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Dear Rhiannon

Council Comments on the Draft Regulations under the Planning Development and Infrastructure Act

Council thanks you for the opportunity to comment on the draft regulations under the new Act. It is appreciated that the introduction of the Planning Development and Infrastructure Act 2016 (PDI Act) is complex and driven by tight time frames for implementation.

Due to the relatively complex nature of these regulations, combined with the release of the Planning and Design Code for Outback areas staff have not been able to review and brief the elected members of Council on this phase of the reform within the prescribed time for this consultation process. This information will be provided to Council for information in March. The comments in this submission are thus the views of Council staff.

Council's detailed comments about various aspects of the regulations are provided in an attachment to this letter.

It is noted that there are some positive outcomes for assessment processes in the draft Regulations including;

1. Recognition of various administrative practices requiring additional assessment time frames such as notification of an application and reporting to the Council Assessment Panel;
2. Extending the time spent waiting for information that is excluded from the assessment time frame to one year;
3. Requiring a certificate of occupancy for Class 1 buildings which will hopefully result in more notifications during construction to make the issue of the certificate more straightforward;
4. Requiring that certificates of occupancy be issued by council which ensures an independent review of the construction. This should also include a reasonable fee for the issue of the certificate to offset costs associated with delivery of this service; and
5. Expanding the items excluded from development to capture more simple regular ancillary residential structures and some demolition.

Council does however have concern about some elements of the regulations including;

1. The extent of items required to be decided by the Council Assessment Panel (CAP) instead of the Assessment Manager capturing significant additional items potentially increasing the workload from around 60 to 70 items per year to around 180 items. This has considerable implications for the timeliness of decisions and workloads associated with preparation of reports to CAP;
2. Many of the regulations associated with managing or submitting information associated with assessment under the Act are written as though this is a paper based process when in fact it will be electronic via a central assessment system and thus they need to be rewritten to address this;
3. There are several instances where the administrative steps required with an application vary for an accredited professional from other forms of authority. This should not be the case as they are working as an authority under the same legal system and should have to meet the same level of process as any other authority;
4. The time frame under Regulation 23 for the CEO of Council to provide comment on applications assessed by SCAP is too limited. It is currently proposed at 15 business days and that does not afford adequate time to consider what would most likely be a more complex proposal and review the impacts on Council assets;
5. Use of the open space contribution funds for a wide range of non open space public works may limit delivery of the very thing this was raised to do. The possible alternative public works are expansive in this draft and use of the funds should be limited to only be available if there are no open space projects identified to apply the funds in the first instance.

Should you wish to discuss this submission please contact Julie Vanco, Manager Planning and Development on [redacted] or by email at [redacted].

Yours sincerely

Bruce Williams
General Manager City Services

19/19169

Draft regulations – Planning Development and Infrastructure Act 2016	
Regulation 3 ***essential safety features*** means— (a) in relation to a building erected or altered after 17 June 1991—any safety systems, equipment or other provisions defined as such, or required to be installed under the Building Rules, any former regulations under the *Development Act 1993* or the *Building Act 1971*, or any Minister's Specification under the *Development Act 1993*;	This should be referred to as essential safety provisions as per regulation 100.
3A—Application of Act (section 8) (1) In accordance with section 8 of the Act, sections 151, 152 and 153 of the Act (relating to the classification and occupation of buildings) do not apply to any Class 1 or 10 building under the Building Code that is not within the area of a council.	This provision only applies to out of Council area land and a certificate of occupancy is required for Class 1 buildings elsewhere which is supported
3A—Application of Act (section 8) (2) In accordance with section 8(2) of the Act, section 102(1)(d)(viii) of the Act does not apply in respect of development that does not involve the creation of a new boundary— (a) that separates 2 or more sole occupancy units within an existing building; or (b) that bounds a public corridor within an existing building; or (C) that is within a prescribed separation distance from an existing building.	Does this address fire rating between buildings where they are undertaking a community title division? The division of land needs to ensure all divisional walls on a boundary are appropriately fire rated regardless of title or class of building. The use of the term fire sourced feature needs to be open to capturing fire protection between units. Fire Source Feature as defined by NCC needs to ensure this can occur.
3F—Significant trees (4) Subregulations (1) and (2) do not apply— (a) to a tree located within 10 metres of an existing dwelling or an existing in-ground swimming pool, other than a tree within 1 of the following species (or genus) of trees: Agonis flexuosa (Willow Myrtle) Eucalyptus (any tree of the genus);	The title of this clause should also reference regulated trees not just significant trees. Willow myrtle should be removed from this limitation. These trees are typically small in height but have multiple trunks that result in them being regulated or significant. They rarely add to the character of the area and are not notable. They often have severe structural failure risks or disease due to the nature of their trunk system which means removal is warranted. They

	should be in the list of trees that can be removed without approval. Pull all provisions together that relate to regulated or significant trees so that this is contained in one location in the regulations. It is recommended that significant and regulated trees on community land should be exempted development given there is generally no development pressure for the removal of such trees and the Community Land Management Plans under the Local Government Act 1999, which include community consultation, are used to manage the landscape character of community land. Council also undertakes an extensive streetscape renewal program. The program aims to deliver an even distribution of street trees with a wide variety of species and age classes across the City. To achieve this aim, careful planning and selection of the streets is undertaken to provide streetscapes a 50-year lifecycle. The process involves extensive engagement with the affected community's. The statutory land use approval that follows this program for affected significant or regulated trees does not provide any substantial benefit to the process and trees within such programs should be exempted.
3G—Aboveground and inflatable pools (1) Any work or activity involving the construction of an aboveground or inflatable swimming pool which is capable of being filled to a depth exceeding 300 millimetres is prescribed under paragraph (b) of the definition of ***building work*** in section 3(1) of the Act.	This is difficult to police and puts lives at risk. Some form of expiation for not making an application that doesn't negate their need to then also get an approval should be considered.

