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Sally Smith
General Manager, Planning and Development
Department for Planning Transport and Infrastructure

1st March 2019

RE: Draft Development Assessment Regulations and Practice Directions

Dear Sally,

Thank you for providing the UDIA (SA) with the opportunity to comment on the draft Development Assessment Regulations and Practice Directions ('the Regulations').

While we understand the need to progress the reforms quickly, we are concerned with the incredibly short consultation timeframe that we have been given to respond. We acknowledge the Government's ongoing attempt to engage with industry throughout the planning reform process, however given the complexity and severity of the Regulations (black-letter law as opposed to broad themes in the Policy Papers), we feel the timeframes should have been longer.

We have provided the attached table which articulates our concerns clause by clause, but we request an urgent meeting to discuss these and we implore the Government to continue consultation before these Regulations are enacted. The purpose of the reform was to create a more efficient and transparent planning system and while there are many positive changes, unfortunately we have identified a number of serious concerns with elements of the Regulations that we believe will undermine this goal.

While the below is not an exhaustive list, some of the main issues requiring attention include:

1. The removal of the Coordinator-General $5M SCAP pathway.
2. Land Division Deemed Consent condition
3. Excessive timeframes
4. Relevant Authority
5. Schedule 8 – Up-front information required

The removal of the Coordinator-General $5M SCAP pathway

We strongly urge the Government to reconsider the removal of the Coordinator-General pathway. This process is necessary as a way to expedite large and important developments in a streamlined manner. To remove this pathway with a new and untried system, this could limit any capacity to deal with unforeseen issues.

Land Division Deemed Consent condition – clearance of site before titles issued

This condition will apply to any deemed consent for a land division where the resultant allotments will accommodate new development. In practice, it will require the site to be cleared of all buildings and materials (including any concrete, irrigation pipes or rubbish) prior to section 51 clearance (now s138 clearance). In practice, this condition is unrealistic and should be removed.

Excessive and stagnated timeframes

There are many odd timeframes applied throughout the Regulations which are addressed in the table, however we would like to highlight just some examples of poor timeframes.

1. Regulation 85 states that land division is required to be undertaken in accordance with the requirements of a water industry entity (SA Water). The SA Water Statement of Requirements is valid for only 40 business days (presently 60 days). There is a risk that SA Water requirements could change part way through a project and secondly that there is a fee to pay every time an updated assessment is required. This period should be extended to be longer.

2. Regulation 82 gives the State Planning Commission ('SPC') 30 business days to provide its comments on a land division application plus *any further time* the SPC determines. This uncapped timeframe is concerning as a land division cannot be approved until the SPC comments are received. The result will be increased uncertainty that many businesses simply cannot plan around. There must be a reasonable limit applied.

Relevant Authority (Reg 22)

Due to changes to as who will be deemed the 'relevant authority' under the new Regulations, it is likely that there will be a significant increase in the number of Council Assessment Panel (CAP) applications. This could result in significantly longer decision timeframes and increased costs ultimately borne by developers. The Regulations should not rely on Councils delegating this authority to make it workable.

CC: Minister Knoll - Minister for Planning
CC: Mr Michael Lennon - Chair, State Planning Commission

Schedule 8

The information required at the application stage is excessive. For example, the requirement to include landscaping and materials and external finishes including walls, doors and windows is unnecessary for deemed-to-satisfy applications. Timing issues may also arise regarding selections by clients (often made after the planning consent is granted) and the nomination of landscaping plants (which may not be of interest until after clients have moved in) highlight the lack of practicality with the Regulations coupled with a lack of any real benefit.

Furthermore, Clause 2 provides that a full site contamination audit must be provided up-front, which is simply unrealistic as applicants are producing a very expensive report prior to a decision being made. The request for an audit should occur only after approval is given pending the outcome of a report.

Certificates of occupancy (Regulation 83)

The equivalent new regulation (Reg 108) removes the exemption for certificates of occupancy for class 1a buildings (single dwellings) i.e. a certificate of occupancy will now be required for all class 1a buildings. While statements of compliance will still be required, a building cannot be occupied until there is a certificate of occupancy issued by a council (and the statement of compliance is required for the certificate of occupancy).

In practice, this means Council does not have to issue an occupancy certificate if the builder has not completed items like paving, landscaping, septic, stormwater, rainwater tank. Our industry understands that given the housing affordability pressure on homeowners, many people arrange for items like their paving, stormwater, landscaping etc after handover. The UDIA is very concerned about the potential impact on delayed handovers.

The above is only a small snapshot of potential issues and we look forward to further consultation on behalf of our members.

