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PLANNING
COMMISSION

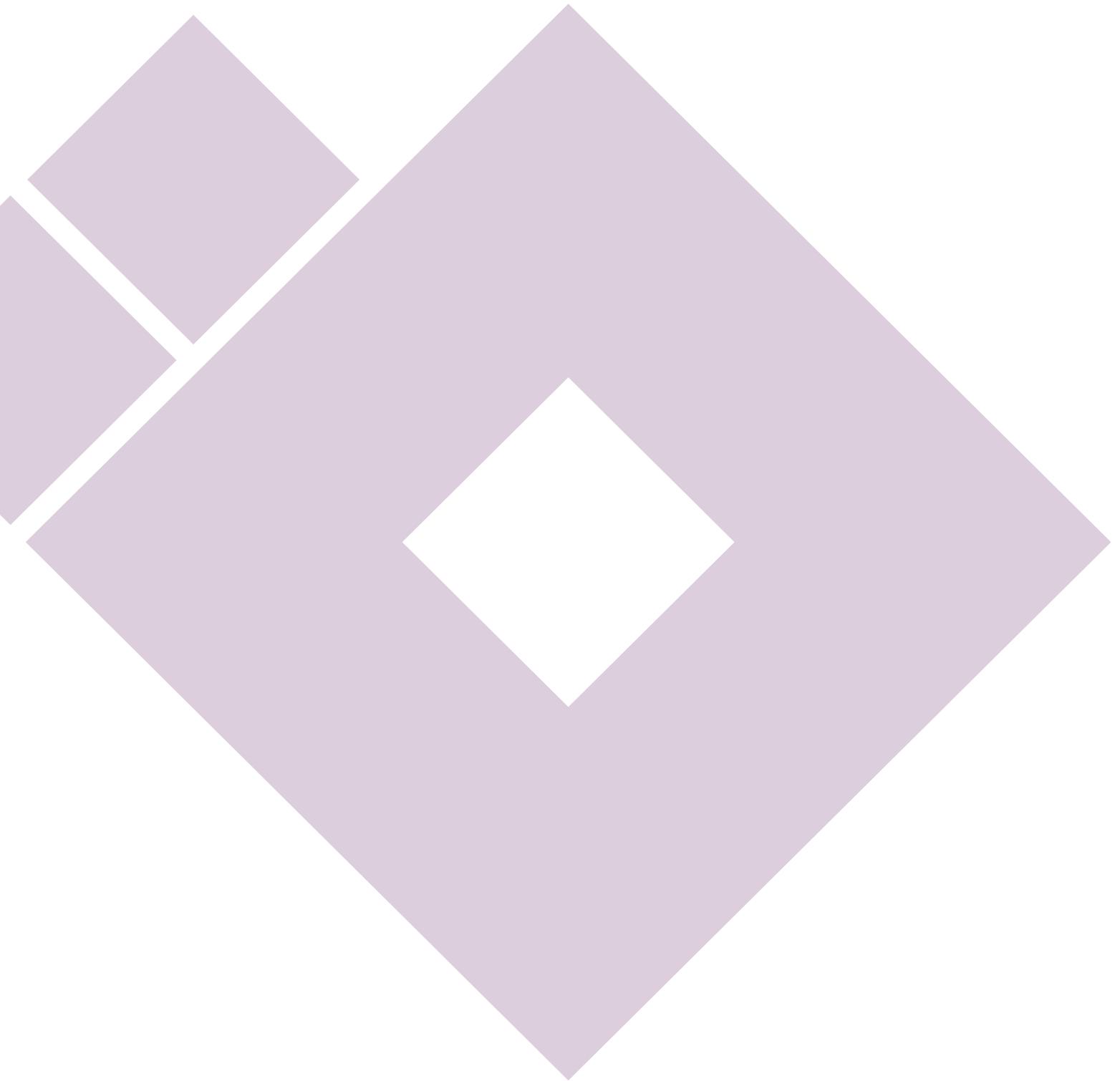


**BACKGROUND PAPER ON
INSPECTION POLICIES
PRACTICE DIRECTION**
OCTOBER 2019



Government of South Australia
Department of Planning,
Transport and Infrastructure

saplanningcommission.sa.gov.au



COMMISSION FOREWORD

South Australia's planning and development system is changing with the staged implementation of the *Planning, Development and Infrastructure Act 2016*.

The new legislation underpins the State's building regulatory building system, which must continue to function well to ensure the delivery of high building standards for the benefit of the South Australian community.

To this end, the State Planning Commission has turned its mind to the issue of council inspection policies, and specifically the role that the on-site inspections by councils might play in facilitating the delivery of these high standards.

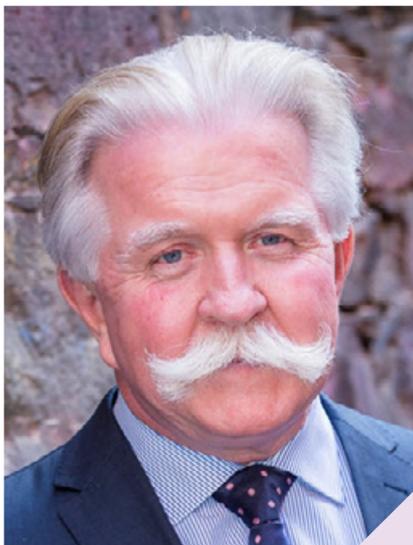
This Background Paper – intended to be read alongside the draft practice direction – sets out the Commission's thinking in relation to these inspections, including how we arrived at the approach presented here, and how it might fit within the broader building regulatory system.

We believe the release of this practice direction represents a positive first step in a potentially wider reform process to ensure South Australia has a first class building regulatory system.

However, it is recognised that on-site point in time inspections can only ever form one part of the broader effort to ensure the delivery of safe, high quality buildings in this State, and that any reform in this space will form part of a broader conversation on this issue, one already well underway at the national level.

As such, the practice direction should be seen as a first generation inspection policy, one which can be built on and improved as we ensure the successful functioning of the State's building system well into the future, in concert with other reform as necessary.

It is now over to you – thank you in advance for taking the time to read this Paper and the draft practice direction, and we look forward to receiving your feedback.



Michael Lennon
Chair, State Planning Commission

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DISCUSSION QUESTIONS

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HOW IS THIS PAPER STRUCTURED?

