAP will need to authorise the Assessment Manager to be delegated to undertake these additional planning functions.

A consequence of the new arrangements under the **PDI Act** is that CAP and Assessment Managers as relevant authorities in their own right, will both be respondents to planning appeals in their own right rather than the Council. However the Council will be directly responsible for the costs associated with both appeals and the activities of its CAP and its Assessment Manager pursuant to Section 83 (1) (h) (ii) and 87(f) of the **PDI Act**. It should be noted that the Assessment Manager and the CAP will not directly receive application fees.

Out of administrative necessity, CAP will need to authorise the Assessment Manager to make decisions on procedural matters (in the same way Council does now).

Draft delegations from the CAP to staff have been prepared to encapsulate the matters specifically mentioned in the Practice Directions issued by the State Planning Commission and other necessary administrative matters related to the processing of planning applications of a minor nature. These further draft delegations are based upon model delegations provided by the Local Government Association. The model delegations consist of the following four instruments:

- Instrument A - Delegations for the Powers of a Council as a Designated Authority
- Instrument B - Delegations for the Powers of a Council as a Relevant Authority
- Instrument C - Delegations for the Powers of a Council Assessment Panel
- Instrument D - Delegations for the Powers of an Assessment Manager

Amendments to Instruments A and B will be considered at the 27 January 2021 Council meeting and Instrument D by the CEO/Assessment Manager.

Further explanation on the CAP powers recommended to be delegated is provided in the following sections of the report.

3. DELEGATIONS FOR DEVELOPMENT OF A MINOR NATURE

As is currently the situation pursuant to Part 1 of Schedule 9 of the Development Regulations 2008, there is the power pursuant to and in accordance with, the Planning and Design Code (the PD Code) for a CAP to form the opinion that a development is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development and therefore to exclude the development from the requiring public notification. As a procedural matter, and out of necessity this power to form the opinion is delegated to staff under the Development Regulations.

Similarly there is a current power delegated to staff in relation to Schedule 8 of the Development Regulations 2008 to form an opinion that a development is minor in nature and does not warrant a referral to a State agency. Likewise there is a power pursuant to and in accordance with the Planning and Design Code for a CAP to form the opinion development is minor in nature and would not warrant a referral to a State agency when considering the purpose of the referral.

As a procedural matter, and out of necessity this power to form the opinion is delegated to staff under the Development Regulations. It is recommended that the same delegations are provided to the Assessment Manager under the **PDI Act**. It is also recommended that as a condition of delegation that the opinion of the delegate be documented in a Delegate report and be countersigned by another statutory planner.

4. STATE PLANNING COMMISSION PRACTICE DIRECTION 3 PERFORMANCE ASSESSED DEVELOPMENT– PUBLICLY NOTIFICATION OF DEVELOPMENT

Performance Assessed developments that are required to be publicly notified will be determined by the CAP under the **PDI Act** except where delegations are provided to the Assessment Manager.

Practice Direction 3 prepared by the State Planning Commission outlines the requirements for undertaking Notification of Performance Assessed Development Applications and preparing notifications (refer **Attachment 2**). Out of necessity these procedural matters need to be managed by Council staff, and **Attachment 1** contains three (3) additional delegations to the Assessment Manager for these tasks.

5. STATE PLANNING COMMISSION PRACTICE DIRECTION 5 – APPOINTMENT OF ADDITIONAL MEMBERS TO ASSESSMENT PANEL

Practice Direction 5 prepared by the State Planning Commission outlines the requirements in circumstances where a delegate forms the view that additional expert advice is required for consideration of a development of by the CAP (refer **Attachment 3**).

Section 85 of the Act stipulates that an assessment panel appointed or constituted under the Act may appoint one or two members to act as additional members of that panel for the purposes of dealing with a matter that it must assess as a relevant authority and expertise is required that is not possessed by the existing assessment panel members. The additional members do not have voting rights.

However, a person is not eligible to be appointed as an “additional member” unless the person holds a qualification, or has expertise or experience, recognised by the Practice Direction.

