

→ OUR
NEW
SYSTEM



ASSESSMENT PATHWAYS: HOW WILL THEY WORK? TECHNICAL DISCUSSION PAPER

August – October 2018





**Assessment Pathways:
How will they work?
Department of Planning,
Transport and Infrastructure
August 2018
ONLINE: 978-0-7590-0289-0**



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WHAT IS THE ASSESSMENT PATHWAYS DISCUSSION PAPER?

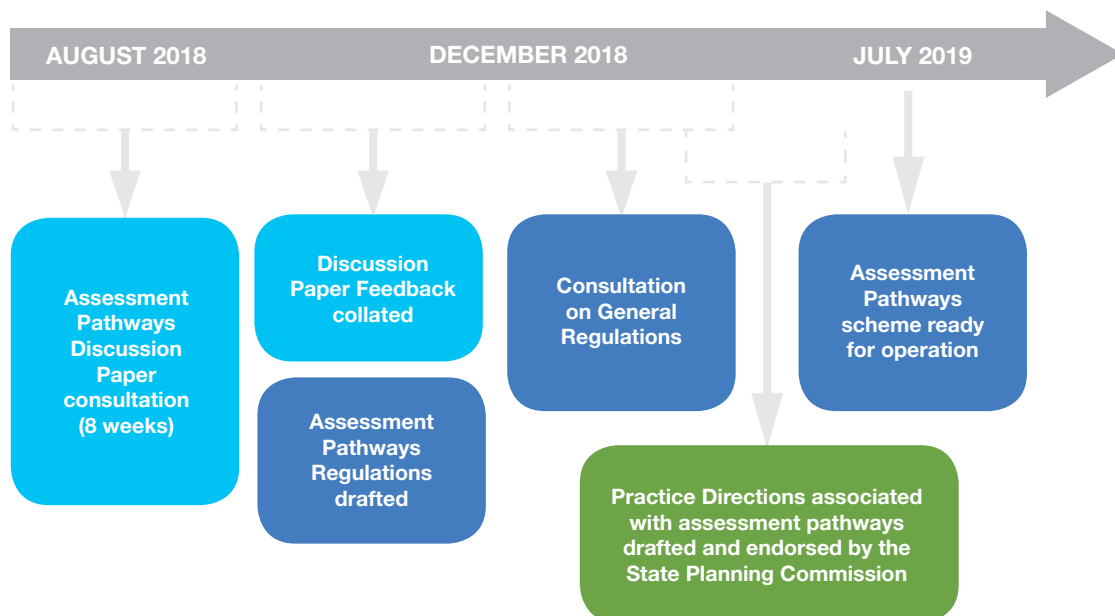
South Australia's new, more efficient planning system aims to modernise the way planning and development outcomes are delivered across the state. The new system is being created with input from the community, planners, developers and other interested parties. A key part of this reform is the new assessment pathways, which are designed to create confidence in the planning system.

'Assessment Pathways' refers to the processes a development application will go through when lodged under the *Planning, Development and Infrastructure Act 2016* (**the Act**). This discussion paper explores what will happen at each stage of the application process.

While the paper will assist in understanding what the Act requires, it will also raise some critical

questions about how the detailed aspects of the assessment pathways should work. Each section of this paper includes a series of key questions to assist in determining the most appropriate pathways/procedures/principles.

Consultation on this discussion paper is open. Feedback will help inform our future assessment system, which will include Regulations, Practice Directions, and policy framework within the Planning and Design Code. Further engagement will be undertaken on the detail of the pathways as each of these new planning tools are developed. The assessment pathways will be in place when the State's new planning rulebook - the Planning and Design Code (**The Code**) - is first implemented.



We invite you to participate and share your opinions as we shape and progress development of the assessment pathways.

Your feedback is encouraged via:

- SA Planning Portal: Visit the Have Your Say webpage and lodge a submission at http://www.saplanningportal.sa.gov.au/have_your_say
- Email: DPTI.PlanningEngagement@sa.gov.au
- Post: PO Box 1815, Adelaide SA 5001.



EXECUTIVE SUMMARY

The new planning and development system focuses on getting the planning policies right: policies that will support good planning decisions and outcomes. This focus relies on getting community input and ideas early in the process, through genuine community engagement, so that subsequent planning and development is guided by these aspirations. Local councils will work with their communities to decide on local planning priorities, and state bodies will set state-wide planning policies in consultation with key stakeholders. It is essential that this engagement is genuine and effective, in accordance with the State Planning Commission's Community Engagement Charter.

Based on community input, planning policies will be identified and presented in a clear and concise way to encourage confidence and certainty in the planning system. Under the new system, people building a home or extending their property, or those investing in an area, will benefit from a more streamlined process: they will have greater clarity about what policies apply to their situation; their applications that satisfy the planning policies will be assessed quickly and transparently by an accredited professional (of their choice); and they will be able to track their application in real-time via the ePlanning portal.

Public notification processes will be improved. Simple, expected development will be assessed efficiently without notification. More complex development will be notified to neighbours in the affected area, including placing a sign on the proposed development's site. Development with state-wide significance will have tailored consultation, following an Environmental Impact Statement process.

ePlanning solutions will provide a central, interactive electronic platform to facilitate more efficient development application lodgement and assessment processes. Planning information, publications, maps and data will be accessible 24 hours a day, seven days a week. This provides significant time and cost

savings in the assessment process, and enables the overall performance of the system to be monitored.

Currently, many simple applications are being considered by assessment panels, adding significant costs and time delays. Some complex applications warrant this level of rigour, and our new system caters for this.

Decision makers in the new system will be qualified and experienced professionals who will undergo regular training and competency audits. For more complex proposals, assessment panels comprising independent experts with the necessary skills, knowledge and experience will ensure appropriate development outcomes.

Feedback received on this discussion paper will inform the drafting of regulations which will support the implementation of assessment pathways under the Act, so that they are in place when the Planning and Design Code is first implemented.

We invite you to participate and share your opinions as we shape and progress development of the assessment pathways for South Australia's new planning system.







1. INTRODUCTION

Planning and development in South Australia has evolved over many decades. Expectations of community members and planning, development and building professionals has changed over this time, calling for a more streamlined, effective and transparent planning system.

How we assess proposed development needs to be straightforward, transparent and easy to understand for all involved. We need to reduce red tape while ensuring the facilitation of developments that deliver real benefits for our community.

1.1 What are 'assessment pathways'?

The Act sets out the framework for new assessment pathways, such as the new categories of development and relevant authorities. The future Planning and Design Code, regulations and practice directions/guidelines will delineate what forms of development will follow which pathway, and set the details of how the pathways work.

At the simple level, there are some standard steps that are applied across Australia when applications for development are assessed:

1. Lodgement of an application
2. Public notification or referral to a specialist body
3. Assessment
4. Decision.

What varies across jurisdictions includes:

- The information that an applicant needs to provide
- Timeframes for each step
- The assessment authority
- The level of community consultation/notification
- Involvement of other parties in the decision making process
- Legal review/appeals
- The policies about what an application is assessed against
- The ability for staged approvals.

1.2 What are the benefits of the new assessment pathways?

- **Range of pathways** – new pathways deal with simple to complex applications in a process commensurate with their complexity.
- **Streamlined decision making** – guaranteed planning consent for new 'deemed-to-satisfy' and 'accepted' pathways to enable streamlined assessment for low-impact development.
- **More certainty** – new processes for preliminary advice, outline consents, staged consents and deemed consent to provide applicants greater certainty through the assessment process.
- **Targeted public notification** – notices placed on development sites will be seen by people who regularly interact with the site, targeting those affected.
- **ePlanning solutions** – a central, interactive electronic platform will facilitate more efficient development application lodgement and assessment processes, with planning information, publications, maps and data accessible around the clock, every day of the year.
- **Focus on design** – design review process for prescribed development will provide better design outcomes for future generations.
- **Appropriate authorities** – an accreditation scheme for planning professionals will ensure all decisions are being made by qualified and experienced practitioners, while more complex applications will be determined by a panel of experts.

1.3 What are the key differences in the new assessment system?

The new assessment pathways seek to simplify pathways under the *Development Act 1993*, whilst providing for more streamlined decision-making and greater flexibility to adapt to modern construction requirements.

WHAT'S NEW?	Development Act 1993	Planning, Development and Infrastructure Act 2016
Categories of development	Public notification classified into either Category 1, 2 or 3 Complying, merit, non-complying application types.	3 categories of development: accepted, code assessed, impact assessed (category of development no longer refers to public notification requirements).
Referrals	Referrals to agencies prescribed in Schedule 8 for regard, concurrence or direction.	Referrals limited to matters for direction or concurrence and standard agency comments translated to criteria in the Planning and Design Code. Where allowed by regulations, referrals can be deferred as a reserved matter if requested by the applicant.
Relevant authorities (Planning consent)	Council is the relevant authority, with powers delegated to CEO, council assessment panel, staff, etc. on a council-by-council basis.	Relevant authority will be an accredited professional, assessment manager, assessment panel, the Commission (restricted development) or the Minister (impact assessed development). Council will be the relevant authority for building assessment (where referred) and the issuing of development approval.
ePlanning	No requirement for online system. Councils have different systems for application lodgement/processing/tracking, some hard copy and some electronic.	ePlanning platform to handle all application processes, consistent across the state.
Deemed consent	If an application is not determined within the regulated timeframe, the applicant may apply to the Court for an order requiring the relevant authority to make a determination within 14 days. If a determination is not made within that time, it is taken that consent is refused.	If an application is not determined within the regulated timeframe, the applicant may give the relevant authority a 'deemed consent notice', and it will be taken to have granted the planning consent on the date the notice is received. The relevant authority may then choose to grant the planning consent with conditions (within 10 business days), or apply to the Court for an order quashing the consent.