This Paper is intended to be read in conjunction with the draft Inspection Policy Practice Direction available separately on the SA Planning Portal.

An outline sets out the purpose of the Paper and notes the inherent limitations of the policy.

This Paper is in two main parts:

- Part One provides an overview of the development of the new policies. This includes key context and inputs that have assisted the Commission to reach its position, and a summary of policy development, drawing on the expert advice of the Commission's Building Committee, and other stakeholders.
- Part Two sets out how the practice direction is structured, how it works, the levels of inspection recommend and the rationale for these levels in supporting the initial rollout of the Act.

Other issues and frequently asked questions are also discussed here, including the role of notifications, the issue of statements¹, who can undertake inspections, and so forth.

The Paper concludes by setting out next steps for councils, including how to provide feedback during the eight week consultation period.

¹ While not currently legislated, except in relation to 'designated building products' (discussed below) the PDI Act provides the potential for mandated documentation, such as checklists, statements or certificates, to be provided by a building work contractor to council, as another means of verifying or supporting compliance with approved plans.

OUTLINE – PURPOSE AND LIMITATIONS

What is the purpose of this Background Paper?

This Background Paper sets out the Commission’s position in relation to the draft inspection policies practice direction, to be issued under section 144 of the *Planning, Development and Infrastructure Act 2016* (the Act).

The Paper aims to set out the key context around this topic, and to clearly explain how the Commission has landed on the proposed inspection levels contained within the draft direction.

Importantly it also seeks your feedback on the proposed approach.

Overall, the Commission is confident that the development of these policies has been rigorous and the proposed levels set forward will: meet the obligations of the Act, be clearly understood, set a reasonable starting point which does not impose any undue requirements on council and industry, and support overall positive outcomes for South Australian built environment.

Importantly, the proposed levels of inspections set out are a transitional step, where in the longer term it is anticipated that the direction may be revised accordingly, to support other broader reform and to ensure that the South Australian system aligns with national best practice and standards.

What is the purpose and limitations of the Practice Direction?

In releasing this practice direction for consultation, the Commission is keen to emphasise that on-site council inspections of buildings can only ever form one aspect of a broader effort to ensure the delivery of safe, high quality buildings.

An independent inspection of a building or an element such as a swimming pool can be important to identify potential life safety issues and faults, but no matter what level of inspections are set, there is no substitute for high quality design, engineering, certification, and construction.

The Commission is therefore keen to acknowledge the limits of any inspection policy made under s144 of the Act, and to direct these inspections onto two key aspects: providing for occupant and life safety. These inspections are not intended to provide general consumer protection, and they are not about getting councils into the complex task of providing this to the owner or applicant.

It is also recognised that, since the introduction of the *Development Act 1993* (Development Act) 26 years ago, South Australia has not had a strong tradition or culture of councils undertaking on-site inspections, particularly for commercial or large public buildings. Neither has there been a culture of the State Government undertaking inspections, except in out of council areas.

It is recognised that the introduction of inspections for commercial buildings in particular will represent a step change both for councils and industry in the short term, and following that these initial changes should not be arduous to allow councils, in particular, to build their capacity in this area.

Further, from a broader regulatory perspective, it is recognised that changes in inspection requirements only form one part of a much broader conversation on the issue of general building compliance, one that is already well underway at the national level, and which the Commission will continue to advise the Government on.

PART ONE – POLICY DEVELOPMENT

1.1. The Commission's Legislative Responsibility

Section 144 of the Act sets out the Commission's responsibility in relation to council inspection policies.

Specifically the Act states that: 'the Commission must issue a practice direction that will require councils to carry out inspections of development undertaken in their respective areas' – s144(1).

This section also sets out that 'the practice direction may make different provision in relation to different councils (or groups of councils)' and provides a list of seven matters which the Commission must take into account when setting inspection levels.

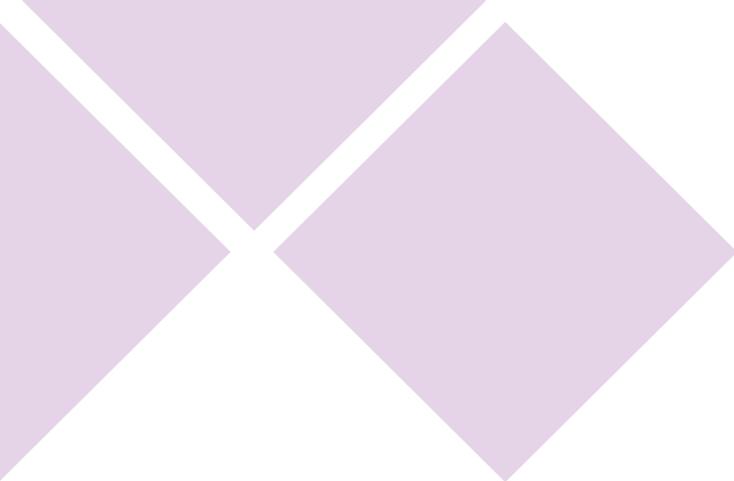
Section 144 concludes by stating that 'a council must comply with the requirements of the practice direction as they relate to the council' – s144(4).

The section applies to council controlled areas of the State only. All 'out of council' areas fall under the ambit of an out of council inspection policy, issued separately by the Commission.

Other key points:

- The policy will be a 'practice direction', a new tool available under the Act for the Commission 'to specify procedural requirements or steps in connection with any matter arising under this Act' (see s42).
- Section 144 provides no specific purpose for undertaking inspections; this is a matter discussed below.
- In contrast to the outgoing Development Act, the Commission, rather than councils, is now responsible for setting inspection requirements.
- The scope of inspections is not limited to buildings but extends to 'development' generally.
- The 'matters' set out at s144(3), which the Commission has considered during policy development are:
 - the financial and other resources of councils;
 - the impact that a failure to inspect a certain number of developments over a period of time may have on local communities;
 - the various sizes of the areas of councils and differences in population;
 - the amount of development undertaken in the various areas of the State;
 - the type of development that predominates in the various areas of the State;
 - in relation to building work, building conditions in the various areas of the State;
 - the public interest in ensuring that development is undertaken in accordance with the requirements of the Act.

The development of this practice direction raises broader questions around building regulation and National Construction Code (NCC) compliance in general, but stakeholders should note that s144 provides the bounds for the Commission's policy.