3H—Public notice (1) For the purposes of the definition of public notice under the Act, public notice is a notice that is— (a) published in a newspaper circulating generally in the area of the State that is relevant to the matter in relation to which public notice is to be given; and (b) published on the SA planning portal; and (c) for the purposes of section 113(5)(b) and (10)(b) of the Act, published in a newspaper circulating generally throughout the State; and (d) for the purposes of section 131(13) of the Act, placed on the relevant land in accordance with the requirements of regulation 113(6).	This is not applicable to performance assessment applications where there is notification of the application as this is not referred to as public notice in that section but rather is called notification of development.
22 Assessment Manager The Assessment manager is established as the relevant authority under 22(1)(a)(ii) for performance assessed development other than the following going to CAP. (ii) development that may be assessed as code assessed development under section 107 of the Act, other than where; (A) notice of the application must be given under section 107(3) of the Act; or (B) the total amount to be applied to any work, when all stages of the development are completed, is to exceed $5 000 000; or (C) the development involves the construction, alteration, enlargement or extension of a building that has, or will have when the development is completed, a rise in storeys exceeding 3 storeys; or (D) the development includes a proposal to create more than 20 additional allotments; or (E) the development has been referred to a design panel under section 121 of the Act; or	Part (ii) Should reference performance assessed development to align with the terminology of the Act to which it relates. This proposal will place a significantly higher number of applications to the panel for assessment than currently experienced. In 2018 we placed 63 items to the CAP for decision. We have reviewed these and removed anything that would not be captured by the proposed work to the CAP which reduced the number to 28. Part A - notified applications increased from 35 to 156 items based on current notification numbers. This may be much less in the new Code and if we exclude all residential development that is single or two storey from those notified (which the out of Council areas draft Code exempts from notification) it would be possibly 57 applications actually notified. It is also noted that the draft Code for out

(F) the development includes a proposal to demolish, in whole or in part, a local heritage place or a State heritage place; or (G) the development is in a zone, subzone or overlay identified by the Planning and Design Code for the purposes of this subsubparagraph and proposes	of Council areas has listed creation of four or more allotments as being notified which means if this is also applied in metro Adelaide land division applications for a small number of allotments would be going to the CAP for a decision. This has not been factored into the numbers above. Part B would add 6 items to the workload with 10 submitted last year and only 4 presented to CAP. There is no definition of "total amount" and "work". Does this mean the value of the building work only or is it broader? If it is broader, what does it include? Suggest that a definition or clarification to avoid disputes is needed Part C would add 30 items with only 2 of the 32 lodged last year presented to the CAP. Should the Code definition of levels be used instead of referring to rise in storeys to avoid confusion and dispute? It is also noted that the Out Of Council Areas Code nominates development with more than two levels to be notified and thus go to the panel. This means the 3 storey trigger would have little use because the notification requirement will capture them. Part D is a real concern because this will likely lead to applications for 19 allotments to avoid the CAP and will potentially result in a failure to achieve public open space where it is needed. Land divisions should not be allocated to the CAP as they would be appropriately managed at the assessment manager level of authority. In terms of numbers we had 11 applications of this type with only 3 presented to CAP. Again it is also noted that the notification provisions in the Out of Council Areas Code would notify applications with four or more additional new allotments and thus the CAP would be seeing divisions with allotment numbers of only 4 to 19 and this is surely not the intent of streamlining our processes.

	Part E is not needed because these are most likely to have been for developments over $5m or three storeys and would get picked up earlier. If this process is used then this would most likely have resulted in an amendment to the built form that facilitates an approval and thus would only be delaying the decision. Part F should not include part demolition of local heritage items as this is not uncommon and often facilitates repair to the main part of the building at the cost of a rear section that is not of value. We had 69 applications affecting local heritage and only presented 3 to the CAP for decision. The suggested work for the CAP in the draft regulations will result in a significant increase to the work load going to the CAP and will unnecessarily delay decisions on applications. Based on our review applications considered by the CAP could go from between 60 to 70 a year to around 180 per year. It is recommended that this be altered to exclude land division completely from the CAP, to only require notified applications with representations wishing to be heard and complete demolition of a local heritage item to go to the CAP. While it is noted that the CAP could delegate applications to the Assessment Manager if they chose not to this would impact considerably the intent of this reform which was to simplify and gain consistency. Some Council's panels may delegate and others may not resulting in very different outcomes for the applicant.
22(1)(e) an assessment manager may act as a relevant authority for the purposes of giving consent under section 102(1)(c) or (d) of the Act. 22(d) - Subregulation (1)(a)(ii)(D) does not apply in relation to the division of a building	Why isn't this included in part (a) as part (iii) so that all instances where the assessment manager is the authority is grouped together. Part (D) should ideally be removed but if