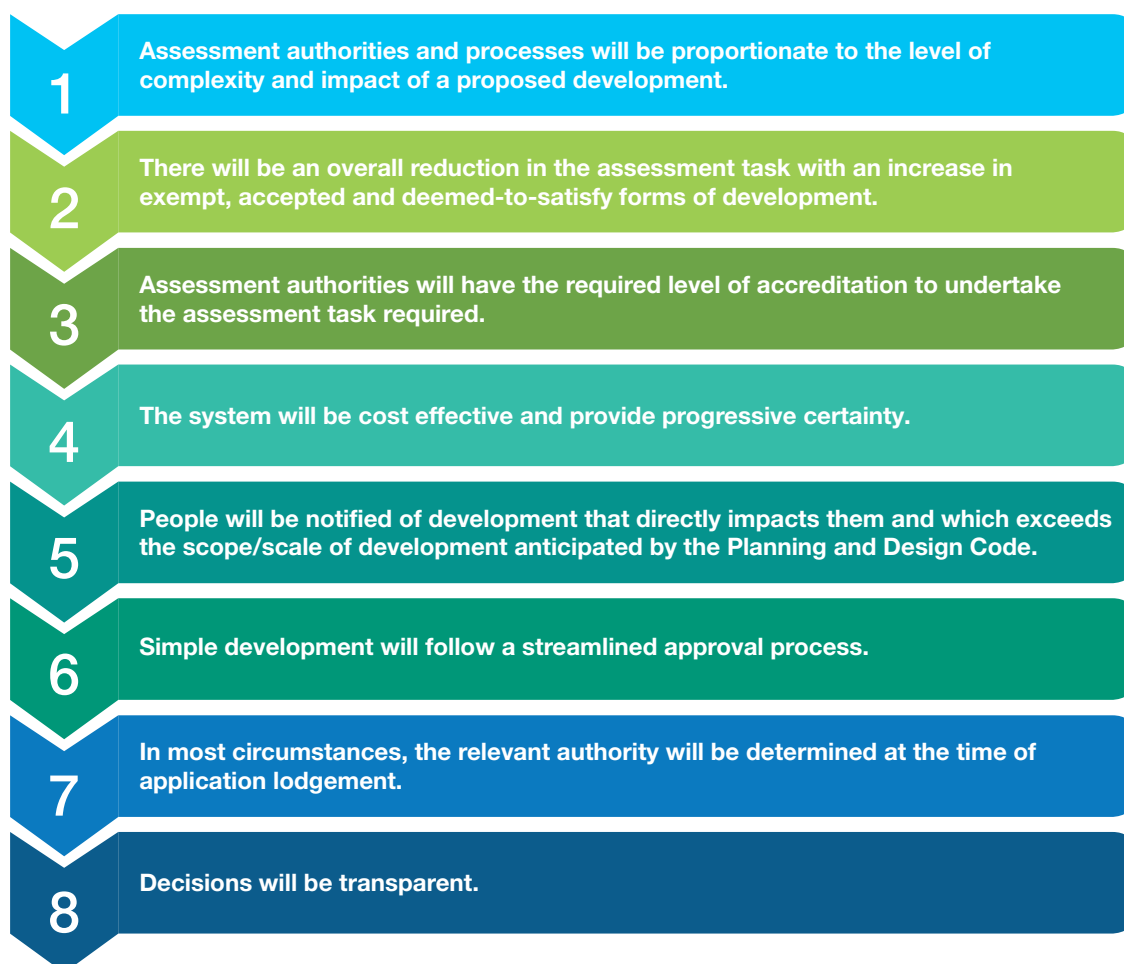


WHAT'S NEW?	Development Act 1993	Planning, Development and Infrastructure Act 2016
Outline consents	Nil	Matters prescribed in a Practice Direction may be granted 'outline consent' to provide upfront certainty for certain application concepts (e.g. building heights within certain zones).
Restricted development pathway	Non-complying development assessed by the council with concurrence of the Commission (or vice versa).	'Restricted' development assessed by the Commission.
Staged consents	Consents must be obtained in order, with elements of a development contained and assessed in a single application, within which the development can be staged.	Consents can be obtained in any order, while different elements of a development can be assessed separately (including by different authorities).
Impact-assessed development	Major projects determined by the Governor.	Impact assessed development (not restricted) determined by the Minister.
Design	'Design review' undertaken informally for certain multi-storey projects in the inner metropolitan area by the Office of Design and Architecture SA (ODASA) as part of voluntary pre-lodgement services.	Design panels facilitated by the Act, which may be undertaken for classes of development specified in the Code. Additionally, design standards will be issued by the Commission.
Building - Accreditation	Only registered Level 1 private certifiers – or those that have received mutual recognition – can provide Building Consent. Level 2 and 3 certifiers can assist a Level 1 certifier but cannot provide consent.	Accreditation scheme allows building certifiers operating at levels 2 and 3 to directly provide Building Consent for developments they are accredited to provide consent for, as well as new level 4 'inspector' to support increased level of inspections for class 1 and class 10 buildings.

1.4 Guiding principles

The Act has established the basic framework of assessment pathways – the next step is to consider which forms of development should follow which pathway.

The following guiding principles may be used when considering what types of development are assigned to which assessment category, relevant authority and/or public notification requirements:





1.5 ePlanning

The new ePlanning system will transform the development application and assessment process from a traditional paper-based system with face-to-face interactions to an online environment where people can access planning services and information from anywhere at any time.

Assessment Pathways will be fundamentally linked with the new ePlanning system, as it will provide the electronic framework through which applications will be lodged, assessed and determined, as well as other associated processes. The processing of

development applications will be streamlined by enabling applications to be lodged and tracked online. **Figure 1** (page 14) provides an example of how steps in the development application process may be managed by the ePlanning system.

In addition to the ePlanning application assessment system, the SA Planning Portal has been updated to improve access to the planning system, making it more transparent and easier to use for all stakeholders, from the public to the assessment authority.



The ePlanning Development application process (basic model)



Figure 1. ePlanning system.



2. RELEVANT AUTHORITIES (PLANNING)

The credibility of decision making is an important concept that is influenced by the accountability, transparency, expertise, capacity and independence of the decision maker. Where applications are open to discretion and notification, this becomes of even greater importance, and those making submissions need to feel confident that their feedback is given proper consideration in a fair and impartial manner. The relevant authorities under the Act have been established with this in mind.

Every development application will be assigned to a 'relevant authority' for assessment and determination. Relevant planning authorities include:

1. the Minister for Planning
2. the State Planning Commission by delegation to the State Commission Assessment Panel (SCAP) or committee (referred to in this paper as 'the Commission')
3. an Assessment Panel - including Joint Planning Board (JPB) Assessment Panel, Council Assessment Panel, Combined Assessment Panel, Regional Assessment Panel and Local Assessment Panel
4. an assessment manager
5. an accredited professional
6. a council (in relation to building rules consent and/or development approval only).

The Minister will always be the authority for impact-assessed development, other than for restricted where the Commission is the authority. The roles of Assessment Panels, Assessment Manager and Accredited Professionals will be determined in future regulations, informed by feedback from this Discussion Paper.

Figure 2 (page 17) summarises the key roles and responsibilities of the relevant authorities, while **Figure 3** (page 18) outlines the differences between various assessment panels.

WHAT'S NEW: AUTHORITY

The Regulations will prescribe the authority for a class of development. This provides greater consistency about when applications will be assessed by a panel, assessment manager or accredited professional. This ensures the right level of skills, knowledge and experience is applied to the assessment of a development application.



Relevant Authorities






	 MINISTER	 STATE PLANNING COMMISSION	 ASSESSMENT PANELS	 ASSESSMENT MANAGER	 ACCREDITED PROFESSIONAL
RESPONSIBLE FOR	Impact Assessed development (not restricted)	Out of council areas, restricted development, infrastructure, Crown development	To be determined in future regulations	To be determined in future regulations	To be determined in future regulations
SIMILAR TO	The Governor (major project pathway)	Former Development Assessment Commission	Former Regional/ Development Assessment Panels	Development Manager with delegated functions	Private certifier in current system
APPOINTED BY		Established under the Act	Council, JPB or Minister	Dept CE, council CE or JPB	Accreditation scheme

Figure 2. Relevant authorities.



Assessment Panels

	COUNCIL	REGIONAL	COMBINED	LOCAL	JOINT PLANNING BOARD
APPOINTED BY	Appointed by council	Appointed by the Minister	Appointed by the Minister	Appointed by the Minister	Appointed by a Joint Planning Board
MEMBERSHIP	No more than 5 members Up to 1 council member	Membership to be determined by Minister (up to 1 council member)	Membership to be determined by Minister (up to 1 council member)	Membership to be determined by Minister (up to 1 council member)	No more than 5 members Up to 1 council member
FUNCTION	As per former Development Assessment Panels	Consists of 2 or more councils	May assess matters under other laws concurrently (e.g. mining, liquor licensing)	Is a substitute for a Council Assessment Panel	Relates to a group of councils entered into a 'planning agreement'

Figure 3. Assessment Panels.

2.1 The Minister

The Minister is the primary custodian of the planning system and is the relevant authority for impact assessed (not restricted) development.

The Minister also determines the composition and powers of Ministerial-appointed panels.

2.2 State Planning Commission (the Commission)

The State Planning Commission has been established under the Act. The Act requires the Commission to establish one or more committees (known as Commission Assessment Panels) and delegate its functions and powers as a relevant authority.

The role and function of the committees is to be determined by the State Planning Commission. It can include specific matters relating to a particular development application and/or specific interest areas.

2.2.1 State Commission Assessment Panel (SCAP)

The State Planning Commission established the State Commission Assessment Panel (SCAP) on 1 August 2017 to continue the assessment functions formerly undertaken by the Development Assessment Commission. The SCAP currently acts as a delegate of the Commission for determination of all development currently prescribed in Schedule 10 of the *Development Regulations 2008*.

In addition, the SCAP acts as if it was a council for planning and building approvals in areas of the state outside a council area (such as the far north of the state, and many off-shore islands).

2.3 Assessment Panels

A person appointed as a member of an assessment panel must be an accredited professional, except if the person is a member, or former member, of a council, and the designated authority is satisfied that the person is appropriately qualified to act as a member of the assessment panel on account of the person's experience in local government.

All assessment panels must also have an assessment manager, who may be an employee of a council, who will operate as the panel's Executive Officer. Assessment managers must be an accredited professional or a person of a prescribed class (refer to *Accredited Professionals Discussion Paper* for more information).

2.3.1 Council Assessment Panels

In the new system, former Development Assessment Panels have changed to Council Assessment Panels (CAPs). The most significant changes are the panel's composition and requirement for members to be accredited. A CAP may:

- Include no more than five members appointed by a council
- Include up to one council member (or former council member).

All independent members of an Assessment Panel will be required to have relevant accreditation, however a council member (or former council member) is not required to be accredited.

2.3.2 Regional Assessment Panels

Regional Assessment Panels (RAPs) will operate similarly to CAPs but are intended to promote regional cooperation and support councils working together. The establishment of, and appointment of members to, a RAP is to be determined by the Minister on request from a group of councils. The Minister may decide the number of members on the RAP, but only one member may be a member (or former member) of a council.

All independent members of a RAP will be required to have relevant accreditation, however a council (or former) member is not required to be accredited.



2.3.3 Combined Assessment Panel

A Combined Assessment Panel can be established by the Minister to consider proposals that may require assessment against multiple pieces of legislation. Its membership is to be determined by the Minister. An example where a Combined Assessment Panel may be established could be where a development not only requires consent under the *Planning, Development and Infrastructure Act 2016*, but also under the *Liquor Licensing Act*, *Environment Protection Act*, or *Mining Act* etc.

2.3.4 Local Assessment Panels

Local Assessment Panels (LAPs) can be established by the Minister if the Commission has conducted an inquiry into an existing CAP and the CAP is found to not be fulfilling its role and functions appropriately. A LAP is constituted by the Minister upon recommendation of the Commission. If a LAP is established, it may take on all of the roles and functions of the CAP.

2.3.5 Joint Planning Board Assessment Panel

The Act provides a mechanism for groups of councils to work together by entering into a 'planning agreement' with the Minister. The intent of the planning agreement is to outline the planning functions which are to be carried out by a Joint Planning Board (JPB). One of the many functions a JPB can undertake is the preparation and amendment of a Regional Plan. In addition, to manage its assessment functions, the Joint Planning Board can establish a Joint Planning Board Assessment Panel.

2.4 Assessment Manager

A new role of 'assessment manager' has been created by the Act. An assessment manager must be an accredited professional (or a person of a class prescribed by regulation).