Yours sincerely,

Pat Gerace
CHIEF EXECUTIVE

CC: Minister Knoll - Minister for Planning
CC: Mr Michael Lennon - Chair, State Planning Commission

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
PDI (General) (Development Assessment) Variation Regulations 2019		
Reg. 4		Definition of designated building reference to clause 4 should be a reference to clause 9 of schedule 8.
Reg 21(d)	Deals with minor operational amendments to designated instruments such as planning and design code without the need for a formal amendment processes where there is a need to change the code because of the change to some other plan or policy. This sub-regulation allows a change because of an amendment to a list of places entered on the state heritage register. The regulation is drafted to allow amendment to both provisional and permanent listings.	The regulation should be amended to delete the reference to provisional listings on the basis that under the Heritage Places Act provisional listings are not yet confirmed even by the Heritage Council and may still be subject to the public consultation process and any appeal to the Environment Court.
Reg 22	The Draft Regs envisage surveyors acting as the relevant authority for some land division applications (deemed to satisfy). The utility of this will depend on what is specified in the Planning and Design Code. The effect of this regulation is to oust the power of the Council Panel to assess applications where there is a scheme within the regulations for decisions to be made by assessment managers or accredited professionals. This regulation establishes that scheme. The effect of sub regulation (1) (ii) is that everything else beyond the listed items is assessed by assessment managers. In broad terms this is good because it takes a large amount of assessment away from panels. The Threshold of 20 allotments is too lower however. Sub-regulation (b) provides that an accredited professional planning level 3 is empowered to determine deemed to satisfy development including where there may be one or more minor variations. The power of an accredited professional of this level should be broader than just assessing deemed to satisfy proposals. There is no reason as a matter of principle why such accredited	Increase the threshold under R 22(1)(a)(ii)(D) to 200 allotments. Expand the role of the senior accredited professional planners beyond just deemed to satisfy with minor variations.

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
	professionals could not be assessing other uncontentious developments but which may not necessarily be deemed to satisfy. For example, (and this is of course subject to the detail of the code) dwellings within residential zones whether or not they are deemed to satisfy surely could be determined by accredited professional.	
Reg. 23	Refers to the process where the commission has been declared to be the relevant authority by the Minister. It requires the Council to provide all of the application documents to the Commission within 5 business days. This seems an excessive period. Surely a period of two business days to simply transfer the application materials is more than sufficient. This is particularly the case given that it should involve no more than uploading the documents to the planning portal if they have not already been uploaded. Sub-paragraph (2)(b) refers to the commission giving the Council 15 business days from, the date of notice from the Commission to the Council to provide a report on the application which has been transferred from the Council to the Commission for assessment. Sub-regulation (3) lists the matters for the purposes of a report from the Council. It refers under sub-regulation (a) to "other public assets and infrastructure". The effect of this clause is to enable the Council to comment at large on public assets and infrastructure. That is inappropriate. Sub-regulation (3) (b) allows the Council to comment on the impact of the proposed development on any local heritage place. There is no reason why the Council should have any particular say on the assessment of a proposal against a local heritage place. That is something that will be inherently required for the commission to take into account. This is therefore not peculiar knowledge that the Council will possess and this requirement should be deleted as it simply encourages mischief by the Council. Sub-clause (c) is unnecessary. The relevant topics ought to be specified in the regulation.	Surely R 23(2)(b) can be streamlined so that everything happens in one sequence. The Minister issues the notice declaring the commission as the authority and the regulations should provide that the Council then has 2 business days to provide the materials and 10 business days from receiving notice under section 94(1)(h) from the Minister to provide any report. Sub-regulation (3) (a) ought to be amended by adding the words "owned or under the care, control and management of the Council". Delete R 23(3)(b).

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Reg. 27	Refers to elements of a development that may be separately assessed. The wording of the regulation is inelegant and it would benefit from re-wording. In particular, it refers to an application that "requires a relevant authority to assess a development". The notion of elemental assessment was introduced so that applications could obtain approval for discrete elements of development that might be more or less contentious rather than having everything at stake.	The rewording should read something like "if an application seeks planning consent the relevant authority must determine whether the development involves two or more elements for the purposes of section 102(7) and if so, clearly identify each element for the purposes of assessment against the provisions of the planning and design code (and any related planning consent)."
Reg 28	Deals with impact assessed development. Sub-regulation (2) has essentially been copied from Development Regulation 63 where the descriptor of the items is "criteria" whereas this regulation refers to "principles" for the purposes of section 108(9) of the Act. It seems however that the matters listed in sub-clauses (a) - (g) are more in the nature of themes than principles.	Query whether this needs to be re drafted as a set of principles.
Reg 33	Deals with accredited planning professionals providing a notice of acting to the Council. Sub-regulation 4 requires an amount specified in a separate regulation to be paid to the relevant assessment panel. Firstly, that fee is not yet specified in any such regulation. Secondly, and similarly to the following regulation 34(4) there does not seem to be any reason why a council should obtain any fee if an accredited professional is undertaking the assessment. Any administration of a development application is something that a Council should be doing anyway.	Delete the requirement to pay a fee to the Council.
Reg 35	Deals with processing of an application by a relevant authority and sets a timeframe for the authority to determine whether all of the plans have been lodged and who is the relevant authority. The regulation provides 5 business days for that process which seems excessive. Surely that decision can be made promptly and within no more than 2 business days.	Amend 35(1) to 2 business days. Sub-regulation 2 can be streamlined so that it simply requires that *"if the authority is the relevant authority to assess the application the relevant authority must within 5 business days of receipt of the application determine the fees required to be paid and advise the applicant of any fees then owing...etc"*