1.2 The Local and National Context - A Platform for Reform

In putting forward this practice direction a number of matters have been at front of mind for the Commission. These include both the local and national context:

Local context

- Administration of the NCC: The Commission is keen to put in place a policy to support the South Australian government to effectively discharge its duties to oversee the implementation of and compliance with the NCC in South Australia.
- Feasible inspection levels for councils: It is recognised that existing council capacity to undertake inspections is limited and that initial inspection levels must be achievable and practical for councils to implement and administer.

National context

- Alignment with national reform: The development of these policies takes place at a key period of national building policy reform, following a range of public building failures, and increased attention from the Building Ministers' Forum (BMF) and building regulators on national compliance issues, and the need to effectively address these.

While South Australia has not witnessed a building issue at the scale seen on the eastern seaboard, the Commission does not consider this State immune from potential issues, and seeks to implement a workable policy that supports compliance and assists the Government to meet its national commitments.

This includes the ongoing implementation of the recommendations of the Shergold Weir Building Confidence Report to improve compliance and enforcement systems and the implementation of the NCC, including recommendation 18 *'that each jurisdiction requires on-site inspections of building work at identified notification stages'*.

Overall, these inspection policies are considered an important tool under the Act.

However, following advice from stakeholders to date, again the Commission recognises that on-site council-led inspections can only ever form one part of an effective building regulatory system.

The need exists to ensure that the entire building process, from design and approval through construction to occupation and maintenance, operates with integrity. The practice direction aims to assist in meeting this objective.

1.3 Inspection Policies - Policy Development

Key steps to support the preparation of the proposed practice direction include:

- Preparation of an independent report (November 2018 to March 2019)
- Building Committee consideration, including three workshops (April to June 2019)
- Commission-led workshops with stakeholders from council and building sector (August 2019)

The Botten Levinson Report (November 2018 - March 2019)

In November 2018 the department engaged Botten Levinson Lawyers to examine the issue of inspections. The Report:

- Prepared an analysis of current council inspection regimes under the Development Act to gauge their effectiveness, and
- Makes recommendations on potential content of new practice direction under the PDI Act.

The Botten Levinson Report will be published on the SA Planning Portal with this Paper, to assist councils in understanding the policy development process.

Research and analysis:

Botten Levinson undertook a desktop analysis of 68 council inspection policies, combined with a more detailed analysis and interviews with 17 representative councils to examine their current approaches.

They also spoke with a range of other stakeholders across the construction sector, including builders, developers and other professionals, and looked at arrangements in Queensland, Victoria and NSW.

Botten Levinson were specifically asked to look at what councils do across all classes of buildings, in light of the current focus on, and increasing numbers of, commercially built buildings, such as Class 2 apartments.

The broader context produced by the 2018 Shergold Weir and 2015 Lambert Review (NSW) were also considered, as well South Australia's investigation into roof truss failures (2008).

Findings:

Botten Levinson found that the current inspection regime is adequate in so far as it goes, but that the focus of council policies is almost solely on those issues which are mandated for in the current regulations – this being roof trusses and swimming pools – and largely does not extend much further than this minimum regime.

In particular, they found that inspections of other classes of buildings (i.e. Class 1b to 9) are rarely undertaken, unless there is a specific issue or building fault detected. In other words, compliance for these buildings is largely left to the ability of the private construction sector and other regulatory controls (i.e. development approval / statements of compliance).

Recommendations:

The final Report made recommendations to Government across three categories: immediate, transitional and ultimate.

Of note, Botten Levinson recommended that an initial focus should be placed on determining a suitable and targeted purpose for s144 of the Act, noting that this is not explicitly stated in the Act.

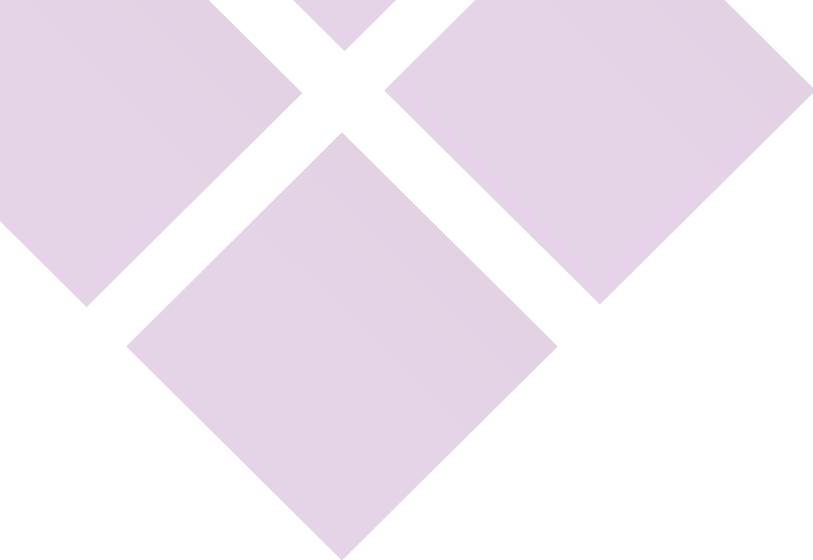
The protection of occupant and public safety is highlighted as a potential focus, with a view also towards consumer protection, the integrity of the development control system, and maintaining appropriate standards of design and construction. Thereby, while s144 allows inspections of 'development' broadly, a focus on building safety is the recommended direction.

The Report also recommended that the policy should direct inspections to areas of risk and be consistently undertaken, whilst also remaining 'flexible, dynamic and unpredictable' to ensure that industry is kept alert.

The Report recommend inspection levels across building classes, which were provided to the Building Committee to inform its analysis.

Of note, across its 19 recommendations the Report recommended that the Government should adopt a transitional approach to the implementation of a new inspection regime, with inspection levels to be increased over time to reflect council capacity and industry circumstances.

The Commission wishes to thank those councils who provided input into this Report, particularly those 17 councils who were involved in interviews and provided data.



Building Committee

The Commission's Building Committee, formed in 2018, undertakes the combined functions of the former Building Rules Advisory Committee (BRAC) and Building Advisory Committee (BAC).

The Committee is also responsible for providing recommendations to the Commission under section 144 of the Act on the inspection policies practice direction, via direction from the Commission.

Following receipt of the Botten Levinson report, the Committee held several workshops on this topic, with their advice to the Commission informed by the Report, their own expert judgement, and the local and national context.