The role of the assessment manager is to provide advice to, and coordinate the business of an assessment panel. The assessment manager will also act as a relevant authority in their own right in cases contemplated by the regulations.

The role of assessment manager will be appointed by the Chief Executive of the council (for a CAP), the Chief Executive of the Department (for a Minister-appointed panel), or by a Joint Planning Board.

Flexibility is provided for smaller councils by enabling assessment managers to be appointed for more than one council, one assessment panel, or can be a contract accredited professional.

2.5 Accredited Professional

The recognition of planners as professionals is a new scheme in the Act. The Governor can establish a professional accreditation scheme for planners, building certifiers and other industry professionals involved in making development decisions. The proposed scheme will also recognise the importance of professionals in the decision-making process based on their skills and experience.

An accredited professional will be able to undertake the assessment functions prescribed by the regulations.

A separate discussion paper titled '*Accredited Professionals Scheme Discussion Paper*' which explores how the scheme will operate in the new system was prepared, with consultation held between February and April 2018. Feedback from this consultation has informed the preparation of the draft scheme ahead of its testing and finalisation.

This scheme is now available for feedback.

2.6 Council

A council or building certifier may act as a relevant authority for building consent (assessing an application against the building rules).

The council for the area in which a development is to be undertaken will also be the relevant authority for the purposes of granting development approval.

WHAT'S NEW: COUNCIL DELEGATIONS

Councils will continue as relevant authorities for certain building-related matters, but otherwise an assessment panel/assessment manager/accredited professional will be the relevant authority, rather than a delegate of the council. The relevant authority cannot be directed by the elected body in undertaking their statutory functions.

2.7 Delegations

A relevant authority, other than an accredited professional, may delegate any of their functions or powers to a particular person or body.

The instrument of delegation may be subject to conditions or limitations, or may provide for further delegation by the delegate.

EXAMPLE 1

A Council Assessment Panel may resolve to delegate its authority to the Assessment Manager for applications where no representations are received throughout the public notification period.

EXAMPLE 2

An Assessment Manager may elect to delegate their power of assessment to a staff member of council for certain low-impact types of development.

Key Question - Relevant Authorities

Code assessed applications are assigned to an assessment panel, except where the regulations assign an assessment manager or accredited professional.

1. **What should be considered when assigning relevant authorities?**



3. CATEGORIES OF DEVELOPMENT

The Act prescribes new categories of development, which will determine the pathway a development application follows. The new categories of the development will ensure that the level of rigour in the assessment process matches the complexity of a proposed development. This means that simple, common development follows a quick and streamlined assessment process, whereas development that has a greater scale, complexity or impact will undergo a more comprehensive assessment process.

There are three categories of development established in the new planning framework:

1. **Accepted**
2. **Code assessed (Deemed-to-satisfy or performance assessed)**
3. **Impact assessed (Restricted or impact-assessed).**

Each of the three categories of development will also have a series of potential assessment pathways which influence the relevant authority and public notification requirements (see **Figure 4** on page 24).

3.1 What types of development will be assigned to each category?

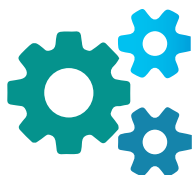
The future regulations and Code will assign development to the assessment categories. Feedback from this discussion paper will assist in the process of determining the key principles to guide that assignment process, which will also require consideration of the policy framework in the Code.

This chapter describes some of the potential characteristics of development in each of the assessment categories. As a general principle, as the impact of a development increases, so will the category and corresponding level of assessment. If a development is standard or expected in a particular area, has minimal impact and warrants a quantifiable

(numeric) assessment, it will be at the low end of the assessment scale (i.e. accepted or deemed-to-satisfy). If, however, the development is not specifically envisaged by the policy, has a significant or unknown level of impact, and requires a qualitative assessment of those impacts, it will fall into a category at the higher end of the assessment scale (i.e. impact assessed development). This scalable assessment process is illustrated in **Figure 5** (page 26).

The following principles may be considered when assigning assessment categories:

- Urban form has changed and continues to change, particularly in Adelaide, in response to shifting community values influenced by the impacts of technology and economic conditions.
- When the last significant legislative change in planning occurred, environmental protection legislation was also introduced. After 20 years, there may be issues or impacts that do not require control by both sets of legislation.
- Improvements in technology (including the ability to model impacts) has increased confidence in predicting impacts, such as noise impact and overshadowing modelling. This may change how different types of development are considered.
- Changes in how people access goods and services may change our assumptions about impacts (on-line services, delivery services etc).
- Impact can be considered in relation to function, aesthetics, imposition and public interest, which also relies on the context of a development's location. These elements will need to be considered when prescribing types of developments into assessment categories (and when prescribing relevant authorities and public notification requirements).



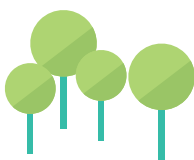
1. **Function Impacts:** Technical issues that relate to the site and locality, which can generally be addressed by design (access, services, noise, odour). These are generally assessed based on specialist technical advice.



2. **Imposition Impacts:** This relates to perceptions of direct and indirect impacts as anticipated by neighbours and the community. These are identified through the public notification process.



3. **Public Interest Impacts:** This relates to public policy matters that may be generated by incremental changes as well as changes of scale. These are identified through referral arrangements and technical/policy advice from agencies/council departments.



4. **Aesthetic Impacts:** This impact can be particularly relevant in a heritage or character context. Assessment of this aspect may require specialist opinion or public opinion or, in some cases, both.

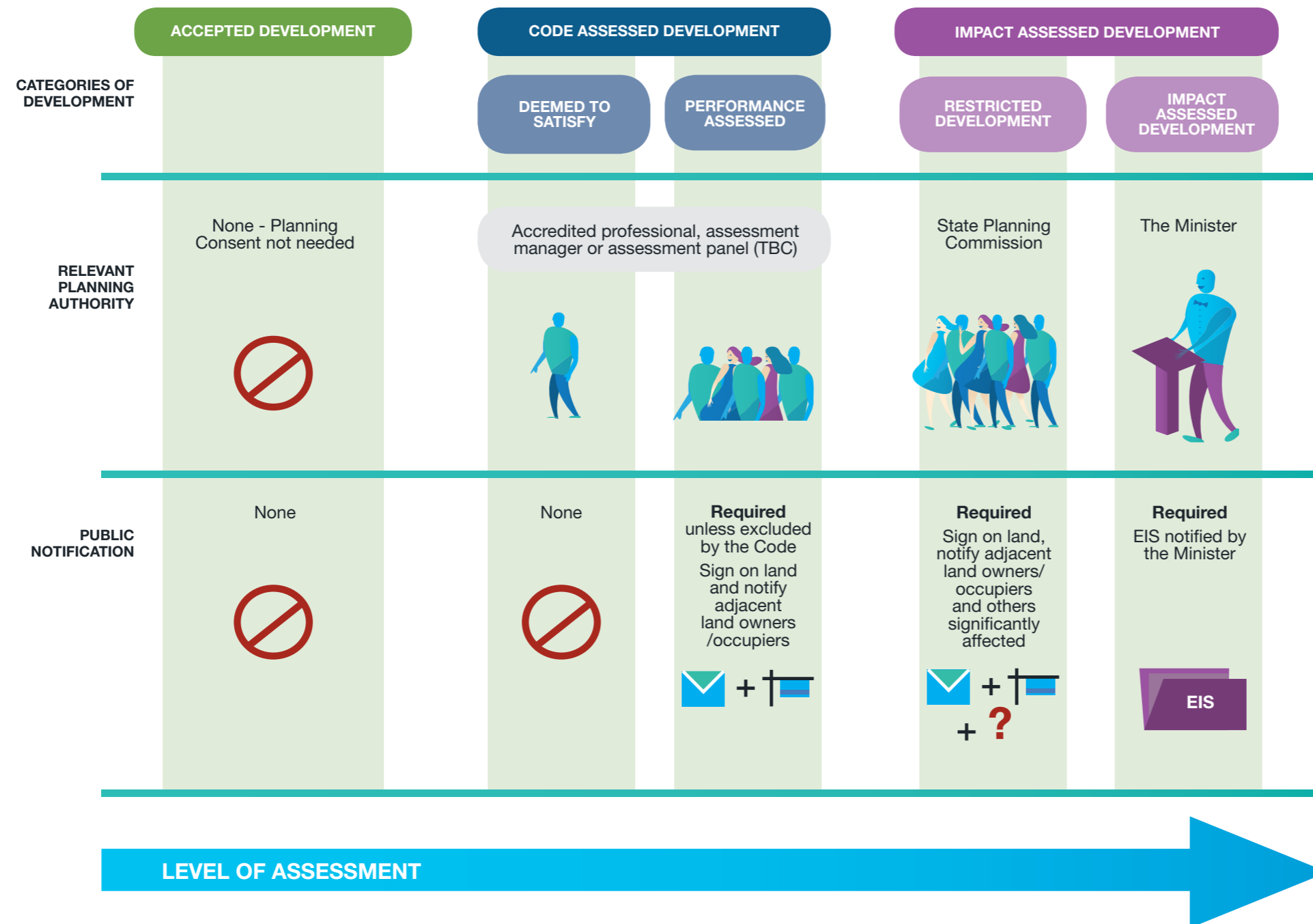


Figure 4. Assessment Categories and corresponding relevant authority/public notification.






Figure 5. Scalable assessment categories.

3.2 Exempt development

Some development that has no planning impact and does not involve significant building safety issues can be considered 'exempt development'. This may vary depending on location. For example, a form of development may require approval in a floodplain due to the potential impact of flood waters, whereas in most urban areas no approvals are required.

Exempt development is technically not a 'category of development' identified in the Act, but will capture forms of development that do not require planning or building approval.

EXEMPT DEVELOPMENT	
<p>EXAMPLE</p> <p>Garden shed, fence, rainwater tanks, small retaining walls</p> 	<p>NOTIFICATION</p> <p>None</p> 
<p>RELEVANT AUTHORITY</p> <p>Not applicable – no assessment required</p> 	<p>KEY QUESTION</p> <p>Schedule 3 of the <u>Development Regulations 2008</u> currently prescribes acts and activities that do not require development approval.</p> <p>2. Should the current scope of 'exempt' development be expanded to capture modern types of common domestic structures and expected works?</p>



3.3 Accepted development

Accepted development includes minor and standard applications that do not require a planning assessment, but may require building consent to ensure structures are appropriately constructed.

Accepted development will cover development that:

- is standard or expected in its location
- does not require an assessment of impact
- is quantifiable and measurable.

ACCEPTED DEVELOPMENT			
EXAMPLE Verandah or carport in a standard residential zone 		NOTIFICATION None 	
RELEVANT AUTHORITY No planning authority, but a building certifier or council can undertake the building assessment <div>   </div> <div> PLANNING BUILDING </div>		KEY QUESTION Schedule 1A of the <u>Development Regulations 2008</u> currently prescribes types of development that do not require Development Plan Consent ('building consent only' development). <p>3. Should the current scope of 'building consent only' development be expanded to allow for more types of common development with minor planning impacts?</p>	

3.4 Code Assessed development

Code assessed development requires an assessment against the Planning and Design Code.

Where an application is not impact assessed or accepted, it automatically defaults to code assessed.

There are several pathways for code assessed development:

1. deemed-to-satisfy
2. deemed-to-satisfy/performance assessed hybrid
3. performance assessed.