Two (2) additional delegations to the Assessment Manager related to engaging additional members with the appropriate qualifications and experience are included in draft additional delegations in **Attachment 1**. It is suggested that engagement of any additional CAP member is undertaken with the concurrence of the Presiding Member.

6. STATE PLANNING COMMISSION PRACTICE DIRECTION 6 – SCHEME TO AVOID CONFLICTING REGIMENS

Practice Direction 6 prepared by the State Planning Commission outlines the regard that needs to be had in undertaking a planning assessment or imposing conditions for matters that are addressed under other Acts of legislation and to ensure that they are not duplicated by Planning Consents (refer **Attachment 4**). Two (2) additional delegations to the Assessment Manager related to avoiding conflicting regimens are included in the draft additional delegations in **Attachment 1**.

7. SUMMARY

The additional draft delegations from the CAP to staff have been prepared to encapsulate the matters specifically mentioned in readiness for the full implementation of the **PDI Act** on the designated date, anticipated to be sometime in March 2021. These draft delegations are based upon model delegations provided by the Local Government Association. Other additional delegations will be considered in further instruments of delegation (Instruments A and B) by the Council and the CEO (Instrument D) in due course.

It is recommended that the additional draft delegations as detailed in **Attachment 1** of this report be adopted by the CAP and included in the previously adopted Instrument of Delegation under the *Planning, Development and Infrastructure Act 2016* and Regulations - Powers of an Assessment Panel (Instrument C).

8. ATTACHMENTS

- (1) New Provisions of Delegation under the Planning, Development and Infrastructure Act 2016 and Regulations - Powers of an Assessment Panel (Instrument C)
- (2) State Planning Commission Practice Direction 3 – Notification of Performance Assessed Development Applications
- (3) State Planning Commission Practice Direction 5 – Appointment of Additional Members to an Assessment Panel
- (4) State Planning Commission Practice Direction 6 – Scheme to Avoid Conflicting Regimens

***Attachment 1
New Provisions of Delegation under the Planning, Development and
Infrastructure Act 2016 and Regulations - Powers of an
Assessment Panel (Instrument C)***

Attachment 2
State Planning Commission Practice Direction 3 – Notification of Performance
Assessed Development Applications

Attachment 3
State Planning Commission Practice Direction 5 – Appointment of Additional
Members to an Assessment Panel

Attachment 4
State Planning Commission Practice Direction 6 – Scheme to Avoid Conflicting
Regimens

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RelianSys® Delegations - Export of Updates by Register - Complete

Instrument of Delegation under the Planning, Development and Infrastructure Act 2016, Regulations, Planning and Design Code and Practice Directions of Powers of an Assessment Panel (Instrument C)

Note - Exported provisions are separated by category into NEW and then CHANGED and then DELETED.

11 November 2020

NEW Provisions

#	Delegation Source	Provision	Item Delegated	Delegate	Conditions & Limitations
386155	Planning and Design Code	PD Code	48. Procedural Matter 48.1 The power pursuant to and in accordance with the Planning and Design Code (the PD Code) to form the opinion development is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development and therefore is excluded from the operation of Sections 107(3) and (4) of the PDI Act.	Assessment Manager	Delegate report to be countersigned by other statutory planner prior to the decision being made.
386156	Planning and Design Code	PD Code	49. Procedural Referrals 49.1 The power pursuant to and in accordance with the PD Code to form the opinion development is minor in nature and would not warrant a referral when considering the purpose of the referral.	Assessment Manager	Delegate report to be countersigned by other statutory planner prior to the decision being made.
386157	Planning and Design Code	PD Code	49. Procedural Referrals 49.2 The power pursuant to and in accordance with the PD Code to form the opinion and deem: 49.2.1 alteration to an existing access or public road junction; 49.2.2 development that changes the nature of vehicular movements or increases the number or frequency of movements through an existing access, to be minor.	Assessment Manager	Delegate report to be countersigned by other statutory planner prior to the decision being made.
386158	Planning and Design Code	PD Code	49. Procedural Referrals 49.3 The power pursuant to and in accordance with the PD Code to form the opinion an alteration or extension of an existing dwelling is minor.	Assessment Manager	Delegate report to be countersigned by other statutory planner prior to the decision being made.
386159	Planning and Design Code	PD Code	49. Procedural Referrals 49.4 The power pursuant to and in accordance with the PD Code to form the opinion development is minor in nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral.	Assessment Manager	Delegate report to be countersigned by other statutory planner prior to the decision being made.
386160	Planning and Design Code	Part 9.4	50. Referral Body: Minister Responsible for the Administration of the Aquaculture Act 2001 50.1 The power pursuant to and in accordance with Part 9.4 of the PD Code to form the opinion that	Assessment Manager	Delegate report to be countersigned by other statutory