In its advice to the Commission, the Committee set out a clear trajectory for council inspection requirements, employing a risk based methodology across building classes and size, to best determine appropriate inspection levels.

Of note, the Committee considered the role that the provision of statements (such as checklists or certificates) from the building site to council may play in supporting the purpose of the practice direction, and compliance more broadly, and made recommendations in this regard.

This issue is discussed in further detail later, noting that any requirements in this area are out of scope for s144 practice direction but subject to Government approval, may form part of further consideration to improve building regulations, in line with national reform.

Commission Workshops

The Commission has tested proposed inspection requirements with a range of stakeholders, including councils and the building and construction industry.

Matters discussed at these workshops on which there were divergent views, demonstrating the complexity of this issue and varied views, included:

- The general role of inspections in the system and the overall benefit they provide in lifting standards.
- How an inspection regime could work in relation to other regulatory tools, such as notifications, certificates, proof engineers, etc.
- The role of independent council inspectors versus improving the accountability of builders and developers in the system.
- Rigidity of the system in rewarding good practice – the same level of oversight is required for builders who are performing well on a consistent basis to those that are not.

Noting these views, the proposed inspection levels in the practice direction are intended as a transitional step that signals the beginning of reform in this area, and assists the Government to meet its broader obligations.

PART TWO – INSPECTION POLICIES – PROPOSED PRACTICE DIRECTION

2.1 Inspection Policies - Proposed Practice Direction

- Please note this section is intended to be read alongside the draft Practice Direction - Council Inspection Policies, available on the SA Planning Portal.
- The direction is the legal instrument which sets out the inspection requirements that councils will have to adhere to as the Act is progressively ‘switched on’.

The purpose of this section is to explain both how the draft practice direction is structured and how the Commission arrived at the proposed inspection levels.

Through this section other questions, such as ‘how will notifications work?’ and ‘who can do an inspection?’, ‘how will they be paid for?’ etc. may come to mind. These are addressed in sections 2.2 and 2.3 below.

Introduction

As set out in section 1.1, the issuing of this practice direction is a legislative requirement placed on the Commission, where s144 sets out there must a practice direction to require councils to carry out inspections of development within their boundaries.

As drafted, the practice direction is intended to set minimum mandatory requirements that councils must comply with.

Should the circumstances call for it, and councils have the capacity, councils may undertake additional inspections to those requirements set out. This is particularly relevant where an issue affecting occupant safety might be detected.

Swimming pool inspections

There is no explicit reference to the inspection of swimming pool safety features in the draft direction.

This is because swimming pool inspection requirements form part of a separate inspection practice direction issued under s156 of the Act (rather than s144).

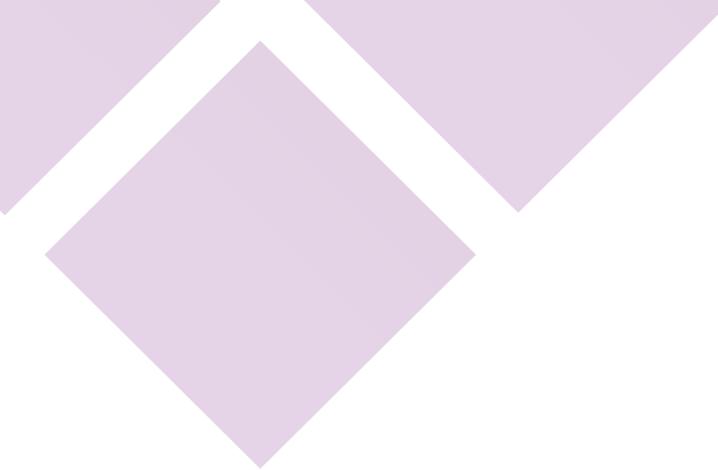
This separate practice direction was approved by the Commission in July 2019, and carries over the inspection requirements contained within the Development Regulations 2008 to provide system continuity.

This practice direction is now operational State-wide and councils are required to comply with its requirements. The practice direction and an Advisory Notice setting out how the direction works are available on the SA Planning Portal.

Please note this practice direction may be updated following consultation on the s144 practice direction.

Specifically, consideration is being given to removing the 80/20 two week/two month percentage split for pool inspections, and instead to require councils to complete all (100%) of pool inspections within two weeks of the installation of safety features.

If this change occurs this will coincide with the implementation of the broader s144 practice direction and councils will be made aware of any changes.



Inspection policy structure

The draft inspection policy practice direction is set out as follows:

Introduction

To introduce the broad purpose of the direction and discuss related matters.

Of note:

- The Commission has considered the matters set out at s144(3) of the Act but has determined that, following a risk based methodology, that buildings, particularly in relation to life safety issues such as fire protection, should be treated equally irrespective of where they are built in the State.
- The Commission recognises that meeting these requirements may be more difficult in regional and remote areas of the State, but all buildings in the State, and therefore for occupants of these buildings, should be afforded the same level of protection.

Part 1 – Preliminaries

Part 1 sets out preliminary matters.

Of note:

- On the object of the practice direction at Part 1(3), following expert advice, the Commission is keen to hone the focus on: ensuring occupant and public safety, providing for public health and hygiene, and maintaining confidence and integrity of the development control system.
- Council inspections need to focus on those essential elements of the buildings which impact on occupant and public safety, with the overall delivery of contracted works, and the quality of this work, remaining a matter between the owner and the builder and other regulatory authorities (e.g. Business and Consumer Affairs).

Part 2 – Inspection policy

Part 2 sets out inspection policy requirements.

Part 1(1) sets out which councils the policy applies to, with reference to Appendix 1.

The purpose of this appendix is to enable the phased introduction of the practice direction. ‘Phase 2’ councils are set out at Part 1 of this appendix and ‘Phase 3’ councils are at Part 2.

Please note the practice direction will apply to all council areas, however it will be 'switched on' as the Act comes into operation for these areas.

Mandatory inspections

Part 2(2) sets out mandatory inspection requirements. This is a key section of the practice direction, which is linked to Appendix 2.

As set out at Part 2(2)(1) a council must comply with the requirements set out at Appendix 2, in reference to both the kinds and proportion of development which require inspection, and the timing and number of inspections required per building.

When undertaking an inspection – as set out at Part 2, subpart (2)(2) – a council is directed to inspect a range of elements, as may present dependent on the kind of development they are inspecting and when they are inspecting it.