(and any related land) where the construction of the building and the division form part of the same development.	retained it should be worded to include this exclusion rather than provide yet another separated provision that may be missed.
23—State Planning Commission (section 94) 2(b) in any case relating to development within the area of a council—the Commission must give the chief executive officer of the council for the area in which the development is to be undertaken a reasonable opportunity to provide the Commission with a report (on behalf of the council) on any matter specified under subregulation (3) that is relevant to the particular case (but if a report is not received by the Commission within 15 business days after the request is made to the chief executive officer, or within such longer period as the Commission may allow, the Commission may presume that the chief executive officer does not desire to provide a report). (3) The following matters are specified for the purposes of a report under subregulation (2)(b): (a) the impact of the proposed development on the following at the local level: (i) essential infrastructure; (ii) traffic; (iii) waste management; (iv) stormwater; (v) public open space; (vi) other public assets and infrastructure;	15 business days is not sufficient time to provide meaningful comment of a development which by its nature would be more complex. There is usually a need to get internal technical advice and then prepare comments and this cannot be achieved within the proposed time frames. It is suggested that this should remain as per the current provisions of the Development Act which allows 6 weeks for Council's comments to be submitted. Furthermore, if 6 weeks is not afforded it would seem appropriate to be consistent in the regulations in respect to the time afforded to councils to provide comments to the Commission to match the time afforded to the Commission to provide comments to councils in regulation 82 (30 business days). In this proposal Council cannot comment on planning related issues but only matters affecting its own infrastructure and we are not sure why this restriction is needed. The absence of local planning knowledge risks the omission of important information and this should be included as a prescribed matter in the regulations.
24—Assessment managers (section 96) (1) This regulation applies in addition to the cases prescribed under regulation 22. (2) For the purposes of section 96 of the Act, and subject to these regulations, an assessment manager may act as a relevant authority for the purposes of giving consent under section 102(1)(e) or (f) of the Act.	This relates to encroachment and Part 15 division 2 requirements. Why isn't this just listed under 22 1(a) as part iv? An Assessment manager shouldn't have to search through multiple regulations to know when they are the authority.

25—Accredited professionals (section 97) (7) In this regulation— *independent technical expert* means a person who, in relation to building work— (a) is not the building owner or an employee of the building owner; and (b) has not— (i) been involved in any aspect of the relevant development (other than through the provision of preliminary advice of a general nature); or (ii) had a direct or indirect pecuniary interest in any aspect of the relevant development or any body associated with any aspect of the relevant development; and (c) has engineering or other qualifications that the relevant authority is satisfied, on the basis of advice received from the accreditation authority under the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*, a relevant professional association, or another relevant registration or accreditation authority, qualify the person to act as a technical expert under this regulation.	If Council receives independent technical advice in relation to an engineering aspect of a development upon which it must rely how are these people ever actually able to meet this provision as being independent given they are paid by the applicant for the advice provided and would not meet part (b)(ii)?
26—Requirement to obtain advice of accredited professional (1) For the purposes of section 235(2) of the Act, if the Commission or an assessment panel does not act under section 99(1) of the Act in relation to development that involves the performance of building work, the Commission or assessment panel (as the case may be) must, in assessing the development in respect of the Building Rules, seek and consider the advice of an accredited professional who would be qualified to give building consent in relation to the building work if the accredited professional were acting as a relevant authority in the particular case.	Is this all panels or just the one set for the Commission? An assessment panel is not designated as an authority under the Act for building rules assessment. This sits with either an accredited professional or the Council. It is unclear when this would be legally undertaken unless Section 94(1) is broad enough to facilitate this. It seems to be a flow on from the provision where Council must engage an accredited professional for the building rules assessment it undertakes but there is a head power in the act making Council the authority for building rules assessment whereas this doesn't apply to the Commission or an assessment panel.

27—Elements of development If an application under section 102 of the Act requires a relevant authority to assess a proposed development against the provisions of the Planning and Design Code, the relevant authority should determine whether the development involves 2 or more elements 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).	How do we make sure that all elements are defined and addressed prior to full development approval. Advisory material should be available – need a practice direction on what these are.

30—Application to relevant authority (1) Subject to these regulations, an application for a development authorisation under section 101 or 102(1) of the Act in relation to a proposed development may—	All applications should be lodged directly into the portal only because we are working electronically and it should be mandated to start that way just as edala currently works. Part (b) potentially creates double handling and removes obligations being accepted by the applicant as they submit their applications. We would require the applicant to log into the portal and directly submit their application if they came to Council rather than doing this themselves remotely. If their information was in paper form we would provide an electronic version for them to use when they then log the application.
(a) be lodged electronically via the SA planning portal (and in accordance with any relevant requirements applying under Part 4 Division 2 of the Act); or (b) be lodged with the relevant authority at the principal office of the relevant authority in accordance with the requirements of these regulations.	The use of the term 'lodged' is misleading as at this point it is submitted and lodgement does not occur until fees are paid. This should be changed to submit or submitted not lodge or lodged wherever this occurs in Regulations 30, 31, 32. The confusion of terms between lodged and submitted throughout the regulations needs to be considered
(2) An application to be lodged with an accredited professional (other than an assessment manager) will be lodged with the accredited professional in such manner as the accredited professional may require.	Not sure why part 2 is included when they are a relevant authority that can be covered under part (1)(b) and we should all be required to receive the same type of information. Not sure why an accredited professional can choose for themselves but an authority that is not an accredited professional is bound by the regulations. Not a level playing field and will deliver a variation in the way applications are required to be formed which is contrary to the intent of the reforms where consistency regardless of authority was desired.

31—Plans, fees and related provisions part (2) An application to a relevant authority that is lodged other than electronically must be accompanied by a copy of the plans, drawings, specifications and other documents and information relating to the proposed development (or such additional number of copies as the entity receiving the application may require) required under Schedule 8 (prepared in accordance with the requirements of that Schedule).	They should only be able to apply electronically. Council already receives 77% of applications electronically and with the introduction of this system it is reasonable to say that this is the only manner in which an application can be submitted. It is not difficult to scan documents if they were not created electronically in the first place and then submit them. An authority doesn't need the paper in multiple copies as it will be electronic in any event and that is the official record not the paper.
32—Lodging application on SA planning portal on behalf of an applicant A relevant authority who receives an application under regulation 30(1)(b) or (2) must lodge the application on the SA planning portal within 5 business days after receipt of the application.	As discussed under regulation 30 we would require the applicant to log into the portal and directly submit their application if they came to Council rather than doing this themselves remotely. If their information was in paper form we would provide an electronic version for them to use when they then log the application. This will avoid the risk of Council not entering the information required by the applicant and them not being aware of the legal framework and intended use of material provided during the application process.