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#	Delegation Source	Provision	Item Delegated	Delegate	Conditions & Limitations
386161	State Planning Commission Practice Direction - 3 (Notification of Performance Assessed Development Applications) 2019	cl6(4)	<p>aquaculture development which involves an alteration to an existing or approved development is minor in nature.</p> <p>51. Responsibility to Undertake Notification 51.1 The power pursuant to clause 6(4) of the State Planning Commission Practice Direction 3 (Notification of Performance Assessed Development Applications) 2019 (PD3), should the applicant request the relevant authority to place the notice on the land and pay the relevant fee, to (either personally or by engagement of a contractor) give notice of the application to members of the public by notice placed on the relevant land in accordance with Section 107(3)(a)(ii) of the PDI Act.</p>	<p>Assessment Manager</p>	<p>planner prior to the decision being made.</p> <p>Nil</p>
386162	State Planning Commission Practice Direction - 3 (Notification of Performance Assessed Development Applications) 2019	cl8	<p>52. Preparing for Notification 52.1 The power pursuant to clause 8 of PD3, if the applicant has confirmed they accept responsibility to place a notice on the land as per clause 6(3)(a) of PD3, to, at least 4 business days prior to the commencement of the notification period: 52.1.1 give notice of the anticipated commencement date and of the notification period to the applicant; and 52.1.2 provide the applicant with a copy of the content of the notice to be placed on the relevant land in PDF format; and 52.1.3 advise the applicant of the position and number of notice(s) to be erected on the land in accordance with clause 10 of PD3.</p>	<p>Assessment Manager</p>	<p>Nil</p>
386163	State Planning Commission Practice Direction - 3 (Notification of Performance	cl10(2)	<p>53. Notice on Land 53.1 The power pursuant to clause 10(2) of PD3, in relation to clause 10(2) of PD3, to determine the most appropriate position for the notice on the land in order to provide for maximum visibility from a public road, and in cases where the relevant land has more than 1 frontage to a public road, to determine that more than 1 notice must be erected on each of the public road frontages to ensure that notice of the development is reasonably apparent to members of the public.</p>	<p>Assessment Manager</p>	<p>Nil</p>

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#	Delegation Source	Provision	Item Delegated	Delegate	Conditions & Limitations
	Assessed Development Applications) 2019				
386164	State Planning Commission Practice Direction (Appointment of Additional Members to Assessment Panel) 2019	cl4(6)	54. Qualifications and Experience of Additional members 54.1 The power pursuant to clause 4(6) of the State Planning Commission Practice Direction (Appointment of Additional Members to Assessment Panel) 2019 (PD5) where the delegate forms the view that additional expert advice is required for an application which requires assessment of a matter listed in Column 1 of PD5, to engage an additional assessment panel member provided that person maintains both the minimum experience detailed in Column 2 of PD5, as well as the minimum qualification listed in Column 3 of PD5.	<u>Assessment Manager</u>	<u>With the concurrence of the Presiding Member of CAP</u>
386165	State Planning Commission Practice Direction (Appointment of Additional Members to Assessment Panel) 2019	cl4(7)	54. Qualifications and Experience of Additional members 54.2 The power pursuant to clause 4(7) of PD5 to be satisfied of the minimum experience and qualifications of an additional assessment panel member.	<u>Assessment Manager</u>	<u>In consultation with the Presiding Member of CAP</u>
386166	State Planning Commission Practice Direction (Scheme to Avoid Conflicting	cl5(1)	55. Scheme Provisions 55.1 The power pursuant to clause 5(1) of the State Planning Commission Practice Direction (Scheme to Avoid Conflicting Regimens) 2019 (PD6), to in undertaking a planning assessment or imposing controls, including through the imposition of conditions of planning consent, ensure that such assessment or controls do not conflict or duplicate matters dealt with or addressed under licencing or regulatory regimens under another Act.	<u>Assessment Manager</u>	<u>Where further sub-delegated - delegate report to be countersigned by Assessment Manager, Director Development & Regulatory Services or Team Leader</u>