Note these terms – for example, ‘primary structural elements’, ‘cladding’, etc. – are not defined in the practice direction, given it is expected that authorised officers undertaking inspections should be able to exercise their own judgement on what an inspection of these elements should constitute.

Appendix 2 contains four tables which set out classes and sizes of buildings, divided into risk categories, from less risk (Table 1) to higher risk (Table 4).

Key attention is drawn towards these tables as they will set the minimum mandatory inspection levels, specifically the timing, minimum number and proportion of developments to be inspected.

The Commission rationale for the table is as follows –

Table 1 – Domestic dwellings

This table relates to Class 1a single dwellings.

For the initial inspection policy, aspects of current inspection requirements under the Development Act and Regulations for Class 1a will be retained, with some changes.

The requirement that 66% of dwellings be inspected is retained, however greater flexibility is provided to councils on when they might seek to undertake this inspection.

This table sets that if a building falls within the 66% captured, then that building must receive at least one inspection (i.e. one is acceptable).

When undertaking these inspections councils should consider which elements at Part 2(2)(2) they are seeking to inspect or which may present.

Following, the notification should be set accordingly (see Section 2.2 of this Paper for discussion on notifications).

For example, if the council seeks to undertake an inspection of the framing and roof truss, then the notification should be set at a time to allow that element to be inspected, potentially one day prior to linings being installed in this case.

Councils will also note – in the lefthand column – that the council should give consideration to undertaking an inspection at completion if certain criteria are met, as listed.

This is not compulsory, but is provided as guidance, and if an inspection at completion is undertaken, this will count towards the 66% total.

Collectively, tables 2 to 4 cover all other buildings (except Class 10).

- It may be noted that all three of these tables propose one inspection, and could therefore potentially be combined into one table. However the three tables are presented to allow councils to consider the levels of risk which different buildings may present.

Table 2 – Smaller commercial developments

Table 2 covers smaller, lower risk commercial developments, farm buildings and sheds, and small public buildings, such as a council hall.

It is proposed that councils inspect 100% of these developments, with at least one inspection per development. This inspection must be undertaken on completion.

Again, in undertaking this inspection, a council will need to look at the elements listed at Part 2(2)(2) of the direction, and determine which are applicable for inspection at completion point.

Table 3 – Medium commercially built developments

Table 3 covers medium sized commercial developments, boarding houses, smaller apartments, backpackers, normal sized offices, warehouses, and factories, and retail over 500m² in floor area but less than 2000m².

It is proposed that councils inspect 100% of these kinds of development, with at least one inspection per development.

This inspection may either be an inspection during construction or on completion. As set out in the lefthand column it is recommended that the notification be set at a point which enables a general audit inspection of the overall construction and fire safety elements.

Table 4 – Larger commercial developments

Table 4 applies to apartments over 2 storeys, backpackers over 1 storey, larger offices, retail, warehouses and factories, and larger public buildings.

Again, it is proposed that councils inspect 100% of these kinds of development, with at least one inspection per development.

This inspection may either be an inspection during construction or on completion.

As set out in the lefthand column it is recommended that the notification be set at a point which enables a general audit inspection of the overall construction and fire safety elements.

Note on commercial inspections:

- The use of the term audit is deliberate above, given that as buildings become larger and more complex (those listed in Tables 3 and 4), it is not expected that a council will be able to inspect every particular element. Instead the proposal is that they undertake a sufficient level of inspection to be able to draw a conclusion on the overall adequacy of the building in relation to the object of the practice direction – i.e. to ensure that the building provides for occupant and public safety, and that general confidence and integrity in the development system can be maintained.
- Noting the proposed introduction of mandatory inspections (1) for commercial and public buildings (Class 1b-9) views are welcomed on this inspection level. During policy development differing views have been heard on this topic. These ranged from one inspection being declared likely to be ineffective or insufficient for complex commercial buildings, to the view that while only a small change, moving from virtually zero to one inspection will begin to apply an incremental level of scrutiny on commercial construction that does not presently exist, to lift overall building standards, and identify potentially critical issues prior to occupation, particularly where construction may be poor.

Again, the Commission acknowledges that delivery of high building standards largely rests with high quality design and engineering, certification, and execution by the construction sector.

However, the Commission's proposition at this point is that these inspections will provide an additional, independent checkpoint to assist in this overall objective.

However feedback is again welcomed.

Additional inspections

Part 2(3) 'Additional inspections' sets out instances where councils may undertake inspections in addition to the mandatory requirements, where certain issues or circumstances arise in relation to the objects of the practice direction.

Stakeholders are encouraged to read through this list and provide feedback on any possible omissions, noting this is not meant to be an exhaustive list but to provide guidance on where an additional inspection may be warranted.

Of note, Part 2(3)(3)(e) asks councils to consider whether an additional inspection might be carried out where an unlicensed builder, also known as an 'owner builder', is undertaking the building work.

This follows feedback received by the Commission that 'owner builders' should be subject to more inspections.

Part 3 – Authorised Officers

Part 3(1) reiterates that only authorised officers may carry out inspections for the purpose of the practice direction. Part 17 of the Act sets these requirements, in conjunction with regulation 112 of the General Regulations.

Part 3(2) sets out that, when determining which authorised officer to assign to carry out an inspection, consideration is given to ensuring that person has the appropriate qualifications, skills, knowledge and experience to carry out that inspection.

Per this part, councils should be considering who to allocate to an inspection on a case by case basis, however Part 3(3) provides that the appointment of an authorised officer under regulation 112 provides the starting point.

Authorised Officers - ability to inspect

The topic of what kinds of developments any given authorised officer should be able to inspect was a key issue that was raised during development of the draft practice direction.

Opinions varied from the position that only an accredited professional who has the ability to provide advice on and approval for a building should be able to inspect that building, through to – so long as the requirements of regulation 112 of the General Regulations are met – that a council should be able to choose to assign their authorised officers to inspections as they see fit, based on a judgement of their abilities.

Under the first position, for example, an inspection of a six storey Class 2 apartment building – which would require an accredited professional, building level 1 to assess – could only be inspected by an authorised officer who carries that level of accreditation, and so forth.

As per above, in the draft direction the Commission has determined that councils should be provided with, again as long as an authorised officer is correctly appointed under regulation 112, a degree of flexibility in how they assign authorised officers to an inspection.