33—Notification of acting (accredited professionals—planning) (1) If— (a) an application is lodged with an accredited professional (other than an assessment manager) for the purposes of obtaining a planning consent; and (b) the proposed development is to be undertaken in a part of the State that is within the area of a council, the accredited professional must, within 5 business days after receiving the application, give notice of the application to the assessment panel for the area in which the development is to be undertaken (as described under section 93 of the Act). (2) A notice under subregulation (1)— (a) must be given via the SA planning portal (and in accordance with any relevant requirements applying under Part 4 Division 2 of the Act); and (b) must be accompanied by an electronic copy of the application (including the plans, drawings, specifications and other documents and information that accompanied the application for the purposes of Schedule 8). (3) A notice under subregulation (1) must comply with any relevant requirement specified by a practice direction. (4) An amount equal to the base amount payable under the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019 is payable to the relevant assessment panel at the time that notice is given to it under subregulation (1).	Why is notice to the assessment panel not the assessment manager. Would this mean we then need to report these to the panel? It seems Assessment panels have been given a greater role in the system such as being notifiable bodies (regulation 33), collecting fees (regulation 33(4)). It is recommended that the Commission give consideration to where the Assessment Panels have been referenced anywhere in the draft regulations for administrative purposes and whether this should be reassigned to Council or the Assessment Manager This shouldn't require a delegation from the CAP but should ideally be set to the Assessment Manager up front. If remaining as currently worded would this mean that the fees Council previously received no longer come to Council and instead have to be set into a CAP income stream and yet Council still has to fund the panel and assessment functions supporting the panel. There is a need to consider processes to ensure that fees are received and handled by Council. We only need the notice from the portal. The plans and fees are already submitted there and we can view the information. The fees should be sent to Council separately via the established fee transfer system

34—Notification of acting (accredited professionals—building) (1) If— (a) an application is lodged with an accredited professional (other than an assessment manager) for the purposes of obtaining a building consent; and (b) the proposed development is to be undertaken in a part of the State that is within the area of a council, the accredited professional must, within 5 business days after receiving the application, give notice of the application to the council. (2) The notice under subregulation (1)— (a) must be given via the SA planning portal (and in accordance with any relevant requirements applying under Part 4 Division 2 of the Act); and (b) must be accompanied by an electronic copy of the application (including the plans, drawings, specifications and other documents and information that accompanied the application for the purposes of Schedule 8). (3) A notice under subregulation (1) must comply with any relevant requirement specified by a practice direction. (4) An amount equal to the base amount payable under the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019 is payable to the relevant council at the time that notice is given under subregulation (1).	Again all we need is the notice from the portal because the fees and plans will already be there.
35—Verification of application and determination of nature of development	This needs to happen via the portal

36 Application and further information (5) For the purposes of section 119(5)(d), the period of 10 business days from the date of the application being lodged with the relevant authority is prescribed.	This applies for applications that are performance assessed and some deemed to satisfy and will require the one request for further information to be issued within 10 business days. This is too short a period for more complex performance assessed applications where there may be a need for fairly complex review of information provided prior to determining whether additional information is required. The current provision under the Development Act allows 15 business days and this is at times hard to meet but should not be reduced.
38—Amended applications	Definition of substantial variation is required which will then established when a new application is required in lieu of a minor amendment. Use of term receipt when at other times lodges or submitted may be used. There will dispute about what this means and there needs to be consistency.
44 Referrals (2) A response for the purposes of section 122 of the Act may be made by providing the response electronically via the SA planning portal (and in accordance with any relevant requirements applying under Part 4 Division 2 of the Act).	This should be must as the central SA planning portal has to cater for this referral and response.
49 Preliminary advice and agreement (Section 123) (9) If— (a) an applicant seeks to rely on an agreement under section 123 of the Act in connection with the application; and (b) a notice of a decision on the application is issued by the relevant authority under regulation 62, the relevant authority must send a copy of the notice to the prescribed body within 5 business days after the notice is given to the applicant under regulation 62.	The SA Planning portal will issue an electronic notice to the relevant prescribed body which will then allow them to view the decision. We shouldn't have to actually send them a copy of the notice as it will be accessible on line.

50 Performance Assessed and restricted development notice requirements (4) If— (a) the applicant, in accordance with a procedure specified by a practice direction, requests the relevant authority to place a notice on land under subregulation (2); and (b) pays the fee prescribed by the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*, the relevant authority will be responsible for placing the notice on the land. (5) Subregulation (4) does not apply if the relevant authority is the Minister or the Commission.	It is interesting that the assessment manager or Council will potentially have to undertake this work if the applicant requests this but the minister and Commission have been excluded from doing so. Not sure why this isn't an option regardless of which body is the relevant authority Given the implications of the notice being present on the property in relation to the actual notification period it would seem that this should actually be done by the relevant authority. There may be a need to exclude regional areas where significant spatial separation means this would have little effect but considerable time and resource implications when it may take 2 to 3 hours to travel to and from the site simply to place a sign on land that no one other than the owner is likely to see. What are the risks of causing damage to land if there is a need to insert supporting posts and infrastructure is damaged. Who would be liable for the impact of any such action if the authority was placing the sign on the land. Given the likelihood of actual or alleged removal of such signs, it would be appropriate for the Commission to provide guidance on the implication if a sign is removed for consistent practice across the state.