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#	Delegation Source	Provision	Item Delegated	Delegate	Conditions & Limitations
386167	Regimens) 2019 State Planning Commission Practice Direction (Scheme to Avoid Conflicting Regimens) 2019	cl5(3)	55. Scheme Provisions 55.2 The power pursuant to clause 5(3) of PD6 to, where the delegate is uncertain whether a matter conflicts with, or duplicates a matter dealt with under a licencing or regulatory regime under another Act, to seek the advice of that authority or agency.	Assessment Manager	<u>Statutory Planning, prior to the decision being made.</u> <u>Where further sub-delegated - delegate report to be countersigned by Assessment Manager, Director Development & Regulatory Services or Team Leader</u> <u>Statutory Planning, prior to the decision being made.</u>

This practice direction is issued by the State Planning Commission under section 42 of the *Planning, Development and Infrastructure Act 2016*.

Introduction

Section 42 of the *Planning, Development and Infrastructure Act 2016* (the Act) allows the State Planning Commission (the Commission) to issue practice directions for the purposes of the Act. Generally, practice directions specify procedural requirements or steps in connection with a matter arising under the Act. In certain cases, the Act requires a particular matter to be addressed or dealt with by a practice direction.

This practice direction is being made by the Commission to support the operation of section 107(9) of the Act with respect to the notification of performance assessed development applications.

Practice direction

Part 1 – Preliminary

1 – Citation

This practice direction may be cited as the *State Planning Commission Practice Direction 3 (Notification of Performance Assessed Development Applications) 2019*.

2 – Commencement of operation

This practice direction came into operation on 1 July 2019.

Version 2 of this practice direction commences operation on the day the Phase Two (Rural Areas) Planning and Design Code Amendment comes into effect pursuant to section 73(12) of the *Planning, Development and Infrastructure Act 2016*.

3 – Object of practice direction

The object of this practice direction is to specify the form of notice in cases where notice of a performance assessed development application is required to be given to the public in accordance with the Act and the Regulations.

4 – Interpretation

In this practice direction, unless the contrary intention appears –

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

Adjacent land in relation to other land, means land that is no more than 60 metres from the other land, as defined under section 3 of the Act

Commission means the State Planning Commission

Notification period means the period of time within which representations may be made to the relevant authority, as prescribed by regulation 50 of the Regulations

Public notification means the giving of notice under section 107(3) of the Act

Public road frontage means—

- (a) the boundary between the relevant land and any public road adjoining the relevant land;
or
- (b) if the only access to the relevant land is across private land, the boundary between that private land and any road adjoining that private land at the point of access

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

Relevant land means the land upon which a proposed development is proposed to be undertaken

Note: Section 14 of the Acts Interpretation Act 1915 provides that an expression used in an instrument made under an Act has, unless the contrary intention appears, the same meaning as in the Act under which the instrument was made.

Part 2 – Notification of Performance Assessed Development Applications

5 – Form of Notice under section 107(9) of the Act

- (1) Section 107 of the Act outlines the manner in which performance assessed development applications are to be assessed and processed with respect to planning consent. Section 107(9) allows a practice direction to specify the form of any notice to be given under section 107(3).
- (2) The following directions apply to all performance assessed development applications, except where specifically excluded from notification in the Planning and Design Code pursuant to section 107(6) of the Act.