In taking this position, it is recognised that the officer that attends the site may be assisted in the overall inspection by another, potentially more qualified officer, either prior to or on their return from the inspection itself, so this approach is intended to enable councils to consider the overall inspection abilities of their staff and appointed officers, and manage resources while also inspecting properly.

Further feedback on this issue is welcomed. However, stakeholders are advised that any new requirement or controls in this area would be a matter for regulatory change, and would need to be approved by Cabinet, rather than the Commission.

Lastly, any authorised officer appointed under regulation 112 who is an accredited professional is also subject to the Code of Conduct requirements under the Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019.

2.2 HOW WILL INSPECTIONS WORK?

The s144 practice direction sets inspection requirements but requires other elements under the Act and the Planning, Development and Infrastructure (General) Regulations 2017 (General Regulations) to operate.

The basic process is set out as follows, noting that in some circumstances this may alter:

Setting and providing notifications under regulation 93

As development approvals are processed, in issuing the final approval, councils will be able to set notifications required during building work, via the final notice of decision, issued under s126 of the Act and in accordance with regulation 57 of the General Regulations.

The General Regulations set two 'standard' mandatory notifications for each development (see regulation 93).

- These are a commencement notification, and a completion notification – regulation 93(1)(a) and (f).
- The only other notification mandated relates to the installation of designated building product – this is discussed at section 2.3 below.
- Please note the mandatory roof framing notification has been removed.

Per regulation 93(1)(b) and (c), councils may also require that a notifications for the intended commencement or completion of any stage of the building work.

- These represent the optional notifications which councils will use to ensure the Commission established requirements under s144 are met, specifically to set the point at which an inspection during construction is required.
- When issuing a final approval therefore, councils should consider the class of building they are approving, the inspection requirements that apply, and then set notifications accordingly.

A new regulation has been included – 93(1)(d) which requires that notification is given of any stage of building work specified by a relevant authority (i.e. a building certifier) when this authority provides building consent. This links to regulation 57(7). Inclusion of this regulation was in response to the Shergold Weir and Botten Levinson reports.

- The purpose of this regulation (57(7)) is to allow a building certifier to recommend notification – and therefore inspection – stages to council.
- The aim here is to encourage certifier to assist councils to set inspection requirements, particularly for more complex buildings where there certifier is likely to have a greater knowledge of key elements which should be subject to an inspection, keeping the object of the practice direction in mind.
- Where the council is the relevant authority for building work, this regulation (57(7)) will be unused.
- Councils will be required to transfer these certifier specified notifications onto the final decision notice issued under s126.
- Importantly it will remain up to council whether or not they chose to inspect at these notifications points, noting a certifier may recommend, for example, notifications at four stages, and a council may only elect to inspect at one of these.

Getting the notification system working properly is important and it will be critical that:

- Required notifications are clearly set out on the decision notice.
- Builders abide by their notification requirements as set by certifier or council, noting that the new regulations retain a maximum penalty for not notifying (\$10,000), but also add an expiation fee of \$750 (see regulation 93(5)).
- To make easier for builders to notify, notification will be accepted online via the SA Planning Portal, phone or email, or by leaving a written notice with council. While up to the builder, use of the portal is intended to be the preferred option – see regulation 93(3).
- When a builder issues a notification, they should take note of the date they issued the notification and what it was for (i.e. footings, framing, wet areas, etc.), as this must now be recorded on the final Statement of Compliance. Failure to do so may result in a \$750 expiation.

Lastly, councils will note that the General Regulations prescribe no limitation on the number of notifications that may be required.

While this is intended to provide flexibility, councils will be strongly encouraged to prescribe or attach an inspection to a notification required under 93(1)(b) and (c), and to limit the use of notifications to track general construction progress.

Part 4 – Other Matters

Matters set out here include record keeping, counting inspections, and review.

Part 4(1) relates to record keeping.

Record keeping is an integral aspect of any inspection policy, and clear requirements are important.

Part 4(2) relates to counting inspections.

Part 4(3) sets that the practice direction will be reviewed after two years, which will enable the direction to properly ‘bed down’ before it is reviewed, and for sufficient data to be collected.



Receiving notifications and undertaking inspections

Following approval, the outline of legislated steps is as follows:

- The first notification received in relation to a Development Approval will be the commencement notification, to be provided one business day's notice prior to the intended commencement of building work on the site – regulation 93(1)(a).
- As building work progresses, further notifications should be received by council as specified on the final decision notice, and guided by the requirements of the s144 practice direction.
- When a notification is received by council that an inspection requirement is allocated to, an authorised council officer must undertake that inspection.
- Per regulation 112 of the General Regulations, 'Authorised officers and inspections', a person authorised under this section is authorised to carry out inspections for the purposes of section 144 of the Act – see regulation 112(2)(a).
- An authorised officer may, as appropriate, utilise their powers as provided under sections 155 and 211 of the PDI Act when undertaking an inspection, which mirror current arrangements under the Development Act.
- Once an inspection is complete, it will be the responsibility of council to take appropriate action in response if required, such as providing direction on a rectification, setting a follow up inspection, and other appropriate compliance and enforcement measures as necessary.
- Post an inspection, councils will also be required to undertake appropriate record keeping in accordance with the requirements set out in the practice direction and internal procedures.

Note further advice in relation to authorised officers is provided in sections 2.1 and 2.3.

- The following diagram (Figure 1) presents a basic overview of the process described above, noting that the only possible 'statement' requirement possible at present is in relation to 'designated building products' (see 2.3, Question 6, below).