Simple developments such as a detached house in a residential zone will be fast tracked as a deemed-to-satisfy development application. If a standard dwelling does not quite meet certain numerical criteria, those elements will be performance assessed (and notified if applicable). More complex applications such as a multistorey building will be subject to performance-based assessment on merit.

WHAT'S NEW:

If a code assessed development application incorporates an element of 'accepted' development, assessment of that element is not required.

3.4.1 Deemed-to-satisfy

A development is considered 'deemed-to-satisfy' when it meets the numerical and prescriptive requirements of the Planning and Design Code. Deemed-to-satisfy development:

- meets established, well known design solutions to issues that can be translated into code-based policy
- is an appropriate land use in zone
- is quantifiable and measureable
- has a limited number of impacts to be managed, or has impacts that are understood and able to be addressed through prescriptive criteria.

A development that falls within this category will accord with established policies for the locality, making it an entirely expected, standard form of development. As such, an application that meets the deemed-to-satisfy criteria will be granted planning consent without undertaking a process for public notification. This provides certainty to both landowners and neighbours about what can be done on land, while avoiding unreasonable delays in the assessment process.

If a relevant authority is satisfied that development is deemed-to-satisfy development except for 'minor variations', the development will still be assessed as deemed-to-satisfy.



DEEMED-TO-SATISFY DEVELOPMENT

EXAMPLE

A dwelling in a standard residential zone which meets numerical criteria (i.e. setbacks, height, car parking)



NOTIFICATION

None



RELEVANT AUTHORITY

To be determined by future regulations. However, it is anticipated that an assessment manager or accredited professional may be the authority



KEY QUESTION

4. How should the scope of a 'minor variation' to deemed-to-satisfy development be defined?

3.4.2 Deemed-to-satisfy/ performance assessed hybrid

If certain elements of a development don't meet all of the deemed-to-satisfy criteria (and they cannot be considered a 'minor variation' from the criteria), those elements will be 'performance assessed'.

A performance assessment means that those elements will be assessed on merit against the Planning and Design Code's desired outcomes.

Similarly, if a performance assessed development incorporates some components which comply with deemed-to-satisfy criteria, only components of the development that do not meet the deemed-to-satisfy criteria will be subject to performance assessment and notification (if applicable).

WHAT'S NEW: DEEMED-TO-SATISFY COMPONENTS WITHIN A PERFORMANCE ASSESSED APPLICATION

Components of a development that do not meet the 'deemed-to-satisfy' criteria will be categorised as 'performance assessed' and assessed on their merits against the Planning and Design Code. Components that do meet the 'deemed-to-satisfy' criteria will, however, be taken to have been granted planning consent.

3.4.3 Performance assessed

The second type of code assessed development is the 'performance assessment' pathway, which requires assessment of a development on its merits against the Code. This is the default assessment pathway, and will capture all forms of development that are not specified as accepted, deemed-to-satisfy, restricted or impact-assessed.

Performance assessment will typically apply for development where:

- it requires an assessment of potential impacts
- assessment of the impacts of the proposal is against performance outcomes
- notification may be required if beyond an expected use and/or scale
- a referral to a third party for direction may be required (i.e. proposing a new junction on a State-controlled road).
- performance policy includes both quantitative and qualitative attributes
- a prescriptive outcome is difficult to determine
- issues are generally understood and can be mitigated in multiple ways.

If the relevant authority determines that the elements of performance assessed development are seriously at variance with the Planning and Design Code, planning consent must not be granted.



PERFORMANCE ASSESSED DEVELOPMENT

EXAMPLE

Dwellings greater than 3 storeys where a qualitative assessment of design is required



NOTIFICATION

Notice to adjacent land owners or occupiers and a notice placed on the land (unless a class of development excluded from notification in the Code)



RELEVANT AUTHORITY

To be determined by future regulations. However, it is anticipated that an accredited professional, assessment manager or assessment panel may be the authority, depending on the complexity of the application



KEY QUESTIONS

5. Are there some elements of a project that should always be notified if the deemed-to-satisfy criteria are not met (e.g. buildings over height)? Are there other things that don't matter as much for the purposes of notification?
6. What types of performance assessed development should be assessed by an Assessment Panel?

3.5 Impact Assessed development

The ‘impact assessed’ development category will capture development that warrants the highest level of assessment. Such development will be assessed by the State Planning Commission or the Minister.

Impact assessment is an important new assessment pathway. No planning system can envisage all the circumstances of a possible project; there needs to be mechanisms to assess beneficial projects that don’t necessarily meet all the guidelines. This requires genuine community input at the right time and in a way that ensures their concerns are heard and responded to. The assessment process needs rigour and transparency.

There are two pathways for impact assessed development:

1. Impact Assessed – Restricted

(as classified by the Planning and Design Code); or

2. Impact Assessed (not restricted)

(as classified by the regulations or declared by the Minister, with an Environmental Impact Statement (EIS) required).

Both of these sub-categories are assessed based on their impact in each individual circumstance, rather than a performance assessment against established criteria in the Code. Given the complexity of assessment, the relevant authority is set at a higher level, while public notification will be wider-ranging.

The preparation, consultation and assessment of an Environmental Impact Statement (EIS) is the most extensive engagement process, as it involves evaluation with full cross-government technical input.

3.5.1 Restricted Development

The category of ‘restricted’ development captures forms of development that are generally not envisaged within the relevant zone. This does not necessarily mean that the development is inappropriate, but rather that assessment of the proposal will follow a more rigorous impact-based assessment pathway.

For example, development could be classified ‘Restricted’ if it is determined:

- to be highly complex
- to require a higher order of assessment
- the development is beyond an expected use and/or scale (and therefore notification is required)
- the form of development might create an impact that may be unacceptable in the zone/locality
- the impacts are unknown or potentially significant
- the solutions to address impacts are unknown or require detailed investigation to determine
- referral to an external agency/authority is required (and the advice required is not addressed in the Planning and Design Code).

WHAT’S NEW: RESOLVING TO PROCEED

The Commission (or its delegate) will be responsible for resolving whether to proceed with assessment of restricted applications.



RESTRICTED DEVELOPMENT

EXAMPLE

Winery in a water protection district.
As the impacts are unknown and difficult to qualify, it could become restricted development.



NOTIFICATION

Notice to adjacent land owners or occupiers and anyone directly affected to a significant degree (as determined by the Commission) and any other person of a prescribed class and a notice placed on the land



RELEVANT AUTHORITY



THE STATE PLANNING
COMMISSION

KEY QUESTIONS

7. What types of principles should be used when determining 'restricted' development types in the Planning and Design Code?

8. How should restricted development be assessed - what other considerations outside of the Code should be taken into account?

PRACTICE DIRECTION

The Commission must prepare a practice direction which outlines: a) the circumstances under which they will be prepared to assess restricted development b) in cases where assessment will be undertaken, how the Commission will proceed with the assessment (i.e. information requirements and the other steps that an applicant must take).

Development can be classified as 'restricted' by the Planning and Design Code, but cannot be assessed unless the Commission determines that it will be assessed and, if it is, whether planning consent will be granted.

If the Commission's delegate (SCAP) resolves not to proceed with assessment of a restricted development, the applicant can appeal the decision to the Commission itself.

When assessing a restricted development, the Commission's delegate must take into account the relevant provisions of the Planning and Design Code, but is not bound by those provisions.

3.5.2 Impact assessed (not restricted) development

Impact assessed development (not restricted) is the highest order of assessment.

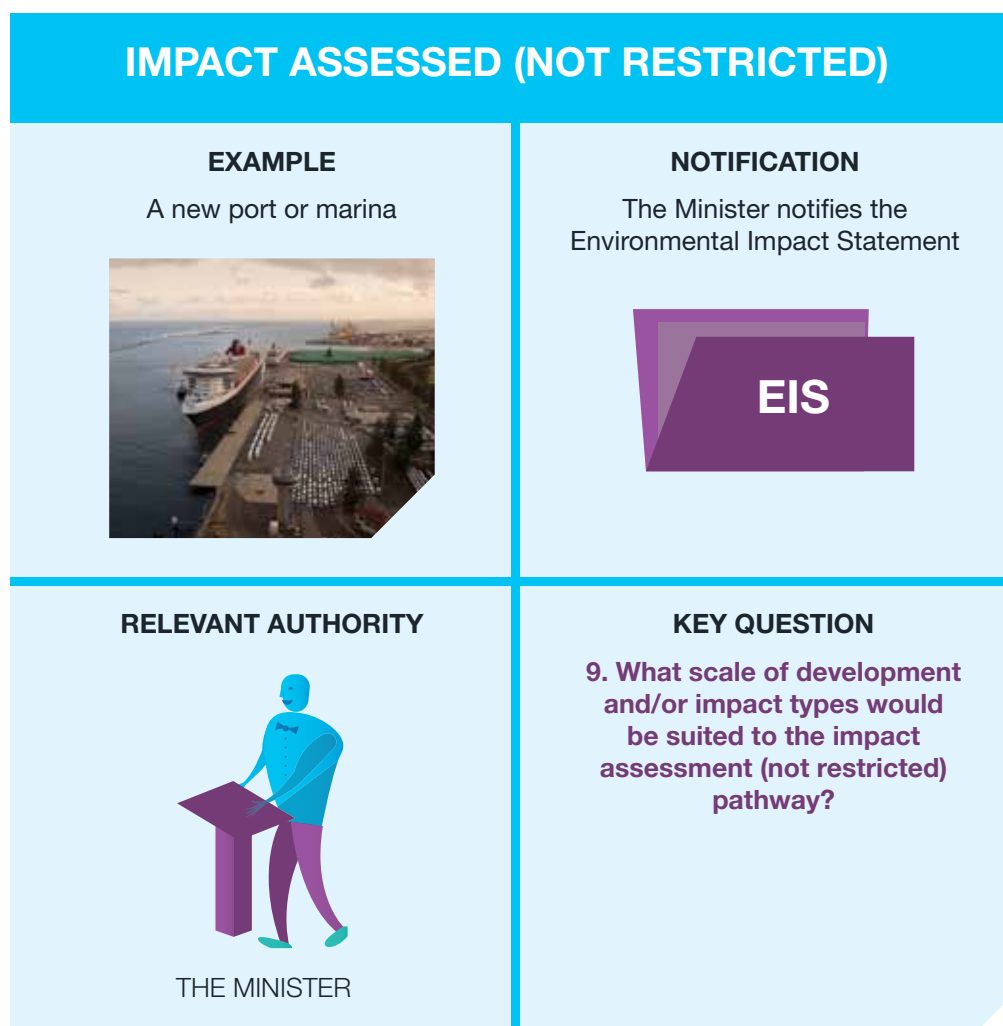
It can be further categorised into:

1. impact assessed by declaration of the Minister
2. impact assessed as prescribed by Regulation

In a manner similar to the current 'major development/project' system, these developments will be assessed according to their potential impact. The assessment process will be tailored to focus on the most uncertain and complex aspects of a development's potential impacts.

Development that is impact-assessable:

- requires an Environmental Impact Statement (EIS) which considers the expected environmental, social and economic effects of the development
- requires whole of government assessment
- has potential for significant or unknown impacts, to which solutions are unknown (or known but require detailed investigations to determine)
- requires assessment of the impacts of the proposal against performance outcomes
- requires notification.