6 – Responsibility to undertake notification

- (1) The relevant authority will be responsible for giving notice of the application to an owner or occupier of adjacent land in accordance with Section 107(3)(a)(i) of the Act.
- (2) The applicant will be responsible for giving notice of the application to members of the public by notice placed on the relevant land (either personally or by engagement of a contractor) in accordance with Section 107(3)(a)(ii) of the Act, subject to subclause (3).
- (3) Upon lodgement of a performance assessed development application that requires notification, the applicant must either:

- (a) confirm they accept the responsibility of placing a notice on the land in relation to the application (either personally or by engagement of a contractor) on or before the notification period in accordance with the relevant requirements of the Act, Regulations and this practice direction (noting that the applicant will be notified of the notification period commencement date by the relevant authority at least 4 business days prior to that date in accordance with clause 9 of this practice direction); or
 - (b) except in cases where the Commission is the relevant authority, request that the relevant authority place the notice on the land, and if so requested, pay the relevant fee determined by the relevant authority as being appropriate to cover its reasonable costs in giving public notice of the application under section 107(3)(a)(ii) of the Act.
- (4) Should the applicant request the relevant authority to place the notice on the land and pay the relevant fee, the relevant authority will be responsible (either personally or by engagement of a contractor) for giving notice of the application to members of the public by notice placed on the relevant land in accordance with Section 107(3)(a)(ii) of the Act.

7 – Notification period

The notification period commences the day on which the notice under section 107(3)(a)(i) of the Act would be expected to be received by the owner or occupier of land in the ordinary course of postage (i.e. 4 business days), in accordance with the Regulations.

8 – Preparing for notification

If the applicant has confirmed they accept responsibility to place a notice on the land as per clause 6(3)(a) of this practice direction, at least 4 business days prior to the commencement of the notification period, the relevant authority must:

- (a) give notice of the anticipated commencement date and of the notification period to the applicant; and
- (b) provide the applicant with a copy of the content of the notice to be placed on the relevant land; and
- (c) advise the applicant of the position and number of notice(s) to be erected on the land in accordance with clause 10 of this practice direction.

9 – Notice to adjacent land owners/occupiers

- (1) For giving notice to owners of properties adjacent the relevant land in accordance with section 107(3)(a)(i) of the Act, the relevant authority will send a notification to all owners or occupiers of adjacent land, either:
- (a) by post; or
 - (b) by email if the owner or occupier has given specific consent to receive correspondence from the relevant council via email.

- (2) The notice will contain the following details:
- The date when the notification period is to commence (see clause (7) of this practice direction); and
 - The date when submissions must be received by (in accordance with timeframes prescribed by the Regulations); and
 - The development application number (as it appears on the relevant SA Planning Portal application record); and
 - The nature of the proposed development (as it appears on the relevant SA Planning Portal application record); and
 - The applicant name (as it appears on the relevant SA Planning Portal application record); and
 - The address of the relevant land (including street address, lot number, plan reference and certificate of title volume and folio number); and
 - The location where the plans and application will be available for inspection during the notice period; and
 - Identify any deemed-to-satisfy or accepted elements of the proposed development that may not be subject to comment under section 107(4) of the Act.
- (3) A template outlining the minimum content of the notice is contained in **Attachment 1** of this practice direction.
- (4) A template of the submission form to be provided with the notice to owners or occupiers of adjacent land is contained in **Attachment 2** of this practice direction.

10 – Notice on land

- (1) In relation to placing a notice on the relevant land in accordance with section 107(3)(a)(ii) of the Act, the notice must be:
- (a) placed on, or within a reasonable distance of, the public road frontage of the relevant land, ensuring that it is visible and legible to members of the public from the public road;
 - (b) mounted at least 600mm above ground level, and no more than 1.5 metres above ground level;
 - (c) made of weatherproof material (e.g. laminated print attached to fence/building, corflute print on star droppers, or other); and
 - (d) at least A3 size.
- (2) In relation to clause 10(1)(a), the relevant authority shall determine the most appropriate position for the notice on the land in order to provide for maximum visibility from a public road. In cases where the relevant land has more than 1 frontage to a public road, the relevant authority may determine that more than 1 notice must be erected on each of the public road frontages to ensure that notice of the development is reasonably apparent to members of the public.
- (3) The layout for a notice on the relevant land is detailed in **Attachment 3** of this practice direction.