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Reg 36	Deals with requests for further information. Sub-regulation (4) allows the clock to continue running and the authority to keep asking questions where it is merely "seeking clarification about any document or information that has been provided". This opportunity to the authority undermines the requirement for the authority to assess the application on the information that has been provided and despite the Act limiting the number of times that further information can be requested. This effectively allows the authority to seek "clarification" rather than seeking "information". This is ripe for abuse by those authorities making mischief and should simply be deleted.	Delete sub-regulation 36(4).
Reg 37	Deals with a period for additional information to be provided and extends the period from 30 days to 60 business days. That is an improvement on the current development regulations. However, the regulations should go on to state "... date of the request unless that period is extended by the relevant authority on request by the applicant". Although the timing seems strange, the effect of sub-regulation (2) is ultimately good. It assumes that the relevant authority might allow an extension of up to 1 year and the clock won't run. That is good in that the applicant may require further time to address issues and the authority will not be under pressure so long as the applicant has decided to stop the clock. However, after 1 year, the clock will automatically start running.	Add to Regulation 37(1) the words: "unless that period is extended by the relevant authority on request by the applicant".
Reg 38	Deals with amended applications and allows the authority to permit an applicant to vary an application during the assessment process. This is a good idea and is carried over from the development regulations. Sub-regulation (2) allows the variation so long as "the variations to the application are not substantial". The use of the phrase "not substantial" in sub-regulation (2) and (3) is vague. It is inconsistent with the use of the phrase "change the essential nature of a proposed development" then used in sub-regulation (4). The phrase relating to the essential nature has been used in the development regulations and is the subject of some case law. While	Either define the "not substantial" test or consistently use the "essential nature test".

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
	it too is an imperfect phrase it has at least been partly defined by the Courts. This mechanism is good and should be supported. It is just a matter of whether the notion of variations that are not substantial should simply be removed and left to the essential nature test or if the not substantial test is to be retained whether it might be possible to provide further definition so that the applicant and the authority have greater certainty around allowing such variations during the course of assessment.	
Reg 41	Deals with the authority having the power to withdraw or lapse an application that has not been determined after 1 year. The development regulations have the same power although it cannot be activated by the Authority until the passing of 2 years. The difference between 1 years and 2 years probably doesn't matter much. The reduced period of 1 year can probably be supported, but surely only if the application is entirely dormant. In other words, the regulation ought to provide that the power can only be exercised by the authority if no action or response has been made my the applicant and if there has been a change to the planning and design code of relevance. If there has not been any change to the code then this seems an utterly unnecessary power for the authority to exercise. The regulation ought to be reworded accordingly	Amend the regulation so that it can only be exercised if - (a) there has been a relevant change to the PDC relevant to the assessment of the application; and (b) the applicant has abandoned the proposal by not actively pursuing it or addressing a request for information or amendments.
Reg 43	Deals with referrals by the relevant authority to other agencies for comment. It needs to be read alongside the referral schedule 9. Generally speaking, it is a mechanism currently in place under the development regulations and is acceptable. It expressly refers in sub-regulation 3 to the power of a referral body to request further information and provides that such a request must be made within 10 business days of the prescribed body receiving the application. That time limit is supported, however, the difficulty under the Act is that it does not expressly prevent a referral body from making information requests more than once even though that limitation is applied to the relevant authority itself. One way to ensure that agencies such as the EPA do not continue their current practice of repeatedly asking over and over again for little batches of information is to ensure that the regulation sets the time limit for such request. To that extent, this regulation is supported.	To emphasis the point, the word "must" in sub-regulation 3 should be supplemented with the word "only".