In addition to being assessed against the Planning and Design Code, impact assessed development is subject to a scalable environmental impact assessment process. The State Planning Commission must issue a practice direction which sets out the assessment guidelines, including the requirements of an Environmental Impact Statement.

The Commission is required to determine the potential impacts of a project and set the 'level' of investigation based on information provided by the proponent as part of the formal development application. The Commission will need to consider a proposed development's potential impact and scale, as illustrated in **Figure 6** (page 37).

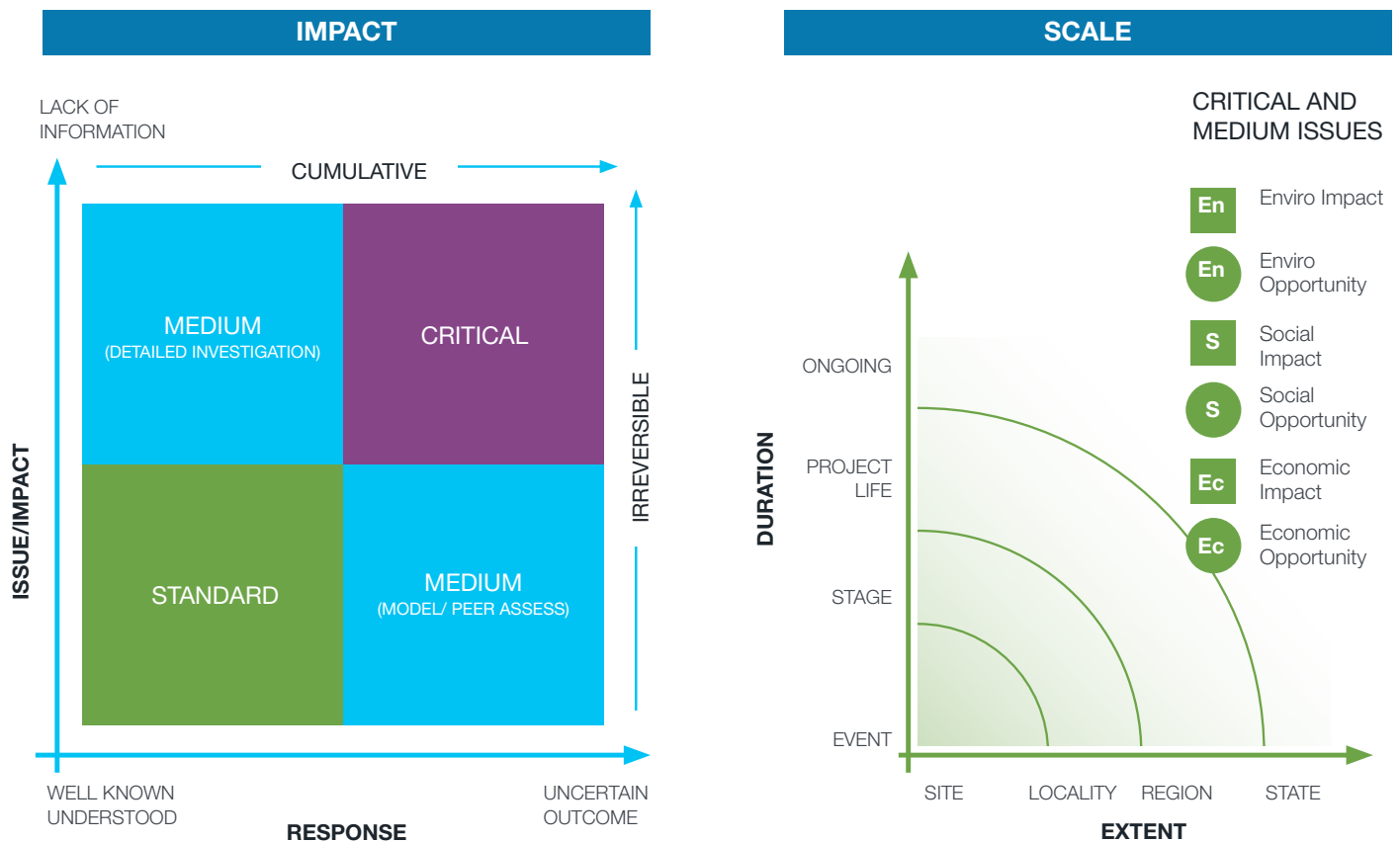


Figure 6. Considerations in determining impact and scale for impact-assessed development.

4. PUBLIC NOTIFICATION (DEVELOPMENT ASSESSMENT)

Public notification requirements in the current planning system vary greatly depending on the type of development proposed in different areas. For example, each of the 72 development plans prescribe different types of development as Category 1 or 2 (i.e. requiring public notification or not) in different zones, while other council development plans may have a similar zone with no prescription of categories. The new planning assessment framework will seek to provide for greater consistency of public notification requirements, so that both the community and developers have greater certainty on the application process, no matter where they live/develop.

Impact assessed development will always be publicly notified. Certain types of performance assessed development may also be notified, but will be determined on a zone-by-zone basis in the Code.

The following principles may be used when determining what types of performance assessed applications should be publicly notified:

- Owners of land should have an ability to use and develop land for reasonable purposes. Neighbours should have an ability to provide insight on development that has a direct and potentially unreasonable impact. However, it is noted that, in times of change, there are differences of opinion about what is reasonable as different people experience change to varying degrees.
- The community should have an ability to provide insight on wider, direct impacts.
- The new system should focus the opportunity for public submissions at the policy engagement stage rather than during development assessment. This means that public notification only occurs for development proposals that do not meet key quantitative policy in the Planning and Design Code.
- It is important that public notification is undertaken in a manner that can be verified to ensure that both applicant and third party interests are respected.

See Figures 7 (page 39) and 8 (page 40).

WHAT'S NEW: SIGN ON LAND

When a planning application is to be notified, a sign must be placed on the land, in addition to notifying adjacent land owners/occupiers. This method of notification is undertaken in other planning systems in Australia, and is used in notification of liquor licences in South Australia. There will no longer be a requirement to place a notice in a local newspaper to notify of a performance assessed development application.

WHAT'S NEW: ADJACENT LAND

The definition of 'adjacent land' in the Act has been changed to mean 'land that is no more than 60 metres from the other land'. This means that all properties within 60 metres of the subject land must be notified, which will capture more properties that may be impacted by the development.



Whether a performance-assessed development will require notification or not will be outlined in the Code (Figure 8), informed by feedback from this paper

		NO NOTIFICATION	NOTIFY ADJACENT LAND AND PLACE NOTICE ON LAND	NOTIFY ANY OTHERS AFFECTED TO A SIGNIFICANT DEGREE	EIS NOTIFIED BY PUBLIC NOTICE AND ANY OTHER CONSULTATION AS DETERMINED BY THE MINISTER (REGARD TO COMMUNITY ENGAGEMENT CHARTER)
ACCEPTED		●			
DEEMED-TO- SATISFY		●			
PERFORMANCE ASSESSED	NO NOTIFICATION (EXEMPT BY CODE)	●			
	NOTIFICATION REQUIRED		✉ + 🏠		
IMPACT-ACCESSED	RESTRICTED		✉ + 🏠	+ ?	
	NOT RESTRICTED				EIS

Figure 7. Public notification table.

STEP 1.
LAND USE

Is it an anticipated or envisaged form of development in the zone/
sub-zone/overlay?

NO

YES

**Public notification
not required**

Minor,
reasonable
or
anticipated
level of
impact

STEP 2.
IMPACT

What will be the extent of
impact?

Impacts
potentially
significant or
beyond an
anticipated
scale

**Public
notification
required**

May require consideration of a
development's scale vs. proximity to
nearby land on a zone-by-zone basis

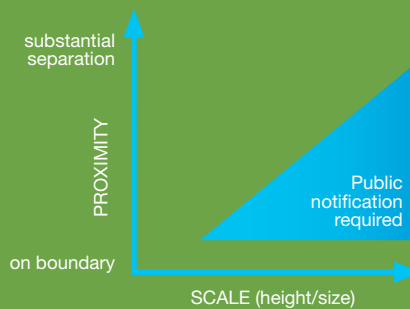


Figure 8. Potential considerations in determining what types of development should require public notification when drafting the Planning and Design Code.



4.1 Deemed-to-satisfy

An application that meets the deemed-to-satisfy criteria must be granted planning consent without undertaking a process for public notification. A development that falls within this category will accord with established policies for the locality, making it an anticipated/expected form of development.

4.2 Performance assessed

The Planning and Design Code may exclude specified classes of development from requiring public notification.

If a proposed development is performance assessed and not excluded from requiring public notification by the Code, notice of the application for planning consent must be given to (subject to any future practice direction):

- an owner or occupier of each piece of adjacent land; **and**
- members of the public by notice placed on the relevant land.

A person may make representations to the relevant authority in relation to the granting or refusal of planning consent.

The relevant authority must forward a copy of any representations received to the applicant and allow the applicant to respond.

The subject matter of any notice and/or representation must be limited to what should be the decision of the relevant authority as to planning consent **in relation to the performance based elements of the development only.**

The Act does not specify a right to be heard for representors to performance-assessed development, however the regulations could prescribe otherwise. This important question is under active consideration, to be guided by feedback from this discussion paper.



4.3 Impact assessed – Restricted development

If proposed development is to be assessed as restricted development, notice of the application for planning consent must be given to:

- an owner or occupier of each piece of adjacent land; **and**
- any other owner or occupier of land which, according to the determination of the Commission, would be directly affected to a significant degree by development if it were to proceed; **and**
- any other person of a prescribed class; **and**
- the public generally, including by means of a notice placed on the relevant land.

Any person may make representations to the Commission in relation to the granting or refusal of planning consent.

The Commission must forward a copy of any representations received and allow an applicant time to respond.

The Commission must allow the person who made the representation - and who indicated an interest in appearing before the Commission - a reasonable opportunity to appear personally or by representative before it can be heard in support of the representation. If the person so appears, the Commission must also allow the applicant a reasonable opportunity to appear personally or by representative before it in order to respond to any relevant matter.

If a person is to appear personally or by representative before the Commission to be heard in support of a representation made, the Commission must, at least 5 business days before the appearance, ensure that copies of both the application documents and any report prepared by the Commission are published on the SA Planning Portal and made available for inspection and downloading.

The subject matter of any notice/submission/representation must be limited to what should be the decision of the Commission as to planning consent in relation to the development.

WHAT'S NEW: ePLANNING PORTAL AND PUBLIC NOTIFICATION

The SA Planning Portal must include both:

- a facility that allows the general public to be notified directly about specified classes of matters or issues that are of interest to them.
- a facility that allows the general public to make submissions and provide feedback about matters that are subject to notification or consultation, e.g. impact assessed development.

4.4 Impact assessed (not restricted)

The Minister must ensure that copies of an Environmental Impact Statement (EIS) prepared for an impact-assessed development are available for public inspection and purchase by public notice and invite interested persons to make written submissions on the EIS. A copy of the EIS must also be published on the SA Planning Portal.

The Minister may also undertake, or require the proponent to undertake, any other consultation in relation to the EIS as the Minister thinks fit.