52—Public inspection of applications (1) For the purposes of sections 107(3) and 110(2) of the Act, the relevant authority must ensure that copies of— (a) the application; and (b) any supporting plans, drawings, specifications and other documents or information provided to the relevant authority under section 119 of the Act, are reasonably available for inspection (without charge) by the public at the principal office of the relevant authority for the period commencing on the day on which notice of the application is first given under this Division and ending on the day on which representations must be lodged with the relevant authority under these regulations**.**	This must be via the portal
53—Representations (1) For the purposes of sections 107(3)(b) and 110(2)(b) of the Act— (a) a representation to a relevant authority must be lodged with the relevant authority— (i) in relation to section 107(3)(b) of the Act—within 15 business days after the day on which the notice under section 107(3)(a)(i) would be expected to be received by the owner or occupier of land in the ordinary course of postage under subregulation (2), or the day on which the notice under section 107(3)(a)(ii) was placed on the relevant land, which ever is the later; and	This is going to be very hard to comply with in the written from of the notice when the applicant is placing the sign on the land. The letter requires the authority to specify a date by which comment must be submitted but if the applicant is slightly late putting up the sign then the notification period will close later. Staff would need to check the subject site or SA Planning portal every day to see when the sign was placed on the land which will give additional time to the submission period beyond 15 days to determine whether a submission was validly received and some members of the public may read the letter and think they have missed the submission period when in fact they could have had more time available to them. The timing of the sign on the land shouldn't affect the notification period but if the sign isn't there one day prior to the commencement of the notification period then it should result in the need to repeat the process. Page 40
58—Notification of decision—accredited professionals (section 89)	Anything an accredited professional has to provide to Council needs to come via the SA planning portal system. If this reg doesn't specify that they will send it direct to Council, potentially in paper form,

	bypassing the system they should be using.
59—Issue of building consent by other bodies	Not sure why an assessment panel would be making a building rules decision given the act prescribes an accredited professional and the Council for this assessment and again all information needs to be via the e planning system on the SA Planning Portal
60—Notice of decision (section 126(1)) (2) A notice under subregulation (1) must be given— (a) unless paragraph (b) applies—within 5 business days after the decision is made on the application; or (b) in the case of a decision under section 99(3) of the Act—within 2 business days after the decision is made on the application. (5) Subregulation subregulation (4) does not apply to a council ~~is~~ acting as a relevant authority under section 99(3) of the Act (6) If the decision is in respect of a development approval that has required a building consent, the relevant authority must, in acting under subregulation (4), return to the successful applicant a copy of the plans, drawings, specifications and other documents and information lodged by the applicant in accordance with the requirements of these regulations (endorsed as required by subregulation (4)).	Not clear why these are reduced to 2 days when all other decisions have 5. It should be consistent and not be separately distinguished. Further when there are peak periods of activity it may not be possible to meet this requirement. Duplication of word and unnecessary use of is. The applicant should be notified of the decision for Development Approval being issued via an email triggered in the eplanning system and then they can go to the planning portal and access the approved documents. Also what is intended to be returned? Is it the last consent or all consents at this point? It is not workable to have a set of documents for planning that are then separate to the building documents and expect efficient enforcement of any breach or even clear understanding of what is fully approved by an applicant/ builder. There should be a requirement to issue a set of development approval stamped documents under the regulations.
61—Notice of decision to another relevant authority (1) The relevant authority under regulation 60 must send a copy of the notice issued by the relevant authority under that regulation to any other relevant authority— (a) that has already given another development authorisation that relates to the same development; or	This must be done via the portal

(b) that is considering an application for another development authorisation that relates to the same development.	
62—Notice of decision to a prescribed body (1) If an application for consent or approval of a proposed development has been referred to a prescribed body under section 122 of the Act, the relevant authority must send a copy of the notice issued by the relevant authority under regulation 60 to the prescribed body.	This must be done via the portal
63—Notification of decision to owner of land (1) If an owner of the land to which a decision on an application under Part 7 of the Act relates is not a party to the application, the relevant authority must send a copy of any notice issued by the relevant authority under regulation 60 to that owner.	This must be created via the portal and if they don't have email to receive notifications then the authority need to provide it to the owner.
64—Notice of conditions In accordance with section 126 of the Act, notice of a decision on an application under Part 7 of the Act must be accompanied by details of any condition to which the decision is subject, and of the reason for the imposition of the condition (and, if any condition is imposed on the basis of a direction of a prescribed body under section 122 of the Act, the relevant authority must identify the prescribed body).	This adds no value and is not undertaken by all authorities so what is the benefit of still requiring it for some. The ERD Court and SCAP don't do this now and ERD Court insists they be removed.
67—Certificate of independent technical expert in certain cases (3) For the purposes of section 235(1) of the Act, a relevant authority, authorised officer, assessment manager or accredited professional may rely on a certificate of an independent technical expert in a circumstance to which this regulation applies.	These are relevant authorities so not sure why they are individually listed.
71—Variation of authorisation (section 128) (1) An application to which section 128(1) of the Act applies must be lodged with the relevant authority which granted the development authorisation that is sought to be varied. (2) However, an applicant is not required to comply with subregulation (1) if the development authorisation was granted by	Can't see any justification for separating the accredited professional from this provision. The way this is currently worded it means that where it was originally assessed by an accredited professional they don't need to actually submit an application. If there is concern the accredited professional no

an accredited professional	longer exists then this provision could nominate the assessment manager for the relevant Council area, or SCAP if there is no Council, as the authority to whom the variation should be submitted. These need to be lodged in the ePlanning system on the SA planning Portal