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Reg 47	Provides that there is no right of appeal against a condition imposed because of a direction given by the Commissioner of Highways or Technical Regulator on referral. There is no reason why the Commissioner of Highways directions can't be reviewed by the Court. While this provision is essentially carried over from the Development Regulations it is unwarranted and unfair. Surely the Commissioner of Highways is not beyond review.	Delete this regulation
Reg 50	Deals with notice given to members of the public for the purpose of performance assessed and restricted development. It requires notice to be given to "adjacent land" and if relevant "directly affected land". The first of those phrases is defined in section 3 of the PDI Act, however, the second phrase "directly affected land" is not defined and ought to be defined in this regulation if that phrase is to be used.	Define "directly affected land".
Reg 53	Sets the period for third party representors to lodge their objections. The effect of sub-regulation 1 and sub-regulation 2 is that a representor will have 15 business days plus 3 business days to make a representation and in the case of restricted development, 20 business days plus 3 business days. In other words, the current period under the Development Act which is simply set as 10 business days has now been extended to 18 and 23 business days. Surely, this period is unnecessary, especially in this State where a sign on the property, electronic notification and automatic alerts under the portal are now available. While plenty of people complained about the 10 business day period to lodge a representation, that period of 2 weeks is ample. It is not as if the representor needs to marshal a planning argument within that time, the representor really only needs to express their view and provide any relevant information, in which case 10 business days is plenty of time. The regulations do not appear to provide a requirement for the authority to give notice of the relevant meeting to the applicant even though the authority must give notice to a representor of a meeting. In particular, if an application is to be decided at a meeting but there are no representations then sub-regulation 53(6) would not seem	This period should be cut back to 10 business days in all instances and the effect of sub-regulation (2) of adding 3 business days to account for postage should be deleted.

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
	to have any effect and the authority may not notify the applicant of the time and date of the meeting of which its application was to be considered.	
Reg 55	Deals with notice of meetings. Should expressly require notice to the applicant. The regulation should expressly include an obligation to notify the applicant of the meeting and of the decision and specify that the rules of natural justice are to be followed for all decision making processes, for example, that the authority ought to provide the applicant with notice of conditions intended to be imposed or where there is an adverse recommendation from the relevant assessment manager to the panel ,the applicant ought to be given opportunity to consider those matters and respond. This might seem obvious, but it is regularly ignored by panels across the state. To say that an appeal or judicial review proceedings are a remedy is inadequate given that it would only take the authority 5 or 10 minutes of listening to the applicant to discharge this duty and potentially prevent a degree of stupidity and unfairness.	Amend Regulation 55 to require notice to be given to an applicant of any meeting to consider an application and require procedural fairness where: (1) conditions are imposed; (2) there is an adverse recommendation.

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Reg 56 Deemed to satisfy - 10 business days to approve	The Regs allow an authority 5 business days to determine whether an application is Deemed to Satisfy (Reg 35) and then a further 10 business days to approve it (Reg 56). This is unnecessary - if a relevant authority has determined that an application is a deemed to satisfy development it has effectively determined that it must approve it and there is no real need for a further two weeks after it has already determined that it must grant consent.	The 10 days should start from the date on which the application (with necessary docs etc) has been lodged, not from when the decision has been made that it is a Deemed to Satisfy development.
Reg 56 30 business days for any referral	Sets out the time within which decisions must be made and is similar in many respects to development regulation 41 albeit that regulation was expressed generally by reference to the number of weeks rather than the number of business days. Generally, the periods nominated in this new regulation 56 are appropriate. The period for comment under sub-regulation (h) of an additional 30 business days (6 weeks) for a referral agency seems excessive. Although referral agencies regularly take that amount of time it is probably just because they take the allotted time rather than the fact that they need it. Sub-regulation (3) provides that a relevant authority may decline to deal with the application if proceedings have been instituted in the Court until those proceedings have been concluded. There is no reason why the authority should be able to put the tools down just because some element of the process might be the subject of proceedings. Whether or not that occurs should instead be left to the Court to decide, rather than have the authority unilaterally determine it.	Reduce referral timeframe to 20 business days Sub-regulation 56(3) ought to be deleted and the inherent power of the Court to issue an injunction or to otherwise regulate the conduct of the application the subject of proceedings should be left in place.
Reg 60	Deals with notice being given of a decision. Sub-regulation 2 refers to 5 business days, which seems excessive. Similar comments as above apply to regulation 61 and 63 dealing with the period of time for the authority to notify other relevant authorities or the land owner.	Reduce the period to 2 business days for notice to be given after the decision is made.