11 – Availability of plans

The relevant authority must ensure that the application plans required to be available for inspection in accordance the Regulations are available to view via the SA Planning Portal during the notification period. Access to those plans shall be made available via a unique URL or QR Code listed on both the letters to adjacent land owners/occupiers and the notice on the relevant land.

12 – Confirmation of public notification

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

- (a) Within 1 business day after erecting the notice on the land, a photograph clearly displaying the notice on the land, with details of the location, date and time the photograph was taken; and
- (b) Within 2 business days of the end of the notification period, a written statement confirming that the notice on the relevant land was undertaken in accordance with the relevant requirements of the Act, Regulations and this practice direction.

13 – Interpretation

- (1) The above procedures also apply to performance assessed applications for outline consent or to vary an existing development authorisation where notice is required to be given in accordance with the Planning and Design Code.
- (2) The form of notice specified in this practice direction may apply to the notification of an application for restricted development if the Commission determines as such under section 110(13) of the Act.

14 – Attachments

Attachment 1 – Template – Notice to adjacent land

Attachment 2 – Template – Representation Form

Attachment 3 – Template – Notice on Land

Varied by the State Planning Commission on 18 June 2020

Note: Version 2 commences operation in accordance with clause 2 ‘Commencement of operation’

Versions

Version 2: Commences operation on the day the Phase Two (Rural Areas) Planning and Design Code Amendment comes into effect pursuant to section 73(12) of the *Planning, Development and Infrastructure Act 2016*

Version 1: Commenced operation on 1 July 2019

Proposed Development

Under the Planning, Development and Infrastructure Act 2016

[date of public notification commencement]

[name]
[Address line 1]
[Address line 2]
[Suburb] [State] [Postcode]

Dear [salutation] [surname] [or organisation]

Notice of Development Application

Applicant:	[Applicant name]
Application Number:	[Development application number]
Proposed Development:	[description of proposed development]
Notified Elements:	<performance assessed elements>
Subject Land:	[address of subject land]

As an adjoining owner/occupier or person potentially affected by the above development application, you are invited to view details of the application and make a representation.

The application documentation may be examined:

- online on the SA Planning Portal [insert URL] [and/or insert QR Code]
- in person at the principal office of [relevant authority name]

If you wish to comment on the application, please complete an online representation form at [\[insert url\]](#), or complete the attached form and submit to [relevant authority] at [email address] or [postal address]. All representations must be received by no later than **5pm on [date 15 business days from commencement of notification period (allowing 4 business days for postage)]**.

Please note that, in order for representations to be valid, they must:

- be in writing; and
- include the name and address of the person (or persons) who are making the representation; and
- set out the particular reasons why planning consent should be granted or refused; and
- comment only on the performance-based elements of the proposal, which does not include the [list any accepted or deemed-to-satisfy elements of the development].

You may be given an opportunity to appear before the relevant authority to further explain your views. You will be contacted should a hearing be arranged.

If you have any questions relating to this matter, please contact [relevant authority name] by telephone on [phone] or email [email address].

South Australia
PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016

REPRESENTATION ON APPLICATION – PERFORMANCE ASSESSED DEVELOPMENT

Applicant: [applicant name]
Development Number: [development application number]
Nature of Development: [development description of performance assessed elements]
Zone / Sub-zone / Overlay: [zone/sub-zone/overlay of subject land]
Subject Land: [street number, street name, suburb, postcode]
 [lot number, plan number, certificate of title number, volume and folio]
Contact Officer: [relevant authority name] **Phone Number:** [authority phone]
Close Date: [closing date for submissions]

My name*:		My phone number:	
My postal address*:		My email:	

** indicates mandatory information*

My position is: (please tick one)

I support the development

I support the development with some concerns (detail below)

I oppose the development

The specific reasons I believe that planning consent should be granted/refused are:

[attached additional pages as needed]

Note: In order for this submission to be valid, it must:

- be in writing; and
- include the name and address of the person (or persons) who are making the representation; and
- set out the particular reasons why planning consent should be granted or refused; and
- comment only on the performance-based elements of the proposal, which does not include the [list any accepted or deemed-to-satisfy elements of the development].