The Minister must give the proponent copies of all submissions made and the proponent must prepare a written response.

The Commission must then prepare an Assessment Report and notify any person who made a written submission on the EIS of the availability of the Assessment Report by the same methods of public notice as the EIS.

If an EIS or Assessment Report is amended, the Commission must give notice of the place at which copies of the relevant document/s (with the amendments) are available for inspection and purchase.



Key Questions: Public Notification

10. Should accredited professionals/assessment managers have the capacity to determine publicly notified applications?
11. Who should be responsible for placing a notice on the subject land?
12. How would that person/body provide/record evidence of a notice being placed on the land throughout the specified notification period?
13. For how long should an application be on public notification (how long should a neighbour have to provide a submission)? Should a longer period apply for more complex (i.e. impact assessed) applications?



5. PROCEDURAL MATTERS

5.1 Provision of Information

Applicants will be required to provide minimum mandatory information when lodging an application on the ePlanning system, determined by the nature of development they are applying for.

Following lodgement, relevant authorities will only be able to make one request for the applicant to provide additional documents or information in relation to:

- a) deemed-to-satisfy development of a certain class; and/or
- b) any other class of development prescribed by the regulations.

Key Questions: Provision of Information

- 14. What type of information should be submitted with deemed-to-satisfy applications? Are the current requirements in Schedule 5 of the Development Regulations 2008 sufficient/too onerous?
- 15. Should relevant authorities (including accredited professionals) be allowed to dispense with the requirement to provide the mandatory information listed by the regulations/code/practice directions?
- 16. Should a referral agency or assessment panel be able to request additional information/amendment, separate to the one request of the relevant authority?
- 17. Should there be an opportunity to request further information on occasions where amendments to proposal plans raise more questions/assessment considerations?

OPPORTUNITY TO REQUEST INFORMATION

Under the current *Development Act 1993/Development Regulations 2008*, a relevant authority can only request additional information on one occasion for merit development, and that request must be within 15 business days from receipt of the application.



5.2 Outline Consents

The Act provides a new capacity for an ‘outline consent’ to be sought by applicants, but only in circumstances permitted by a Practice Direction issued by the Commission.

Outline consent provides a development assessment pathway that considers the merit of a broad development intent and provides a partial development approval for a conceptual proposal (i.e. an outline of the proposal).

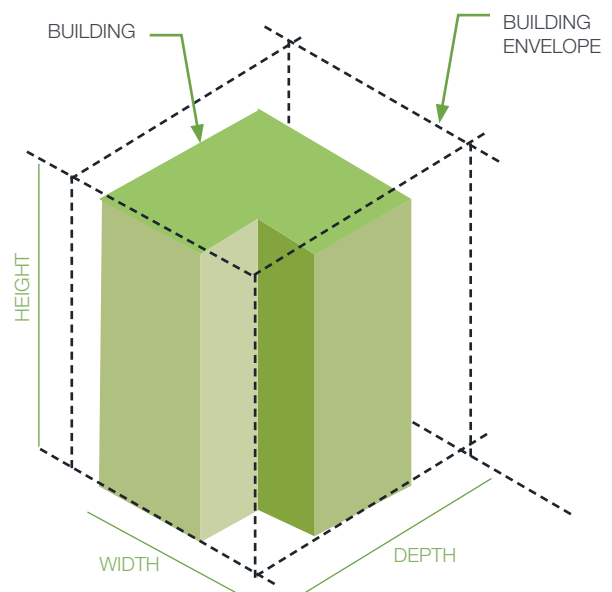
An outline consent could be best used for complex projects where ‘in principle’ approval may be needed to facilitate project delivery. It is expected that one way of achieving an outline consent will be by submitting a master plan to the standard specified in a practice direction.

The practice direction is likely to apply outline consents only to certain elements of development in certain areas/zones. For example, the operation of outline consents could be limited to building height/envelope for zones in the inner metropolitan area, or to land uses in a certain rural zone.

Outline consent processes may align with pre-lodgement practices that make use of preliminary advice and agreement provisions, such as the design review panel process.

An outline consent will bind the original assessment body to grant any subsequent related consents that are consistent with the outline consent.

If, when a subsequent application is lodged, there has been a material change to a development that differs from the outline consent, further assessment, notification and consultation may be required.



Key Questions: Outline consents

18. How long should an outline consent be operational?
19. When, where and for what kind of development would an outline consent be appropriate and beneficial?
20. What types of relevant authorities should be able to issue outline consent?

PRACTICE DIRECTION FOR OUTLINE CONSENTS

The practice direction should set out:

1. the circumstances where a request for outline consent may be granted.
2. the timeframe for which the consent is operational.

5.3 Design Review

A design review process may be initiated for developments of a prescribed class - the Code can specify types of development or attributes of a development for which a design panel could be established to consider an application.

A design panel can be established as determined by the Minister. A design panel may provide advice with regard to the form and content of a proposed development, how the proposed development can be modified or improved, or any other matters.

For more information on design, look out for an upcoming discussion paper about design in the new planning system.

5.4 Referrals

Under the new assessment framework, the referral process will be rationalised. Legislated referrals to agencies will be confined to matters for direction or concurrence so that agencies need only provide advice on matters pertinent to the purpose of the referral.

The Act allows for the Planning and Design Code to address policy issues in preference to seeking referrals for 'regard' or 'advice'. This is reinforced by a provision which requires the Code to include standard policies that would commonly be applied by a referral body in giving referral advice. These policies will provide greater up-front certainty to applicants as to the performance and other outcomes sought by those agencies, and the thresholds beyond which referrals will be required.

To avoid time delays on matters of detail, applicants will have the option of deferring a referral to a later stage of the assessment process, but only if specifically allowed by the regulations. Should the applicant choose to defer a referral, they would need to accept any risk that the future referral advice may require amendment to the reserved consent.

Key Question: Referrals

- 21. What types of development referrals should the regulations allow applicants to request for deferral to a later stage in the assessment process?**

WHAT'S NEW: REFERRALS

If the regulations so provide, an applicant may request a relevant authority to defer a referral to a particular stage in the process of assessment and, in such a case, the relevant authority must comply with the request.

5.5 Preliminary Advice

A person may seek the opinion of a referral authority/ agency in relation to proposed development that would require agency referral before lodging an application for planning consent. The referral body can then issue an agreement which confirms that the development meets their requirements. If an application for planning consent is then lodged with the relevant authority, the application will not need be referred (provided the agreement remains valid).

In providing a preliminary agreement, a referral body may require the payment of a fee prescribed by the regulations and exercise the power to impose conditions.


Key Questions: Preliminary Advice

- 22. The Act stipulates that preliminary advice may be obtained from agencies. Should there also be a formal avenue for applicants to seek preliminary advice from the relevant authority?**
- 23. Should there be a fee involved when applying for preliminary advice?**



5.6 Decision Timeframes

The time within which a decision must be made by the relevant authority will be defined in the regulations.

Decision Timeframes Under the <i>Development Act 1993</i>				Decision Timeframes Under the Act
Application type	Decision timeframes			Future timeframes
Complying	2 weeks	+ 6/8 weeks if agency referral report/direction required.	+ 10 weeks if concurrence required	To be determined by regulations 
Merit	8 weeks			
Non Complying	8 weeks			
Building consent	4 weeks			
Land division	12 weeks			

Key Questions: Decision Timeframes

24. How long should a relevant authority have to determine a development application for each of the new categories of development?
25. Are the current decision timeframes in the *Development Act 1993/Regulations 2008* appropriate?

5.7 Deemed Planning Consent

The assessment process will be subject to a series of timelines for key assessment milestones. Where an assessment body fails to make a decision within the time prescribed by the regulations, the Act enables applications to initiate the 'deemed planning consent' process. This process replaces the 'deemed refusal' under the current Act.

The process for seeking a deemed planning consent is as follows:

- where a timeframe is not met, the applicant may serve notice on the relevant authority
- on receipt of the notice, the authority will be taken to have granted the consent
- the authority has up to 10 business days to issue its own consent with or without conditions, which—if issued—supersedes the deemed consent
- if the authority fails to issue its own consent, the standard conditions specified by a practice direction will apply to the deemed consent.

If a relevant authority considers that the application should have been refused, it can apply to the Court for an order quashing deemed consent within one month from the consent date.

These steps will be able to be followed through the workflows in the new ePlanning system.

The ability for an authority to apply to the court for the consent to be quashed will guard against administrative mistakes that could lead to undesirable outcomes.

A deemed planning consent will not be available for impact assessable development, building consent or land division consent.

Key Questions: Deemed Planning Consent

26. **Should a deemed planning consent be applicable in cases where the timeframe is extended due to:**
 - a referral agency requesting additional information/amendment
 - absence of any required public notification/referral
 - any other special circumstances?
27. **What types of standard conditions should apply to deemed consents?**



5.8 Conditions and Reserved Matters

Conditions

A development authorisation may be subject to conditions imposed by the relevant authority, provided such conditions are consistent with the Act, future regulations and Planning and Design Code.

The Act also provides a power for the Commission to issue a practice direction to specify conditions or prohibit certain conditions or classes of conditions. It is intended that a practice direction will be issued by the Commission and that it will initially address conditions for the most common forms of development.

For example it is likely that the practice direction will address conditions affecting dwellings and other forms of residential development.

Reserved matters

The ability to reserve certain matters for later decision is strengthened in the Act, addressing case law which has tended to constrain these to very minor matters only. Matters may be reserved at the initiative of the relevant authority, or on application of the applicant if that matter is specified for reservation in the Planning and Design Code.

Any matter that is not fundamental to the nature of a development may be reserved for later decision.

This will provide greater certainty to applicants and councils in determining those matters that can or should be reserved for later decisions.

Key Questions: Conditions and reserved matters

28. What matters be should addressed by a practice direction on conditions?
29. What matters related to a development application should be able to be reserved on application of an applicant?

WHAT'S NEW: CONDITIONS

A condition may provide that a proposed deemed-to-satisfy development will be undertaken so as to address any minor variation to make it consistent with the deemed-to-satisfy requirement.

WHAT'S NEW: RESERVED MATTERS

A relevant authority must allow any matter to be reserved on the application of the applicant if specified by the Planning and Design Code for that purpose.

PRACTICE DIRECTION FOR CONDITIONS

A practice may be prepared to guide conditions.

5.9 Variations

Variations to existing development authorisations will continue to work in a similar manner to the current framework under the *Development Act 1993*. This means that:

- a person may seek to vary a development authorisation or conditions (but only if the authorisation is still operative)
- the variation (but not any other elements of the development) will be treated as a new application for development authorisation (subject to any exclusions by the regulations)
- the variation cannot seek to extend the period for which the authorisation remains operative (unless otherwise approved by the relevant authority).

Key Questions: Variations

30. Should the scope for 'minor variations' - where a new variation application is not required - be kept in the new planning system?
31. Should a fee be required to process 'minor variations'?

5.10 Permits under the *Local Government Act 1999*

The Act amends the *Local Government Act 1999* to reference the role of accredited professionals in granting approvals for the use/alteration of public land.

An accredited professional may only grant an approval for alteration of a public road (e.g. a new vehicle crossover) or use of a public road (e.g. outdoor dining area) with the **concurrence** of the council. Any other relevant authority under the Act (except an assessment panel) may only grant an approval after **consultation** with the council.