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Reg 64	Requires the authority to specify reasons for any conditions that it imposes. This is essentially the same as development regulation 42(3). The practice has been in place for sometime but is a complete waste of time. It does not cause the authority to give any greater thought to the conditions it imposes, it simply adds a pointless administrative burden where the authority tries to make up some bizarre reason for imposing its standard conditions. It has no bearing on any appeal proceedings or a broader understanding of the process or rationale for conditions and is just a nuisance to everybody concerned.	Delete Regulation 64.
Reg 66	This regulation requires an authority granting a "development authorisation" (which is defined in the Act to include any consent and despite its language is not the final approval) to take into account any prior development authorisation for the same development. This is an eminently sensible obligation given that the Act now allows under section 102 (6) for different consent to be issued in a different order. It makes sense that given different authorities might be issuing different consents for the same overall development, that they have regard to the other consents that have already been issued. Although the language is perhaps confusing, the regulation is sensible.	The wording of this regulation should be improved so that its operation is not confused with general assessment principles of having regarding to existing approvals in considering a new application.
Reg 68	Is similar to development regulation 80 and deals with the requirement to upgrade buildings in certain cases. Sub-regulation 2 is similar except that it now captures class 1b buildings, whereas previously all of class 1 (class 1a and 1b) were exempt. Development regulation 80 also had a protection built into it where the relevant authority could not require the upgrade of building work in certain circumstances for instance where it would cause unjustifiable hardship etc. Those protections from development regulation 80(3) should be reinserted.	Add the protections from DR 80(3) to this regulation.

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Reg 71	Deals with the variation of an authorisation. It is similar to development regulation 47A and is generally supported. The requirement in sub-regulation 1 that the variation application only be issued by or lodged with the relevant authority which granted the original authorisation is unnecessary. If the variation has merit then an applicant should be entitled to lodge a request for a variation with any authority with jurisdiction to determine the matter. There is no ownership in the assessment of an application and surely the merits of the variation will be assessed consistently regardless of who the authority is.	Sub-regulation 1 should be deleted
Reg 73	Deals with the lapse of consents or approvals and is very similar to development regulation 48. Clearly there needs to be a lifespan for consents and approvals and the underlying rationale in this regulation is supported. However, rather than the somewhat complicated system of a consent remaining operative for 12 months unless a further consent is obtained and then substantial work starts on site, surely the regulations can simply provide that a consent remains alive for a period of 3 years. This avoids the need for anybody rushing around to pour footings for substantial commencement. Similarly, the land division period for the life of a consent ought to be extended so that land divisions of a simple nature with limited infrastructure might have 3 years but more substantial land divisions commonly take 5-10 years before all of the work is done. If the concept of substantial commencement is to remain, it should be extended for all development. The 12 month period for substantial commencement is arbitrary and places unnecessary pressure on projects.	Have a blanket 3 year and 5 year life span, Otherwise, a less desirable option is to extend timeframes to allow: • 2 years to substantially commence any development; • 5 years to complete any development with a build cost of $5M or over; The trigger for land division could be whether or not road or stormwater infrastructure is to be provided, in which case, the period is extended, or alternatively, set the distinguishing factor at the number of allotments such as anything over 50 allotments has 5 years and anything over 300 allotments has 10 years.
Reg 74	Deals with impact assessed development and specifies the period for the authority to send application documents to the Minister after the Minister makes a declaration. The authority has a staggering 10 business days to provide the documents whereas a period of 2 business days is ample.	Amend Regulation 74(1)(a) and (b) to 2 business days

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Reg 82	This gives the SPC 30 business days to provide its comments on a land division application plus any further time the SPC determines. Essentially a "blank cheque" for additional time for SCAP on a land division. This is important as a land division cannot be approved until the SPC comments are received. Deals with the process whereby a land division application is lodged with the commission and the commission then provides advice to the Council. Usually the advice is utterly useless. It adds nothing to the assessment process other than standard conditions. The commission generally sends the application around to other agencies (not referral agencies per se, but others such as SA Water etc). The process could be streamlined so that the application is simply lodged electronically and automatically allocated to the relevant authority and other agencies and their response is automatically provided to the Council is cumbersome and wastes time.	On lodgement the application is referred to the relevant authority. The commission can be given a period of 10 business days to make any report and at the same time the application can be referred using the portal to any other relevant agencies who likewise can be given 10 business days to report directly to the Council.
Reg 83	Is in essentially the same terms as development regulation 5A. It deals with land divisions involving existing buildings and effectively requires the upgrade of buildings to address fire safety. In general terms the regulation is sensible. The only difficulty is that sometimes it leads to rigidity where the upgrades necessary to a building are proposed to be funded as part of the sale of allotments. The regulation as presently drafted prevents that from occurring.	The regulation ought to be amended to add at the end the words "or that satisfactory measures are or will be in place to comply with these provisions prior to the separate occupation or ownership of the dwellings".