74—Procedural matters (section 111(2)) (1) For the purposes of section 111(2)(a) of the Act, a relevant authority must transmit to the Minister any relevant documentation (including the application and any accompanying documentation or information lodged by the proponent with the relevant authority under Division 4 of Part 7 of the Act)— (a) in a case where section 108(1)(b) of the Act applies—within 10 business days after being requested to do so by the Minister; or (b) in a case where section 108(1)(c) of the Act applies—within 10 business days after the notice is published on the SA planning portal. (2) A relevant authority must, at the time that documents are transmitted to the Minister under subregulation (1), also transmit to the Minister any fees that have been paid by the proponent under (reference to fees) (less any amount that the Minister determines should be retained by the relevant authority). (3) If— (a) a proposed development is to be assessed by the Minister under section 115 of the Act; and (b) the Minister indicates that an assessment of the development in respect of the Building Rules is to be referred to the council for the area in which the development is to be undertaken or to a building certifier under section 99(1) of the Act, then, unless otherwise directed by the Minister— (c) the application lodged with the Minister must be accompanied by a copy of the plans, drawings, specifications and other documents and information required by Schedule 8 (in accordance with the requirements of that Schedule); and (d) the applicant must, at the appropriate time, also provide a copy of those plans, drawings, specifications and other documents and information to the council or building certifier (as the case may be).	This seems to be based on the current state arrangement where something may be lodged with another authority in a separate system. Under the PDI Act they go into the portal and we should only need to redirect via a notification from the eplanning system if it was sent to us incorrectly. The correct authority would then access all relevant documentation via the system. Fees are in the eplanning system and once the relevant authority is identified in the system they should then receive the fees when transfer of fees occurs. Council only need to be notified via the eplanning system and then we can access information in that system.

Division 2—Advice from Commission **82—Advice from Commission** (3) A notice under subregulation (2) may be given— (a) via the SA planning portal; or (b) in such other manner as the Commission may determine to be appropriate.	Assessment of applications is in the eplanning system and any notification or reports need to only be from there. There shouldn't be an option to step outside of the system leading to records split between the portal and other authorities systems which is not appropriate. There needs to be one central record. This comment also applies to Regulation 79(3)
83—Presumption in respect of division of certain buildings For the purposes of section 102(1)(c)(v) of the Act, if a proposed division of land relates to an existing Class 1 or 2 building under the Building Code, walls of the building exposed to a fire source feature as a result of the proposed division must comply with Section C of Volume 1 and P 2.3.1 of Volume 2, of the Building Code as in force at the time the application for consent is made (and the Commission may not issue a certificate in respect of the division under section 138 of the Act unless or until it is satisfied (in such manner as it thinks fit) that such compliance exists).	The division of land needs to ensure all divisional walls on a boundary are appropriately fire rated regardless of title or class of building. The use of the term fire source feature needs to be open to capturing fire protection between units. Fire Source Feature as defined by NCC needs to ensure this can occur.
Division 6—Prescribed requirements—general land division	This needs to address telecommunication and internet infrastructure. It is currently essentially a copy of the Development Act provisions which were a copy of the Planning Act provisions and are well out of date. Should also include lighting, street furniture, landscaping, etc where they are nominated in the applications.
95—General provisions (6) For the purposes of section 138(4) of the Act, a copy of the certificate and plan (or certificates and plans) referred to in subregulation (3) must be furnished to the relevant council— (a) by providing the council with electronic access to the relevant documents via the SA planning portal; or (b) at the request of the council (provided in such manner as may be determined by the Commission), by sending a written copy to the council.	Part (b) is unnecessary as we are working in an eplanning environment and will access it via the system. If there are authorities that don't have hardware to access the system part of the cost of establishing the system should cater for that.

99—Notifications during building work (3) A notice by a person under subregulation (1) may be given— (a) by notice lodged on the SA planning portal (and in accordance with any relevant requirements applying under Part 4 Division 2 of the Act);	This regulation needs to stop here. Registered post is not practical with most builders running to the last minute to give one days notice, if they do give notice, The system should include an app that allows them to use their smart phones to submit the notification.
108—Certificates of occupancy **Reg 108 outlines the process for issuing a certificate of occupancy which only refers to Council issuing them however regulation 58 states** **58—Notification of decision—accredited professionals (section 89)** (6) If an accredited professional issues a certificate of occupancy for a building, the accredited professional must, within 5 business days after issuing the certificate, provide to the council a copy of the certificate of occupancy, together with a copy of any documentation provided under regulation 108(2).	We support that Class 1 buildings are required to gain a certificate of occupancy and that Council is responsible for issuing these. This will likely promote greater notification and facilitate regular checking during construction and result in the customer receiving a sound and safe final built form. Regulation 58 needs to be amended to correlate with the actual regulation for the issue of certificate of occupancy and remove reference to issuing the certificate. A check of approvals for last year shows that we had 1050 applications for class 1 buildings which at this time don't receive a certificate of occupancy. We are likely to now receive regular notification of all new dwellings and additions which could potentially increase inspection notifications by approximately 3000 and have an impact on Council resources as a result. Last year we received 2400 notifications and inspected 1600 of these. Appropriate fees should be charged for inspections and the issue of certificates of occupancy to support this additional work. These needs to be issued via eplanning
109—Statement of Compliance	This needs to be done via eplanning
111—Developments excluded from approval and notice (1) For the purposes of section 131(4) of the Act (but subject to this regulation), the various forms of development specified in Schedule 14, when carried on by a prescribed agency, are excluded from the provisions of section 131 of the Act. (2) For the purposes of section 131(28)(a) of the Act, the various forms of development	This should be done electronically and if possible via eplanning.

set out in Schedule 14 clause 5are declared to be minor works of a prescribed kind. (3) If a prescribed agency proposes to undertake any building work which is within the ambit of Schedule 14 and to be undertaken within the area of a council, the prescribed agency must, before commencing that building work— (a) give notice of the proposed building work to the council for the area in which the building work is to be undertaken; and (b) furnish the council with— (i) a description of the nature of the proposed work; and (ii) so far as may be relevant, details of the location, siting, layout and appearance of the proposed work.	
116—Register of land management agreements (section 192) and 117—Register of land management agreements (section 193)	We should all be using the eplanning/ SA Planning Portal system to establish and maintain the relevant register. It is not appropriate to duplicate this at state and local level.
121—Offences by bodies corporate—responsibilities of officers (2) For the purposes of section 220(3) of the Act, an offence against section [section references to be inserted] of the Act is prescribed (being an offence to which section 220(2) does not apply).	Is this incomplete on purpose?
122—Rights of review and appeal	It is difficult to comment on this without a practice direction about how we will manage appeals to a Panel about an assessment manager's decision.
Part 18—Miscellaneous **123—Service of notices** (2) For the purposes of subregulation (1)— (a) the person or authority which must give, serve or provide a notice or document may assume that the address of an owner or occupier of land entered in the assessment book of the council for the area in which the land is situated, or shown in the certificate of title register book for the land, is the owner's or occupier's address for the service or provision of notices or documents	This should use the name from the central state system which is also relied on for notification during assessment of applications and not jumping out to a Council data base.