5.11 Land Division

The pathways for land division authorisations remain largely unchanged by the Act. However the following procedural changes are noted:

- Consents can be obtained in any order, and different elements of a development can be assessed separately, therefore land division consent will no longer need to be obtained before any other consent.
- The authority must assess a development for land division to ensure that:
 - o any relevant requirements set out in a **design standard** have been satisfied
 - o specific requirements set out in the Code have been satisfied.
- New off-set schemes allow for existing schemes/funds to be maintained (carparking fund, open space contribution, urban trees fund) and introduces new initiatives for multi-unit building contributions, while allowing other off-setting contribution schemes to be established under authorisation of the Minister.

WHAT'S NEW: DESIGN STANDARDS

The Commission may prepare design standards that relate to the public realm or infrastructure. A design standard may supplement the Code by specifying design principles, standards and guidance. A design standard may be linked to any spatial layer or location in the Code, or apply to an infrastructure delivery scheme or other scheme under the Act.



6. APPEALS

6.1 Applicant appeal rights

6.1.1 General rights of appeal

An applicant may appeal to the Environment, Resources & Development Court (the Court) against the following prescribed matters:

- any assessment, request, decision, direction or act of a relevant authority that is relevant to any aspect of the determination of the application
- a decision to refuse to grant the authorisation
- the imposition of conditions
- any other assessment, request, decision, direction or act of a relevant authority under the Act in relation to the authorisation (subject to exclusion by regulation).

However, the Act specifies that no right of appeal to the court exists against impact assessed developments.

6.1.2 Decision of Assessment Manager

In a case where an application is made to an assessment manager appointed by an assessment panel acting as a relevant authority, an applicant may also apply to the assessment panel for a review of a prescribed matter.

WHAT'S NEW: APPLICANT APPEALS

An application determined by an assessment manager (who has been appointed by an assessment panel) can be appealed to the assessment panel by the applicant.

6.1.3 Refusing to proceed with assessment of a restricted development

A decision of the Commission's delegate (SCAP) to refuse to proceed with an assessment of a restricted development is subject to review by the Commission itself. An application must be made within one month after the applicant receives notice of the decision to not proceed (unless the Commission allows an extension of time). No appeal to the Court lies against a decision of a delegate or the Commission.

6.1.4 Nature of development

A landowner or occupier of the land subject to development may apply to the Court for a review of the decision as to the nature of the development.

6.1.5 Section 234AA of the *Local Government Act 1999*

Where a development proposes an alteration of a road or requires a permit for business to use a public road, a person can appeal to the Court where a council unreasonably prevents or delays a development that requires section 221 or 222 consents or concurrences under the Local Government Act 1999 (e.g. for a new driveway crossover or alfresco dining area in a public road).



6.2 Third party appeal rights

6.2.1 Restricted development

An appeal against a decision on a 'restricted' development can be made to the Court by a third party within 15 business days after the date of the decision.

6.2.2 Nature of development

A person who can demonstrate an interest in a matter that is relevant to the determination of an application (being a landowner/occupier of adjacent land) may apply to the Court for a review of the decision as to the nature of the development.

6.3 Local heritage

The owner of any land constituting a place that has been designated in an amendment to the Planning and Design Code as a new place of local heritage value may appeal to the Court against the decision to make the designation. However, that right to appeal does not apply to existing local heritage designations under Development Plans that are transitioned into the Code.

WHAT'S NEW: THIRD PARTY APPEALS

Third party (representor) appeals only apply to restricted development. Third parties cannot appeal decisions with respect to performance assessed development.



7. BUILDING CONSENT

Any reform to Building Consent pathways has been considered in the context of supporting the effective operation of the Act, and the need to ensure building rules compliance across the State.

7.1 What's not changing?

In contrast to planning pathways, no fundamental reform is proposed to Building Consent pathways.

Under the Act, responsibility for undertaking the assessment of a development in respect of the Building Rules will continue to lie with a relevant authority under the Act.

The relevant authority will continue to be either a council for the area in which the proposed development is to be undertaken, or an accredited Building Certifier, who may draw on the assistance of other experts as necessary.

This implies that, in contrast to planning pathway reform, end responsibility for building rules assessment will continue to lie with either one council, or one building certifier, irrespective of the value or complexity of the development under consideration.

Building rules assessment will continue to be required against the building rules, comprising the National Construction Code (NCC) and any South Australian variations in place at the time of development approval.

Under the new Act it is expected that the large majority of building consents will continue to be provided via private building certifiers, particularly for class 2 to 9 buildings, as set out in the NCC.

WHAT'S NEW: CONSENTS IN ANY ORDER

If a proposed development requires more than one consent (i.e. Planning, Land Division and Building consents), the consents can be granted in any order.

While the standard pathway will remain unchanged, reform is proposed under the new accreditation scheme to allow building certifiers operating at levels 2 and 3 to directly provide building consent for developments they are accredited to provide consent for.

This represents a change from the current model where only registered Level 1 private certifiers – or those that have received mutual recognition – can provide building consent. Under current arrangements Level 2 and 3 certifiers can assist a Level 1 certifier but cannot provide consents.

The new accreditation scheme also proposes to support a new level 4 Building Inspector level to support increased level of inspections for class 1 and class 10 buildings. **See Figure 9** (page 55).

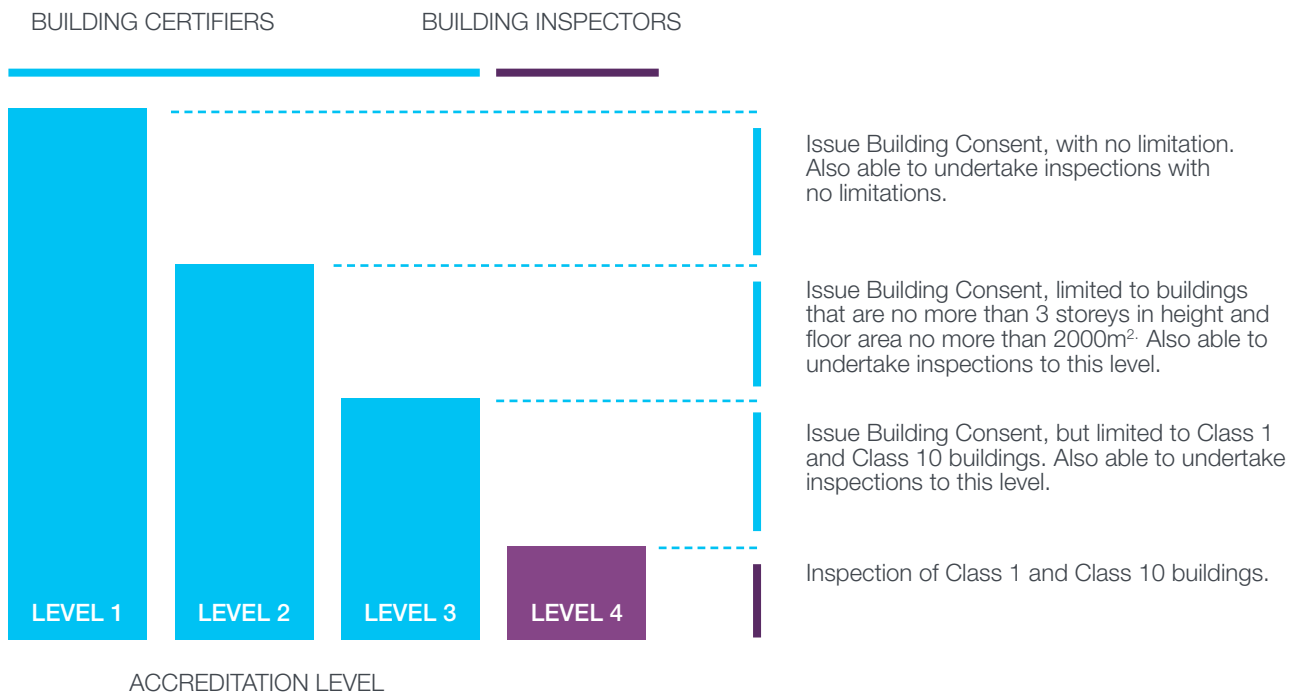


Figure 9. Levels of Building Certification.

7.2 What is under consideration?

While no fundamental reform is proposed to Building Consent pathways at this stage, consideration is being given to how to improve the undertaking of the Building Rules assessment function, to ensure high levels of compliance under the Act.

This review forms part of a separate 'Building Reform' program, which will examine how this key function is overseen, and what improvements

could be made to support increased compliance with the building rules, and ultimately, improved public trust in the delivery of the built environment.

The Department will consult on these issues separately, with the clear aim to ensure any building system reforms complement the planning reforms being delivered under the Act.

8. CROWN DEVELOPMENT AND ESSENTIAL INFRASTRUCTURE

If a State agency proposes to undertake development, or a person proposes to undertake the development of essential infrastructure of a prescribed class, they must lodge an application for approval with the Commission.

The Commission must give notice of the proposed development to the relevant council, who will have one month (4 weeks) to respond.

The Commission must also refer the application to any body prescribed by the regulations for comment and report.

WHAT'S NEW: CROWN DEVELOPMENT

If development to be undertaken by the State Agency is classified as 'accepted' or 'deemed-to-satisfy', the agency can choose to lodge a standard application for processing through the relevant authority.

8.1 Public notification

If an application is for a development that involves construction work where the development cost exceeds \$10 million (other than an application for a variation to an approved development that is deemed of a minor nature), the Commission must:

- by public notice, invite interested persons to make written submissions to it on the proposal within a period of at least 15 business days; and
- allow representors a reasonable opportunity to appear personally or by representative before the Commission to be heard in support of their submission; and
- give due consideration in its assessment of the application to any representors' submissions.

8.2 Environmental Impact Statement (EIS)

If the Minister directs that an EIS be prepared with respect to a development, the State agency must not undertake the development without the approval of the Minister. The development becomes subject to the procedures under the Act with respect to the preparation and consideration of an EIS (as if the development were classified as impact assessed development).





8.3 Determination

The Commission will prepare a report to the Minister on the application. The Minister may then approve or refuse the development. An approval may be given for the whole or part of a proposed development, and subject to such conditions as the Minister thinks fit. No appeal lies against the decision of the Minister.

8.4 Building certification

Approval from the Minister will be taken to be given subject to the condition that, before any building work is undertaken, the building work be certified by a building certifier as complying with the provisions of the building rules.

Key Questions: Crown Development and Essential Infrastructure

32. **What types of Crown Development should be exempt from requiring approval (similar to Schedule 14 under the current *Development Regulations 2008*)?**
33. **Are there any other forms of development/work that should be included in the definition of ‘essential infrastructure’?**

WHAT'S NEW: ESSENTIAL INFRASTRUCTURE

If a proposed development is consistent with a ‘standard infrastructure design’ (as declared by the Minister) and is to be undertaken within an ‘infrastructure reserve’ (land specified as suitable for infrastructure in the Planning and Design Code, or subject to a statutory easement) where that design is recognised as being permitted within that reserve—an accredited professional may (if qualified) act as a relevant authority.