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Reg 85 (SA Water Statement of Requirements)	Sub-regulation 4 provides that any assessment by SA Water is valid for a period of 40 business days. This has been substantially reduced from a period of 60 business days in development regulation 118. Surely, the assessment can remain valid for 12 months given that the relevant authority will often not have decided the application within 60 business days for most large land divisions. Therefore the time between the commission having referred the application to SA Water and SA Water commenting and the Council ultimately deciding the application usually, this period has expires before that decision is made.	Sub Regulation 85(4) should be amended so that the Statement of Requirements is valid for a 12 months. The first two sub-paragraphs should refer in addition to SA Water to "and any water industry entity licensed and authorised to provide water supply services or sewerage supply services under the Water Industry Act including any scheme under section 48 of that Act".
Reg 86	Nominates what are the prescribed conditions for the purposes of a section 51 certificate. There is often confusion about what matters are prescribed conditions for the purposes of section 50 (now section 138 of the PDI Act).	This regulation should be reworded to read "the requirements set out in this division are prescribed for the purposes of section 102 (1) (c)(v) and constitute prescribed conditions for the purposes of section 138 (1) of the Act".
Reg 88	Deals with road widening and is similar to development regulation 52. It ought to be reworded to take the Council's discretion out of the decision and relate the decision simply to engineering standards.	Sub-regulation 1 should be reworded so that it reads "subject to sub-regulation (2) if any existing road abuts land which is proposed to be divided and it is reasonably necessary to widen the road to provide a road of adequate width having regard to existing and future requirements of the area then the council may require that the proposed division of land make a provision for that widening".
Reg 89	Is similar to development regulation 53	Ought to be reworded to remove the council's discretionary power in sub-regulation 1 so that it reads "subject to sub-regulation 2 the roadway of every proposed road on a plan of division must be formed to a width and in a manner that accords with recognised engineering design practice as specified by the Council". Sub-regulation 2 should be amended by deleting the words "in the opinion of the Council".

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
		Sub-regulation 5 ought to be amended to delete the words "satisfactory to the Council" and to include "that accords with recognised engineering design practice as specified by the Council".
Reg 90	Is in similar terms to development regulation 54. Sub-regulation 5 simply refers to "electrical services", a term which has not been defined.	The wording of these requirements again should be amended to remove the discretionary element vested in the Council and should instead refer to recognised engineering design practice. Sub-regulation 1 should therefore read "...approved by the Council in accordance with recognised engineering design practice". Similar wording should apply to sub-regulation 3. Define the term "essential services" in 90(5).
Reg 91	Deals with the process for specifying the designs and is similar to development regulation 55.	Sub-regulation 2 should be amended to remove the council discretion so that it reads "subject to sub-regulation 4 all work referred to in regulation 89 and 90 must be carried out in a competent manner and in conformity with detailed construction plans and specifications signed by a professional engineer or licensed surveyor and approved by the Council before the commencement of the work". Sub-regulation 4 should refer in addition to SA Water to any water industry entity under the Water Industry Act.

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Reg 93	The adoption of an approved model for bonding agreements. This should be strongly supported. A Council should be obliged to accept the bonding for works where a bonding agreement that adopts the approved model is used. It should also be permissible to enter a bond with the commission.. The mechanics ought to be altered so that the process of obtaining clearance is not subject to the advice of the Council but the decision is ultimately one for the commission. Sub-regulation (b) refers to the appropriate electricity authority being satisfied and yet all of this is contingent upon advice by the Council. It seems absurd that the Council advises the commission about the satisfaction of an electricity entity. There should be no role for the Council in this and it should simply be a matter of the electricity entity directly informing the commission.	Changes so that councils are obliged to accept a bonding agreement that adopts the approved model. The preamble ought to be amended so that it reads "... division 6 has not been fully satisfied if the commission is satisfied". Sub-regulation (1)(a) should be amended by inserting after the words "the council" the words "or the commission".
Reg 95	Development regulation 60 has been picked up in regulation 95. Sub-regulation 7 of regulation 95 provides that the section 51 certificate as it used to be known lives for 12 months. While sub-regulation 9 is good, there is an argument for allowing a longer period for the deposit of the plan especially for larger divisions.	A period of 12 months might properly be extended to 24 months.
Reg 99	Deals with notifications during building work and is similar to development regulation 74. Sub-regulation 3, nominates the various means of giving notice to the Council. It ought to include by email to the email address published on the Council website.	Add notice by email
Reg 126	Deals with the register of applications. Sub-regulation 4 provides that a relevant authority may provide copies of documents if somebody pays the relevant fee.	The word "may" should be replaced with the words "must", such that the authority is obliged to provide the copies.