125—Application of Fund For the purposes of section 195(g) of the Act, a public work or public purpose that promotes or complements a policy or strategy contained in a state planning policy is authorised as a purpose for which the Planning and Development Fund may be applied.	Use of the open space contribution funds for a wide range of non open space public works may limit delivery of the very thing this was raised to do. The possible alternative public works are expansive in this draft and use of the funds should be limited to only be available if there are no open space projects identified to apply the funds in the first instance.
126—Register of applications	This arrangement needs to reflect the fact that there is a central eplanning system which will also provide the register for all assessment work. The register should allow someone to look for applications within a Council area or by relevant authority. Council will not be able to provide this separately because we wont have our own system collecting the data to do this and there is no real benefit to duplicating the eplanning system. There only needs to be one register regardless of the authority and the information presented can be sorted based on what the eplanning system contains. Council shuld only need to retain a register of applications processed under the Development Act 1993.
127—Documents to be provided by an accredited professional (2) An accredited professional must produce to a council within 5 business days, on request, a copy of any document that has been submitted to the accredited professional for the purposes of an application for planning consent (and that is not already held by the council under these regulations) so that the council can respond to a request from a member of the public for access to such a document.	These will be in the eplanning system so we will be able to access them at any time. They don't need to produce a copy. We won't be holding anything at Council as it is in the portal
Schedule 4—Exclusions from definition of development **2—Council works** (1) The construction, reconstruction, alteration, repair or maintenance by	Query whether this should be amended to read "undertaken by or on the behalf of a council

a council of— **4—Sundry minor operations** d) a spa pool which is constructed in association with a dwelling and intended primarily for use by the occupants of that dwelling, and which does not have a maximum capacity exceeding 680 litres; (h) a structure (other than in a designated flood zone, subzone or overlay, or within 100 metres of the coast measured from mean high water mark on the sea shore at spring tide) comprised of a combination of— (i) a retaining wall which retains a difference in ground levels not exceeding 1 metre (measured from the lower of the 2 adjoining finished ground levels); and (ii) a fence, if the total combined height of the structure is less than 3.1 metres in height (measured from the lower of the 2 adjoining finished ground levels**);** (f) a fence not exceeding 2.1 metres in height (measured from the lower of the 2 adjoining finished ground levels), other than— (i) a fence in— (A) a designated historic or conservation zone, subzone or overlay; or (B) a designated flood zone, subzone or overlay; or (C) in any other zone, subzone or overlay identified under the Planning and Design Code for the purposes of this subparagraph; or	What about safety fencing for the spa This should be not more than 3.1m to lower ground level to capture both the retaining and fencing exempt development height The extent of built form along a boundary far exceeds the provisions that are normally associated with the wall of a building on a boundary and has this been considered in creating this exemption? Council currently has all fencing in Policy area 18 or 19 of its residential zone requiring approval. The Residential City Wide Polices DPA from October 2017 was meant to deliver the following adjustment; **4—Sundry minor operations** (1) The construction or alteration of, or addition to, any of the following (including any incidental excavation or filling), other than in respect of a local heritage place: (f) a fence not exceeding 2.1 metres in height (measured from the lower of the 2 adjoining finished ground levels), other than— (i) a fence on a property boundary forward of the main façade of an associated dwelling, abutting the lake, or the coastline in— (D) West Lakes General Policy Area 18 or West Lakes Medium Density Policy Area 19

	in the Residential Zone in the City of Charles Sturt; or. This has not been implemented but should still form part of the new provisions in the Regulations. Is this intended to be captured in (f)(i)(C)?
(ii) a fence in a designated historic or conservation zone, subzone or overlay that is situated on the boundary of the relevant allotment with a road (other than a laneway); or	(f)(ii) is not needed because (i)(A) captures this.
(m) a tree house (being a structure that is intended to be used primarily by children for recreational purposes) that is ancillary to a dwelling and that has a total floor area not exceeding 5 square metres	This should capture a cubby house as well as a tree house. At present the cubby houses can exceed the height limit specified for an outbuilding and thus need approval.
(n) the installation of a screen to 1 or more sides of a structure for the purposes of privacy if— (i) the screen comprises a permeable material (such as lattice or shadecloth); and (ii) neither the height nor the length of the screen exceeds the dimensions of the structure to which it is fixed;	Would this allow an existing carport/ structure forward of a dwelling to be enclosed when it potentially was only supported because it was open?
10—Demolition of single storey buildings The demolition of the whole of a single storey building, other than in respect of— (a) a local heritage place; or (b) a building in a zone, subzone or overlay identified under the Planning and Design Code for the purposes of this paragraph; or (c) a building that has a party wall.	Does this capture multiple buildings on the land? For example, other outbuildings and swimming pools. The title is plural, yet the opening statement is referencing a single building. This needs more clarification.