Essential infrastructure means:

- infrastructure, equipment, structures, works and other facilities used in or in connection with the generation of electricity or other forms of energy, or the distribution or supply of electricity, gas or other forms of energy
- water infrastructure or sewerage infrastructure within the meaning of the Water Industry Act 2012
- transport networks or facilities (including roads, railways, busways, tramways, ports, wharves, jetties, airports and freight-handling facilities)
- causeways, bridges or culverts
- embankments, walls, channels, drains, drainage holes or other forms of works or earthworks
- testing or monitoring equipment
- coast protection works or facilities associated with sand replenishment
- communications networks
- health, education or community facilities
- police, justice or emergency services facilities
- other infrastructure, equipment, buildings, structures, works or facilities as prescribed by the regulations.



SUMMARY TABLE – ASSESSMENT PATHWAYS

Category of Development	Meaning	Assigned by	Relevant Authority (Planning)	Notification	Agency Referral	Assessment Tool	Appeal rights
Exempt	Development approval not required.	Regulations.	n/a	None.	None.	None.	n/a
Accepted	Planning consent not required.	Planning and Design Code or Regulations.	n/a	None.	None.	Planning - None Building - Building Rules (National Construction Code).	n/a
Code assessed – Deemed-to-satisfy	Planning consent must be granted.	Planning and Design Code.	Assessment panel, assessment manager or accredited professional as prescribed.	None.	None.	Planning and Design Code.	Relevant authority appeal of a deemed consent.
Code assessed – performance assessed	Planning assessment on merit.	Planning and Design Code.	Assessment panel, assessment manager or accredited professional as prescribed.	Notification required, unless a form of development exempted from notification by the Code. Notification of adjacent land owners/occupiers and members of the public by notice placed on the relevant land.	Only for certain development in specified locations (e.g. bushfire affected) or for specific land uses (activities of major environmental significance), as prescribed in the Regulations.	Planning and Design Code.	Applicant appeal of decision. Relevant authority appeal of a deemed consent.
Impact assessed – Restricted	Planning assessment on impact.	Planning and Design Code.	The Commission (or its delegate).	Notification required. Notification to adjacent land owners/occupiers, others affected to a significant degree, any other person of a prescribed class, and the public generally by notice placed on the relevant land.	Only for certain development in specified locations (e.g. bushfire affected) or for specific land uses (activities of major environmental significance), as prescribed in the Regulations.	Planning and Design Code (but not bound by the Code).	Applicant appeal of decision. Relevant authority appeal of a deemed consent. Third party appeal.
Impact assessed (not restricted)	Planning assessment on impact.	The Minister or Regulations.	The Minister (must receive assessment advice from the Commission).	Copies of the EIS published on the SA Planning Portal and available by public notice. The Minister may also require any other consultation to be undertaken. The Commission must make the Assessment Report available to a person who made a written submission and by public notice.	Regulations prescribe persons and bodies for referrals. The Minister may also require referral to other bodies or persons, as prescribed in the regulations.	Guidelines issued by the Commission (in accordance with Practice Direction and following consultation with prescribed bodies).	No appeal rights.
Crown development/ essential infrastructure	Development by State Agency.	The Act or Regulations.	The Commission (or its delegate).	Notification required by public notice if the development cost exceeds \$10 million.	As prescribed by Regulations.	Not specified.	No appeal rights.

SUMMARY OF KEY QUESTIONS

Relevant Authorities

1. Code assessed applications are assigned to an assessment panel, except where the regulations assign an assessment manager or accredited professional. What should be considered when assigning these relevant authorities?

Assessment Categories

2. Should the current scope of 'exempt' development be expanded to capture modern types of common domestic structures and expected works?
3. Should the current scope of 'building consent only' development be expanded to allow for more types of common development with minor planning impacts?
4. How should the scope of a 'minor variation' to deemed-to-satisfy development be defined?
5. Are there some elements of a project that should always be notified if the deemed-to-satisfy criteria are not met (e.g. buildings over height)? Are there other things that don't matter as much for the purposes of notification?
6. What types of performance assessed development should be assessed by an Assessment Panel?
7. What types of principles should be used when determining 'restricted' development types in the Planning and Design Code?
8. How should restricted development be assessed? What other considerations outside of the Code should be taken into account?
9. What scale of development and/or impact types would be suited to the impact assessment (not restricted) pathway?

Public Notification

10. Should accredited professionals/assessment managers have the capacity to determine publicly notified applications?
11. Who should be responsible for placing a notice on the subject land?
12. How would that person/body provide/record evidence of a notice being placed on the land throughout the specified notification period?
13. For how long should an application be on public notification (how long should a neighbour have to provide a submission)? Should a longer period apply for more complex applications?



Provision of Information

14. What type of information should be submitted with deemed-to-satisfy applications? Are the current requirements in Schedule 5 of the Development Regulations 2008 sufficient/too onerous?
15. Should relevant authorities (including accredited professionals) be allowed to dispense with the requirement to provide the mandatory information listed by the regulations/code/practice directions?
16. Should a referral agency or assessment panel be able to request additional information/amendment, separate to the one request of the relevant authority?
17. Should there be an opportunity to request further information on occasions where amendments to proposal plans raise more questions/assessment considerations?

Outline Consents

18. How long should an outline consent be operational?
19. When, where and for what kind of development would an outline consent be appropriate and beneficial?
20. What types of relevant authorities should be able to issue outline consent?

Referrals

21. What types of development referrals should the regulations allow applicants to request for deferral to a later stage in the assessment process?

Preliminary Advice

22. The Act stipulates that preliminary advice may be obtained from agencies. Should there also be a formal avenue for applicants to seek preliminary advice from the relevant authority?
23. Should there be a fee involved when applying for preliminary advice?

Decision Timeframes

24. How long should a relevant authority have to determine a development application for each of the new categories of development?

25. Are the current decision timeframes in the *Development Act 1993/Regulations 2008* appropriate?

Deemed Planning Consent

26. Should a deemed planning consent be applicable in cases where the timeframe is extended due to:

- a referral agency requesting additional information/amendment
- absence of any required public notification/referral
- any other special circumstances?

27. What types of standard conditions should apply to a deemed consent?

Conditions & Reserved Matters

28. What matters should be addressed by a practice direction on conditions?

29. What matters related to a development application should be able to be reserved on application of an applicant?

Variations

30. Should the scope for 'minor variations' - where a new variation application is not required - be kept in the new planning system?

31. Should a fee be required to process 'minor variations'?

Crown Development and Essential Infrastructure

32. What types of Crown Development should be exempt from requiring approval (similar to Schedule 14 under the current Development Regulations 2008)?

33. Are there any other forms of development/work that should be included in the definition of 'essential infrastructure'?



GLOSSARY – KEY TERMS OF DIFFERENCE

Common Terminology	Development Act 1993	Planning, Development and Infrastructure Act 2016
Adjacent land	Adjacent land in relation to other land, means land— (a) that abuts on the other land; or (b) that is no more than 60 metres from the other land and is directly separated from the other land only by— (i) a road, street, footpath, railway or thoroughfare; or (ii) a watercourse; or (iii) a reserve or other similar open space.	Adjacent land in relation to other land, means land that is no more than 60 metres from the other land.
Assessment Panel	Development Assessment Panel.	Council Assessment Panel; or State Commission Assessment Panel; or Joint Planning Board Assessment Panel; or Regional Assessment Panel; or Local Assessment Panel; or Combined Assessment Panel.
Building Rules	The Building Rules means any codes or regulations under the Act (or adopted under the Act) that regulate the performance, standard or form of building work and includes any standard or document adopted by or under those codes or regulations, or referred to in those codes or regulations.	Building Rules means— (a) the Building Code, as it applies under the Act; and (b) any regulations under the Act that regulate the performance, standard or form of building work; and (c) without limiting paragraph (b), any regulations that relate to designated safety features; and (d) the Ministerial building standards published by the Minister under the Act.
Category of development	Refers to public notification categories – 1, 2 or 3.	Refers to application type/pathway (formerly complying, merit or non-complying - now accepted, code assessed or impact assessed). Public notification is no longer assigned to categories – notification is simply required or not.
The Code	Residential Code (for complying residential development under Item 2B in Schedule 4 of the Development Regulations 2008).	Planning and Design Code (constituting the state-wide policy for planning assessment).



Common Terminology	Development Act 1993	Planning, Development and Infrastructure Act 2016
The Commission	Development Assessment Commission (DAC) - State planning assessment body.	State Planning Commission - planning assessment role delegated to the State Commission Assessment Panel (SCAP).
Council	Council means a municipal or district council.	Council means a council constituted under the Local Government Act 1999.
Design Standards	[no definition]	Design standards may be prepared by the Commission which relate to the public realm or infrastructure for the purposes of the Act. A design standard may supplement the Planning and Design Code by specifying design principles, design standards for the public realm or infrastructure, and providing design guidance with respect to any relevant matter.
Development	<p>In relation to a local heritage place—the demolition, removal, conversion, alteration or external painting of, or addition to, the place, or any other work (not including internal painting but including, in the case of a tree, any tree-damaging activity) that could materially affect the heritage value of the place.</p> <p>The external painting of a building within an area prescribed by the regulations.</p> <p>An act or activity in relation to land (other than an act or activity that constitutes the continuation of an existing use of land) declared by regulation to constitute development, (including development on or under water) but does not include an act or activity that is excluded by regulation.</p>	<p>In relation to a local heritage place—any work (including painting) that could materially affect the heritage value of the place (including, in the case of a tree, any tree-damaging activity) specified by the Planning and Design Code for the purposes of this paragraph (whether in relation to local heritage places generally or in relation to the particular local heritage place.)</p> <p>The external painting of a building within an area specified by the Planning and Design Code</p> <p>An act or activity in relation to land declared by or under the regulations to constitute development, (including development on or under water) but does not include an act or activity that is declared by or under the regulations not to constitute development for the purposes of the Act.</p>

Common Terminology	Development Act 1993	Planning, Development and Infrastructure Act 2016
Planning Rules	[no definition]	Planning Rules means— (a) the Planning and Design Code; and (b) the design standards that apply under Part 5 Division 2 Subdivision 4; and (c) any other instrument prescribed by the regulations for the purposes of this definition.
Private certifier	Private certifier means a person who may act as a private certifier pursuant to Part 12 of the Act.	No definition – role of private certifiers replaced by accredited professionals under a different scheme
Statutory instrument	[no definition]	Statutory instrument means— (a) a state planning policy; or (b) a regional plan; or (c) the Planning and Design Code; or (d) a design standard; or (e) a practice direction, guideline, standard or specification published by the Commission under the Act; or (f) any other instrument prescribed by the regulations for the purposes of the definition.



HAVE YOUR SAY

The Department of Planning Transport and Infrastructure is committed to genuine collaboration with the community in the development of South Australia's new planning system.

Interested parties are invited to provide feedback on the technical discussion paper Assessment Pathways – How will they work?

Submissions can be lodged via

- SA Planning Portal: www.saplanningportal.sa.gov.au/have_your_say
- YourSAy website: www.yoursay.sa.gov.au
- Email: DPTI.PlanningEngagement@sa.gov.au
- Post: **PO Box 1815, Adelaide SA 5001**

For details about engagement activities and how to get involved, visit www.saplanningportal.sa.gov.au



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Department of Planning,
Transport and Infrastructure