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
Schedule 4, Clause 1 (Advertising signage for land divisions)	Land division developers are presently required to obtain approval for any off site or directional signage marketing their estates, as well as any on-site marketing signage that exceeds 4 square metres. Additional signage should be permitted for large land divisions without the need for approval.	Include in Schedule 4 (exempt development) the erection of a single sign on the site of an approved division of 20 lots or over of up to 8 square metres;
Schedule 6	Deals with matters that are determined by the commission. The provision in schedule 10 dealing with the coordinator general has now been removed. The ability for the coordinator general to refer matters to the commission was effective and should be reinstated.	Reinstate the effect of Development Regulation 10, clause 20, relating to the Co-ordinator- General
Schedule 8, Clause 2 (site contamination audit for residential development)	The Draft Regs propose excessive requirements for up front auditing where site contamination is suspected. Similar provisions exist for Res Code at present but it is proposed that this would apply to essentially any residential development. A site contamination audit report is a significant and expensive exercise which will often be unnecessary even when site contamination is suspected. It is taking a very conservative approach with the aim of mitigating risk completely on sites where investigations might point to the site being low risk. The timing of the requirement is also unreasonable in that applicants are being asked to produce a potentially very expensive report prior to a decision on whether the application warrants approval in the first place. Item (a)(x) deals with any areas of landscaping. This ought to be deleted as it carries the implication that people now need to nominate on plans the landscaping that they propose in their back gardens. This is an unnecessary nanny state intrusion. Similarly, sub-regulation (b) requires a floor plan to show the location and purpose of rooms. Surely, the purpose of use of each room need not be nominated on a floor plan. Clause 8 deals with applications in historic conservation zones. Sub-clause (c) requires a report describing the prevailing character attributes and design elements within the locality. The requirement to go to the expense of preparing our report on these matters seems utterly useless, The assessing authority will need to make that assessment for themselves. If the applicant wants to provide	Delete schedule 8, clause 2(d). Delete schedule 8, clause 2(a)(x) and the words "and purpose of" in (b) and 3(b). Delete schedule 8, clause 3(ix).

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
	such a report then so be it, but a requirement to do so is unnecessary. Many Council's will ignore it in any event. Clause 10 deals with the requirements of development near the coast. It is similar to schedule 5 of the development regulations. Nonetheless it does not define the term "coast" at any point. Sub-clause 3 dealing with non-residential development has a reference to landscaped areas at the end of sub-clause (a), which ought to be deleted. Likewise, sub-clause (b) refers to the purpose of rooms being shown on floorplans and this element should be deleted.	
Draft Practice Direction - Conditions		
	Completely inadequate. This document is poorly written and so badly conceived that it simply needs to be deleted and rewritten in its entirety. On page 2, under the heading, "part 2 conditions", under sub-paragraph 3(b) is reference to a "conversation" where it presumably intends to refer to "conservation". The obligation under paragraph 4(a) to "be final" is a separate obligation and quite a distinct obligation to the obligation to be "clear". The reference in that paragraph to section 39 (2) is a reference to the Development Act and is clearly wrong. While some of the sentiments expressed under paragraph 4 are generally derived from the cases it is a very poor rendition of those requirements and must be better written. On page 3, paragraph 5, sub-clause (b) reference to "permits" suggests that this has simply been copied from a Victorian document. Reference to requiring compliance with an infrastructure agreement is potentially invalid and it is difficult to see why a condition would	Delete and re-write. This document is a poor reflection on the Commission.

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
	require compliance with something that is quite probably enforceable in its own terms anyway. Sub-clause (e) relating to payment of a deed seems to misconceive what might happen. The intended operation of paragraph 7 on page 4 is entirely unclear.	
Draft Practice Direction - Deemed Planning Consent Standard Conditions		
	Many of the conditions recited in this practice direction are inconsistent with or in breach of the principles (albeit very poorly stated) described in the other practice direction relating to conditions. These conditions routinely refer to or adopt the phrase "to the reasonable satisfaction of the relevant authority". This is very poor drafting and is too broad to interpret. Firstly, a condition should not as a matter of law delegate a matter that ought to be clear and final to a further decision of another person, even the relevant authority. Secondly, such obligation is uncertain because it does not state the requirement, it simply sets out a process whereby the Council will make a decision without any criteria for that decision. Thirdly, it is unfair that an applicant be subjected to further uncertainty and further discretion (apparently unfettered) exercised by the authority. Lastly, such wording renders these conditions unenforceable particularly by third parties who may take proceedings to enforce a condition. On page 1 of attachment 1, setting out the standard conditions, the first general condition needs to be amended by deleting the word "by" where it appears and replacing it with the word "on" so that the second line of the condition reads "conditions imposed on this application". The word "strict" should be deleted. Either something complies or it does not.	