I: (please tick one)

wish to be heard in support of my submission*

do not wish to be heard in support of my submission

**You may be contacted if you indicate that you wish to be heard by the relevant authority in support of your submission*

By: (please tick one)

appearing personally

being represented by the following person: _____

Signature: _____ **Date:** _____

Proposed Development

Planning, Development & Infrastructure Act 2016
Notice under section 107(3)(a)(ii)

«DevelopmentAddress»

Make a representation until
«Date»

Applicant

«ApplicantName»

Application Number

«ApplicationNumber»

Proposal

«DevType»

«DevType»

«DevType»

<<IMAGE/PLAN OF PROPOSED DEVELOPMENT>>

View the application

Online
«URL»

Scan this code with
your phone camera

QR
Code

Visit the office of
<<AuthorityName>>
[Insert Office Location]

It is an offence to damage, destroy, obscure or remove this notice.
Penalties apply.

Have your say

Online
«URL»

Email
<<AuthorityEmailAddress>>

Post
<<AuthorityPostalAddress>>
<<AuthorityPostalAddress>>

Please note representations must

Be in writing

Include the name and address
of the person/s who are
making the representation

Set out the particular reasons
why planning consent should
be granted or refused

Comment only on the listed
elements of the proposal,
which does not include the
«DTSorAcceptedElements»

This practice direction is issued by the State Planning Commission under section 42 of the *Planning, Development and Infrastructure Act 2016*.

Introduction

Section 42 of the *Planning, Development and Infrastructure Act 2016* allows the State Planning Commission (the “Commission”) to issue practice directions for the purposes of the Act. Generally, practice directions specify procedural requirements or steps in connection with a matter arising under the Act. In certain cases, the Act requires a particular matter to be addressed or dealt with by a practice direction.

This practice direction is being made by the Commission to support the operation of section 85 of the Act.

Section 85 allows an assessment panel to appoint 1 or 2 additional expert members to the assessment panel where necessary.

Practice direction

Part 1 – Preliminary

1 – Citation

This practice direction may be cited as the *State Planning Commission Practice Direction (Appointment of Additional Members to an Assessment Panel) 2019*.

2 – Commencement of operation

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

3 – Object of practice direction

The object of this practice direction is to provide a list of the qualifications and experience which a person must hold to be appointed as an additional member of an assessment panel pursuant to Section 85 of the Act.

4 – Interpretation

In this practice direction, unless the contrary intention appears –

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

Note: Section 14 of the Acts Interpretation Act 1915 provides that an expression used in an instrument made under an Act has, unless the contrary intention appears, the same meaning as in the Act under which the instrument was made.

Part 2 – Appointment of additional members to an Assessment Panel

5 – Purpose and operation of section 85

- (1) Section 85 of the Act stipulates that an assessment panel appointed or constituted under the Act may appoint 1 or 2 members to act as additional members of that panel for the purposes of dealing with a matter that it must assess as a relevant authority.
- (2) However, a person is not eligible to be appointed as an “additional member” unless the person holds a qualification, or has expertise or experience, recognised by a practice direction.
- (3) This practice direction lists the qualifications and experience which a person must hold in order to be eligible to be appointed as an additional member of an assessment panel.
- (4) Additional members may be required on an assessment panel in circumstances where a development application requires expert assessment in a particular field of expertise that is not possessed by the existing assessment panel members.

4 – Qualifications and experience of additional members

- (5) The below table lists the various assessment considerations which may require the appointment of additional assessment panel members to provide the necessary expert advice.
- (6) Where the assessment panel forms the view that additional expert advice is required for an application which requires assessment of a matter listed in Column 1, the assessment panel may engage an additional assessment panel member provided that person maintains both the minimum experience detailed in Column 2, as well as the minimum qualification listed in Column 3.
- (7) Satisfaction of the minimum experience and qualifications will be to the satisfaction of the assessment panel (or its delegate).
- (8) The appointment of additional members to an assessment panel is at the discretion of the assessment panel (or its delegate). The below table does not mandate the appointment of additional members where the relevant assessment consideration may exist.