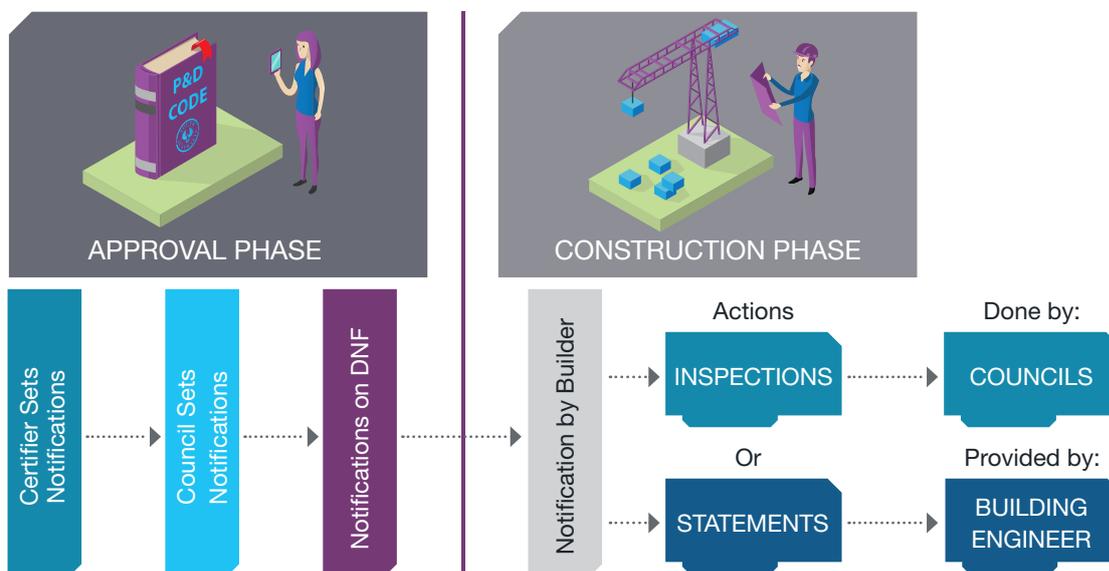


Figure 1. Overview of PDI Act building compliance process

2.3 OTHER MATTERS / FREQUENTLY ASKED QUESTIONS

A range of other topics are discussed below to start to address matters councils and other stakeholders may consider raising during the consultation period.

1. What about inspections for planning (not just building) compliance?

As expressed earlier, the Commission is of the view that given the need to ensure accountability in the construction sector and given limited resourcing, council inspections should be targeted at those aspects of a development which pose potential risk to the safety of occupants, which places the focus on the building itself.

Councils are reminded that the practice direction will set minimum inspection levels, and councils may elect to inspect for planning compliance matters at their discretion, though again these inspections should be linked to appropriate notifications where possible.

2. How will inspections work? What is the general process?

See section 2.2 above.

3. Are there any differences with authorised officers under the PDI Act compared with Development Act?

Under the current system a person must be accredited as a building surveyor to be an authorised officer, or appointed by the Minister.

The General Regulations under the PDI Act require that:

- Per regulation 112, each council must appoint at least one authorised officer under section 210 of the Act (Appointment of authorised officers), who is then authorised to undertake inspections under s144 of the Act.
- An authorised officer must either be an Accredited Professional under the Act (building level 1 to 4) or hold a current accreditation recognised by the Chief Executive of DPTI for the purposes of this regulation, or hold a specific approval from the Chief Executive of DPTI.

Of note, a person appointed under this regulation does not have to be an employee of that council – the emphasis instead is on ensuring that the person has the appropriate skills, experience and qualifications to carry out the relevant inspection.

This is a key question that has arisen, particularly around the issue of council resourcing in regional areas, and is intended to provide an avenue for councils to potentially contract out inspection requirements to ensure they can meet their obligations under s144.

4. Can any level of authorised officer inspect any building?

See section 2.1 above.

5. What about conflict of interest? Can a certifier inspect their own work if appointed as an authorised officer?

If a person is appointed by council under the Regulations to be an authorised officer for the purpose of s144, then they may undertake an inspection for that council, so as long as they are appropriately qualified.

There is therefore no statutory limitation on the person who certified a building being appointed by council to undertake the inspection.

It is important to note here that council remain the entity appointing and remunerating the authorised officer to undertake the inspection, i.e. not the builder. The certifier is therefore answerable to the council in this case, not the builder. This will also allow a council to appoint a certifier who set notification requirements as described above at regulation 57(7).

In this example, the council may think: ‘you have set these notifications, you know the design well, you are the best person to inspect, could we please appoint you to do so’.

- It is acknowledged that a certifier engaged in this situation, while acting on behalf of councils, will potentially be issuing directions to a builder who originally engaged them for the certification work.
- Nonetheless, the Commission has confidence that certifiers should uphold their professionalism in these scenarios, and operate in accordance with the Code of Conduct under the Accredited Professionals Scheme, and their broader professional responsibilities.
- The onus here is also on the council, who will have to weigh up the benefit of appointing a certifier who may understand the design thoroughly to undertake the inspection, versus undertaking it themselves, which may offer greater independence, but less expertise.
- Overall on balance, the advantage of allowing an outside building certifier to assist in inspections is seen as outweighing any potential conflict of interest costs, but the views of stakeholders are welcomed on this issue.

6. What are the requirements for ‘designated building products’?

Requirements for designated building products were introduced under the Development Act in 2018 following nation-wide need to respond to potential issues of non-compliance with the use of Aluminium Composite Panel (ACP), particularly on high rise buildings.

These requirements have been carried over to the PDI Act and Regulations and include a requirement that:

- If building work will include the use of a designated building product on a designated building² then details relating to the designated building product must be provided with the application for building for building rules consent. These requirements are set out on the SA Planning Portal – see Notice A - Designated building products.
- The council – or the certifier who provides the consent – must then set a notification of 1 business day’s notice before the commencement of the installation of the designated product. This is a requirement under regulation 93(1)(e).
- Per regulation 93(4), the person who gives this notification – who must be a registered building work supervisor – must then provide to the council a completed supervisor’s checklist relating to the installation of the product. This checklist is also available on the SA Planning Portal.

² A designated building product is a building product that consists of a metal panel or lining formed with aluminium, or similar thin metal sheet material, with any type of core material. A designated building is Class 2,3 or 9 building consisting of two or more storeys, or a class 5, 6, 7 or 8 building consisting of three or more storeys.

7. What about statements? Where has the roof truss checklist gone?

As described above, a statement – in this case a checklist – is required in relation to use of a designated building product.

A Statement of Compliance signed by the building work supervisor and the owner, is the other key statement required, a requirement carried over from the Development Act.

Beyond this however, there are no further statement requirements under the PDI Act and General Regulations set at this stage.

The requirement for a ‘supervisor’s checklist relating to roof framing’ has therefore been removed.

Please note that further requirements in relation to statements may apply prior to the full commencement of the Act, but this is outside the Commission’s direct remit under the Act.

Any changes of this nature will be clearly communicated to council and industry.