PDI DRAFT DEVELOPMENT ASSESSMENT REGULATIONS AND DRAFT PRACTICE DIRECTIONS		
Section/Clause	**Comment**	**Suggested change**
	The condition relating to vehicle car parks being surfaced is far too generic. It does not account for circumstances where compacted rubble or other hardstand areas may be appropriate. For example, in various high-traffic areas or for use associated with heavy vehicles and trailers. This might be cured by simply deleting the words "with bitumen, concrete or paving bricks". The second condition under the carparking and access refers to the "subject land". Surely, the word "site" can be used. At the bottom of page 1, of annexure 1, the condition relating to a detailed landscaping plan should be deleted. It is vague and unreasonable and the trigger requirement is unclear. It is unnecessary for the planning system to start dictating how people will landscape their back gardens. Likewise, the landscaping condition at the top of page 2 continues this nanny state attitude and should simply be deleted. The second and third conditions under the heading of Site Management should be deleted. They are vague and unnecessary, particularly given the provisions of the Environment Protection Act and the Local Nuisance And Litter Control Act which properly address such matters. They simply do not need to be addressed in conditions. The condition dealing with air conditioning plant and equipment is vague and unnecessary, particularly in light of the Environment Protection Act and the Local Nuisance and Litter Control Act. The condition dealing with external lighting is misconceived. The obligations to keep lights on during the hours of darkness at all times is ludicrous. The stormwater condition at the bottom of page 2 is misconceived and poorly drafted. Presumably, the reference to "all stormwater design" is not a reference to stormwater itself, but to stormwater "infrastructure". If that is the case, the condition should say so. The reference simply to "Australian Standards" is vague and entirely	

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	unsatisfactory. If there are particular Australian Standards to be adhered to, then they ought to be expressly identified. The condition dealing with stormwater at the top of page 3 again is vague in referring only to "in accordance with Council and EPA water quality guidelines". Any such guidelines ought to be expressly identified. The requirement to "regularly inspected cleaned and" should be deleted given that the obligation to maintain it in good working order is sufficient. The condition should be reworded to say "a proprietary stormwater treatment device must be installed within the carpark. The system must be maintained in good working order with gross pollutants, sediments, oil and grease removed at regular intervals." A requirement to submit a stormwater management plan in the next condition is vague and unreasonable and does not seem to have any purpose. It should be deleted. The second condition under the heading Construction Management is vague. The reference to the EPA information sheets should be deleted, it is not a condition but merely an attempt at information. Reference to "current industry standards" is vague and inappropriate. Likewise, the reference to "where applicable" is unsatisfactory. The condition relating to regulated trees on page 4 requires planting within 3 months of the removal of the tree. This is insufficient time given that many trees may be removed as part of the broader development project involving building work and other landscaping. The trees are often removed, as part of the demolition phase at the outset and there may well be many months of construction activity that follows before the landscaping is ready to be planted. This period ought to be extended to 12 months at the least and ideally, 18 months. The next condition relating to pruning being undertaken by a qualified arborist should be deleted. It is not the identity of the person that is important, but the standard to which it is done.	

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Section/Clause	**Comment**	**Suggested change**
	The condition relating to privacy is far too absolutely written such that privacy treatments are required to windows and balconies even if they have no views into private or sensitive areas. The condition ought to be reworded to say "the portion of any upper floor windows less than 1.5m above the internal floor level which provide views into adjoining private space of a dwelling or its curtilage (except windows facing a public road or reserve greater than 15m in width) must be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person within the room". The remainder of the draft condition should be deleted. A similar approach should be taken to the bottom condition on that page relating to balconies. On page 5, the condition relating to swimming pools should be deleted given the terms of the Local Nuisance and Litter Control Act and the Environment Protection Act. The second condition under the Hills Face Rural Areas heading should be amended to remove reference to the satisfaction of the Authority and should provide a period of 12 months for the works. The condition relating to external building materials should remove the reference to the satisfaction of the relevant authority. This condition will apply to any deemed consent for a land division where the resultant allotments will accommodate new development. It will require the site to be cleared of all buildings and materials (including any concrete, irrigation pipes or rubbish) prior to section 51 clearance (now s138 clearance). Conditions like this are typically invalid. They do not relate to the division and arguably do not serve a valid planning purpose. Is there any evidence to suggest that this condition is necessary? The condition relating to land division and requiring all buildings to be demolished should be deleted. It assumes that the land division requires that all existing buildings be deleted or demolished which may only be the case in limited circumstances.	

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	The conditions relating to viticulture and olive farming are unreasonable. A requirement not to use audible bird scaring devices may well be completely at odds with a proposal that expressly includes the use of such devices. A requirement to use particular spray equipment and to keep a spray log, again is unnecessarily prescriptive, is vague and unreasonable and has no obvious planning purpose. The conditions on page 9 dealing with display homes include a second condition relating to car park surfacing and a fourth condition relating to construction of fences. These should be deleted. Whether or not such facilities are required, will clearly depend on the particular display home and estate concerned. All of the advisory notes should be deleted. They are not conditions and have no legal effect. They are utterly irrelevant and should be removed in their entirety.	
Draft Practice Direction - Notification of Performance Assessed Development Applications		
Notification on land (A2 poster)	The Regs require an applicant to erect (or pay the Council to erect) an A2 poster (or posters) on the subject land for the duration of public notification. A2 printing is impractical (most people would need to get it done commercially).	Enable the A2 poster to be comprised of A3 or A4 sheets.