Schedule 8 plans and details for planning applications	This should include a certificate of title to ensure they are building within their available site area and not impacting rights of way. There may also be restrictions to what can happen on the land for example so many services below the surface that the land cannot be built on. It should include stormwater management details to ensure there are no downstream flooding issues resulting from a planning outcome which does not form part of a building assessment. The scale of elevations and site plans is too small for both planning and building applications. The site plan should be 1:200 and the elevations should be 1:100 with sections at 1:50 to ensure detail can be interpreted properly.
Schedule 8- 9 plans for building work (5) If a development involves— (a) the construction of a fence closer than 3 metres to an existing or proposed Class 1 or 2 building under the Building Code; or (b) the construction of a Class 1 or 2 building under the Building Code closer than 3 metres to an existing or proposed fence, at least 1 plan or other document provided for the purposes of a preceding subclause must describe or indicate the material that makes up, or is proposed to make up, the fence (as the case requires)**.**	Is this meant to be addressing the brush fencing within 3m of a dwelling? It isn't clear. It is very complicated and could simply require all fencing within 3m of a Class 1 or 2 building to be specified as a non-combustible material. This would ensure not only brush but also other combustible materials that may not be appropriate are captured.
Practice Direction - Standard Conditions for Deemed Planning Consent Except where minor amendments may be required by other relevant Acts, or by conditions imposed by this application, the development must be established in strict accordance with the details, plans and supporting documentation submitted in Development Application No [---/----/--].	This needs to require that the development is maintained to the satisfaction of the relevant authority in accordance with these items as well so that it is enforceable into the future.

A detailed landscaping plan must be submitted to the relevant authority, to the reasonable satisfaction of the relevant authority, prior to development approval being granted for the proposed development. The landscaping plan must identify a mixture of native groundcovers, shrubs and trees to be planted throughout the development site.	This should not be limited to native but rather should require species that are suited to the environment. Natives aren't necessarily low maintenance nor robust.
A Stormwater Management Plan must be submitted, in consultation with the relevant council, to the satisfaction of the relevant authority. The details of the plan must be submitted to the relevant authority for approval prior to the issue of development approval, and be implemented prior to occupation or use of the development	This should apply to all development if affected by a flood prone area not just for commercial or industrial uses
The hours for waste collection vehicles to enter and exit the site must be restricted to Monday to Friday: 7am to 7pm; with no collection on a Saturday or Sunday. Where the application proposes a development of a commercial or industrial nature on a site located within 100 metres of a zone that envisages residential development.	If it is in a residential zone rather than within 100m of a zone that envisages residential development would this still apply?
The portion of any upper floor windows less than 1.5m above the internal floor level (except windows facing a public road or reserve greater than 15 metres 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 to the reasonable satisfaction of the relevant authority or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.5 m above the internal floor level or a window sill height of 1.5 above the internal floor level.) Where the application proposes a building of 2 or more storeys on a site adjacent to a zone which envisages residential development	If it is in a zone that allows residential development this wouldn't apply. The same would apply for balcony screening. Limitation to opening and exclude sliding windows

Waste storage areas must be: (a) where possible, undercover or contained within the building; (b) constructed or bunded to prevent the entry of external stormwater; and (c) constructed to drain to a stormwater treatment system/device capable of removing pollutants.	On a site of 2000m2 this is always possible and these words should be omitted.
Land division conditions limited to Prior to clearance being issued under section 138 of the *Planning, Development and Infrastructure Act 2016*, all existing buildings and deleterious materials such as concrete slabs, footings, retaining walls, irrigation pipes and other rubbish must be cleared from the subject land to the reasonable satisfaction of the relevant authority. Any application incorporating the division of land where the resultant allotments are proposed to accommodate new development	This condition only addresses removal of structures but what if there are other planning conditions such as public lighting, retaining of soils etc required because of the land division. What if the land is not to accommodate new development but should not retain the original structure on the land as this may not have an approved stand alone use and was only there because it was ancillary to a building now on another parcel of land? Also how does this capture the open space contributions etc normally required by SCAP.
Electricity substations The sound power level of the substation and any associated machinery or equipment must not exceed 70dB (A) maximum as operated at any intended regime. The installation and operation of any machinery or equipment on the substation site – including potentially noisy items of plant or switching gear - must be designed, sited and attenuated (where applicable) to comply with the *Environment Protection (Noise) Policy 2007.* Where the application proposes an electricity substation and is within 100 metres of a zone that anticipates residential development.	The highlighted words should be deleted to capture development near housing regardless of zone
Practice Direction – Notification of Performance Assessed Development applications 2019 Part 2 – Notification of Performance	Some concerns associated with this process have been outlined earlier in this submission.

Assessed Development Applications 5 – Determination under section 107(3) of the Act (1) Section 107(3) of the Act specifies that notice of an application for planning consent must be given in accordance with the Regulations, subject to a decision of a relevant authority made in accordance with a practice direction. This practice direction outlines the circumstances in which the relevant authority may determine such a decision in relation to public notification. (2) If a relevant authority is of the opinion that a proposed performance assessed development is a kind of development which is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development, the relevant authority may resolve to proceed with assessment without undertaking a process for public notification or submissions in relation to the proposed development.	In addition to those it is noted that the practice direction refers to the notification of a performance assessed application as a public notification however we have been advised from department staff that this is not a public notification but rather a notification of an application. If it were to be a public notification then it may be captured by the need to place an advertisement in the newspaper as required under Regulation 3H and it is understood that this is not the intent. The practice direction should be reviewed and terminology corrected where required to refer to notice or notification rather than public notification or public notice.
Practice Direction – Conditions (7) A development condition must not be inconsistent with a development condition of an earlier development approval in effect for the development, unless— (a) the same person imposes the conditions; and (b) the applicant agrees in writing to the later condition applying; and (c) if the applicant is not the owner of the premises when the later development application is made—the owner agrees in writing to the later condition applying.	Why do we need the applicant to confirm they are happy with a condition that may be reflecting their application? What happens to the processing time while we wait for their or the owners acceptance? Is additional time allowed for this to occur outside of the assessment timeframe that may trigger a deemed consent under planning. In part a) why does it say the same person instead of authority?