8. What is the link between Certificate of Occupancy and inspections? Is there any?

This is a common, and important, query that has arisen during consultation, noting that several other jurisdictions require some form of final inspection prior to an occupation permit or certificate being issued. To advise:

Councils and other stakeholders should note that there is no intrinsic link under the PDI Act between requiring a final inspection, and the issuing of a Certificate of Occupancy.

Where a requirement *may* be set however, is via the s144 inspection policy, depending on the outcomes of this consultation (i.e. whether final inspections are required), or when a council decides to do a final inspection on their own accord.

- For example councils will note, looking at the draft policy, that for a Class 1a building, it is proposed that only an inspection during construction is required (for 66% of dwellings, unless owner builder). Therefore, a Certificate of Occupancy for Class 1a building may be provided without a final inspection.
- However, if a council assigns a final inspection to the receipt of the Statement of Compliance – for example, where they seek to inspect items such as bushfire protection systems – then it is expected that this inspection will occur prior to the Certificate being issued.

In relation to other building classes, councils and stakeholders are encouraged to look at the draft requirements set out in the draft policy.

Stakeholders will also note the new PDI Act Certificate of Occupancy does not require the council or certifier issuing to list inspections undertaken and their outcomes. However it is expected that this information will be recorded by the council in accordance with the practice direction.

9. How about site access, particularly for commercial buildings?

Authorised officers will be expected to exercise their powers under the PDI Act, including to enter and inspect any land or building for the purpose of inspecting building work (see s211 of the Act).

Where applicable, it is the responsibility of councils to organise and facilitate appropriate site access, and for building work supervisors to provide access in a timely manner, to allow an inspection.

The Commission recognises that while legislatively there is no change from the Development Act on this issue, this may represent an operational or cultural change for councils, given that there are currently very few council inspections of commercial building sites.

Per the Act, Authorised officers will have to accord with the Act to ensure they carry with them and produce an identity card where necessary, and abide by any work health and safety requirements.

Councils will also be expected to raise the issue of future site access when they issue the final development approval.

10. How will these inspections be paid for?

Fees and charges under the PDI Act are now contained within separate regulations, instead of within the Development Regulations.

Fees are now contained within the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019.

The Commission appreciates that directing councils to undertake a minimum number of inspections will require councils to have adequate recourse to charge appropriate fees to make the policy workable.

It is also appreciated that undertaking inspections of commercial buildings – even of an audit variety – will be more complex than residential inspections and is likely to require follow-ups, which should be accounted for in a fee model.

However, the Commission itself cannot set these fees, and this is ultimately a matter for the Minister and Government, through regulations.

11. What about the issue of liability?

The practice direction will place a legal obligation on a council to undertake inspections in their respective areas.

Following, it is possible that, where a council fails to undertake a required inspection, that it may be inferred that a duty of care has not been met. This may lead to a finding of civil liability against a council for loss or damage.

Councils should note that sections 42(5) and 233 of the PDI Act provide for certain exemptions from liability that councils may note in relation to questions of civil liability.

Section 42(5) states that:

A practice direction does not give rise to—

- (a) any liability of, or other claim against, the Commission; or
- (b) any right, expectation, duty or obligation that would not otherwise be available to a person.

Further, section 233 provides an exemption from liability for good faith acts or omissions:

No act or omission in good faith in relation to a particular development by—

- (a) the Minister, the Commission, a relevant authority, a council or other authority under this Act; or
- (b) an authorised officer; or
- (c) a building certifier,

after the development has been approved under this Act subjects that person or body to any liability.

Please note the above information should not be treated as legal advice, and councils are encouraged to seek their own counsel as appropriate.

12. How will inspection integrate with the new ePlanning system?

Further information will be provided on this topic soon, however the advice to councils at this stage is that notifications will be able to be provided via the SA Planning Portal, while all other aspects relating to inspections will continue to be maintained on individual council systems.

As such, councils will be expected to maintain their existing inspection related software and other capabilities to ensure their compliance, including date, time and outcome of inspections, and any follow-up requirements.

Per the requirements of the practice direction, councils will be required to maintain adequate records to demonstrate compliance with the policy.

Numbers of inspections may be picked by the new system indicators under the PDI Act to enable the Commission to monitor the overall quantity and type of inspections.

DISCUSSION QUESTIONS

Please provide your feedback on the draft practice direction via: DPTI.PDBuildingBranch@sa.gov.au

The following topics and discussion questions may assist you in formulating your feedback.

Overall purpose

1. Is the proposed purpose of the inspection policy easily understood? i.e. a focus on occupant and life safety, and to maintain confidence and integrity in the development control system.

Inspection levels and capacity

2. Are the proposed inspection requirements easily understood? 66% for Class 1as and 100% for Class 1b-9?
3. For the main, the inspection requirements for Class 1as are largely unchanged while Class 1b-9 buildings will require one inspection – do you think this is realistic and achievable for councils?
4. If you answered no to question 3, what level would be achievable? If answering from council, do you think this is static or could this be increased over time?
5. The practice direction provides a list of circumstances when councils may wish to undertake inspections in addition to the mandatory requirements. Would you suggest any change to this list?
6. While not in the s144 practice direction, is the potential removal of the 80/20 two week/two month percentage split for pool inspections, to instead require that all pools to be inspected within two weeks of completion supported?

Who may inspect

7. As long as an authorised officer is appointed under r 112 of the General Regulations, the draft policy allows the council to decide which officer to allocate to an inspection (from level 1 to 4) – do you support this approach?
8. Regulation 112 currently allows councils to potentially appoint an accredited professional who is not a council employee to undertake an inspection (e.g. a private building certifier) to enable recruitment of private sector expertise. Do you support this?

Statements

9. While not a specific part of this consultation, would you support the reintroduction of a statement requirement for roof trusses, and for this to potentially be expanded to the entire frame?
10. Would you support the introduction of statements for other matters, for example, footings or wet areas?

Process

11. Having read the Background Paper, do you have a good understanding on how the inspection process will work, i.e. setting notifications via decision notice, receiving notifications, undertaking inspections, etc.? Are there any areas you are unsure of that could benefit from further explanatory material?

Other matters

12. Are there any other matters you would like to raise at this point?

HOW YOU CAN GET INVOLVED

Provide your feedback to:
DPTI.PDBuildingBranch@sa.gov.au
For more information, please visit:
www.saplanningportal.sa.gov.au



Government of South Australia
Department of Planning,
Transport and Infrastructure

saplanningcommission.sa.gov.au