Column 1: Matter requiring expert consideration	Column 2: Minimum experience	Column 3: Minimum qualifications
Arboriculture (regulated trees)	2 years' experience in a role providing Arboricultural assessments and advice	Australian Qualification Framework (AQF) Level 5 qualified Arborist
Engineering (including traffic or civil matters)	2 years' experience in a role providing advice and assessment of relevant engineering issues	Relevant qualification in engineering or relevant discipline

Column 1: Matter requiring expert consideration	Column 2: Minimum experience	Column 3: Minimum qualifications
Native flora/fauna, biodiversity, or general environmental issues	2 years' experience in a role involving environmental assessment	Relevant qualification in horticulture, conservation, land management environmental science, natural environmental management or relevant discipline
Acoustic impacts	2 years' experience in noise and vibration monitoring and assessment	Qualification in an engineering, science or relevant discipline
Heritage	2 years' experience in the assessment or provision of advice regarding the development or conservation of heritage items	Relevant qualification in planning, archaeology, anthropology, history, earth sciences, geography, environmental science, surveying or relevant discipline
River Murray Floodplain Area	2 years' relevant experience in analysis or conservation of the River Murray	Relevant qualification in planning, conservation, land management environmental science, natural environmental management or relevant discipline
Marina Parks and Coast	2 years' relevant experience in coastal conservation	Relevant qualification in conservation, land management, biology, environmental science, natural environmental management or relevant discipline
Site contamination	2 years' relevant experience in site contamination assessment	Relevant qualification in science, engineering or relevant discipline
Urban design	2 years' relevant experience in urban design matters	Relevant qualification in planning, urban design, architecture, arts, science, environmental design/studies or relevant discipline

Issued by the State Planning Commission on 1 July 2019



This practice direction is issued by the State Planning Commission under section 42 of the *Planning, Development and Infrastructure Act 2016* for the purposes of section 42(3).

Introduction

Section 42 of the *Planning, Development and Infrastructure Act 2016* (the Act) allows the State Planning Commission (the Commission) to issue practice directions for the purposes of the Act. Generally, practice directions specify procedural requirements or steps in connection with a matter arising under the Act. In certain cases, the Act requires a particular matter to be addressed or dealt with by a practice direction.

Section 42(3) specifies that the Commission must establish a scheme with a view to ensuring that planning assessment or controls undertaken or established under the Act (including through the imposition of conditions under the Act) do not conflict with or duplicate matters that may be dealt with or addressed under a licensing or other regulatory regime under another Act.

Practice direction

Part 1 – Preliminary

1 – Citation

This practice direction may be cited as the *State Planning Commission Practice Direction (Scheme to Avoid Conflicting Regimens) 2019*.

2 – Commencement of operation

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

3 – Object of practice direction

The object of this practice direction is to ensure that, in relation to any planning assessment or controls (including conditions), such assessment or controls do not conflict or duplicate matters dealt with or addressed under licencing or regulatory regimens under another Act.

4 – Interpretation

In this practice direction, unless the contrary intention appears –

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

Note: Section 14 of the Acts Interpretation Act 1915 provides that an expression used in an instrument made under an Act has, unless the contrary intention appears, the same meaning as in the Act under which the instrument was made.

Part 2 – Scheme to avoid conflicting regimens

5 – Scheme provisions

- (1) A relevant authority, in undertaking a planning assessment or imposing controls, including through the imposition of conditions of planning consent, must ensure that such assessment or controls do not conflict or duplicate matters dealt with or addressed under licencing or regulatory regimens under another Act.
- (2) Acts to which this provision applies include, but are not limited to:
 - (a) The *Environment Protection Act 1993*;
 - (b) The *Local Government Act 1999*;
 - (c) The *Liquor Licensing Act 1997*;
 - (d) The *Local Nuisance and Litter Control Act 2016*.
- (3) Where a relevant authority is uncertain whether a matter conflicts with, or duplicates a matter dealt with under a licencing or regulatory regime under another Act, the relevant authority must seek the advice of that authority or agency.

Issued by the State Planning Commission on 1 July 2019