

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

### Introduction

Section 42 of the Act allows the Commission to issue practice directions for the purposes of the Act.

Generally, practice directions specify procedural requirements or steps in connection with a matter arising under the Act. In certain cases, the Act requires a particular matter to be addressed or dealt with by a practice direction.

This practice direction is made by the Commission to support the operation of section 120 of the Act regarding the circumstances in which an outline consent may be granted.

The relevant sections of the Act as they relate to this practice direction are outlined below:

#### **120 – Outline Consent**

- (1) *Subject to this section, a relevant authority may, on application, grant a consent in the nature of an outline consent.*
- (2) *An outline consent may be granted in circumstances specified by a practice direction.*
- (3) *If an outline consent is granted and a subsequent application is made with respect to the same development (subject to any variations allowed by a practice direction), a relevant authority*
  - (a) *must grant any consent contemplated by the outline consent; and*
  - (b) *must not impose a requirement that is inconsistent with the outline consent.*
- (4) *However, if—*
  - (a) *there has been a material change to 1 or more elements of the development; or*
  - (b) *a new or additional matter requires assessment (subject to any variations allowed by a practice direction),**then—*
  - (c) *further notification and consultation may be required in accordance with any provision made by a practice direction; and*
  - (d) *subsection (3) will not apply to the extent that a new assessment must be made in the circumstances.*
- (5) *An outline consent remains operative for a period specified by a practice direction.*

An application for outline consent is an application to a relevant authority under Part 7 of the Act, meaning that the relevant provisions of Part 7 of the Act (and associated Regulations) apply for the purpose of an application for outline consent.

NOTE: Some procedural steps in the assessment process of an outline consent application may occur outside of the SA planning portal until such time as the SA planning portal facilitates the assessment of an application for outline consent.

## Practice Direction

### Part 1 – Preliminary

#### 1 – Citation

This practice direction may be cited as the State Planning Commission Practice Direction 18 Outline Consent 2023.

#### 2 – Commencement of operation

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

#### 3 – Object of practice direction and related matters

- (1) The object of this practice direction is to:
  - (a) outline the circumstances under which an outline consent may be granted; and
  - (b) clarify procedural matters; and
  - (c) specify other matters associated with outline consents; and
  - (d) specify the operative period for an outline consent.
- (2) An outline consent may only contemplate the granting of a subsequent planning consent.
- (3) The Commission must be the relevant authority for the purposes of granting outline consent.

#### 4 – Interpretation

In this practice direction, unless the contrary intention appears:

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

**Commission** means the State Planning Commission.

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

**Subsequent application** means a future application for planning consent, following the granting of outline consent, which is consistent with and relates to the development contemplated in the outline consent.

Note: Section 12 of the *Legislation Interpretation Act 2021* provides that an expression used in an instrument made under an Act has, unless the contrary intention appears, the same meaning as in the Act under which the instrument was made.

## Part 2 – Outline consent

### 5 – Circumstances in which outline consent may be granted

- (1) Subject to this practice direction, an application for outline consent may be granted in the circumstances where:
- (a) if the aspects of development proposed in the outline consent formed part of an application for planning consent the proposed development would be assessed as ‘Code Assessed Development – Performance Assessed Development’<sup>1</sup>; and
  - (b) in relation to that development—
    - (i) the applicant has received advice from a council or joint planning board that if the application were to be for planning consent, the council or joint planning board would request the Minister to give notice under section 94(1)(g) of the Act and the Minister has, acting at the request of that council or joint planning board, declared, by notice served on the proponent, that the Minister desires the Commission to act as the relevant authority in relation to the proposed development; or
    - (ii) the Minister has, by notice served on the proponent, called the proposed development in for assessment by the Commission as the relevant authority on a ground set out in section 94(2); or
    - (iii) the Commission would be the relevant authority under section 94(1)(a)(ii) of the Act and the following provisions of Schedule 6 of the Regulations:
      - A. Clause 1 – Areas of all councils – Subclauses (1)(a) and (1)(b) (*South Australian Housing Trust and Urban Renewal*)
      - B. Clause 3 – City of Adelaide – developments over \$10 million.
      - C. Clause 4 – Inner Metropolitan Area – buildings exceeding four storeys.
      - D. Clause 4A – Morphettville and Camden Park – building exceeding four storeys.
      - E. Clause 4B – Corporation of Town of Walkerville – buildings exceeding four storeys.
      - F. Clause 5 – City of Port Adelaide Enfield – developments over \$3 million in identified area.
      - G. Clause 8 – City of Charles Sturt – developments over \$3 million in identified area.
- (2) An application for outline consent will lapse if:
- (a) the application relies on the operation of subparagraph (i) or (ii) of subclause (1)(b); and
  - (b) the Minister has not served a notice on the proponent under the relevant subparagraph within 30 days after the application is made.

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<sup>1</sup> Section 107(1) of the Act provides for ‘Performance Assessed Development’ being that where proposed development is to be assessed as Code Assessed Development and the development cannot be assessed, or fully assessed, as deemed-to-satisfy development, the development will be assessed on its merits against the Planning and Design Code.

- (3) Where subclause (1) applies and after an assessment of the application against the relevant provisions of the Planning Rules, an outline consent may be granted for an application involving any of the following aspects of the development in respect of planning consent (and the outline consent will be limited to these aspects):
- (a) *Building height, bulk and scale*—the height (including number of storeys), width and length of each building proposed within the development in relation to its surroundings.
  - (b) *Building envelope*—the way in which buildings, movement (pedestrian, vehicle and cycling) and open spaces within the development are situated in relation to each other, to retained structures, and to buildings and spaces outside the development.
  - (c) *Access*—details regarding the accessibility to and within the site (for vehicles, bicycles, and pedestrians) in terms of the positioning and circulation and how these fit into the surrounding access network.
  - (d) *Land use*—the use of the land (this can include land uses such as affordable housing, community infrastructure, commercial or retail uses).
  - (e) *Density*—the minimum and maximum density with respect to site area; dwelling numbers; or dwellings per hectare.
  - (f) *Open space*—the location and quantum of land allocated for open space or recreation
  - (g) *Any other aspect*, agreed by an applicant and the relevant authority, that is necessary to determine the application for outline consent (such as tree damaging activity, or demolition of a heritage place).
- (4) For the purposes of determining whether an application for outline consent must be publicly notified and/or referred to a body prescribed in Schedule 9 of the Regulations (and without limiting any other requirement for the provision of information), an application for outline consent must be accompanied by the following information:
- (a) the upper and lower limit for the height (including number of storeys), width and length of all proposed buildings;
  - (b) the approximate location of buildings, movement (pedestrian, vehicle and cycling) and open spaces included in the development proposed;
  - (c) an indication of the area or areas where access points to the development will be situated;
  - (d) the proposed land use for each element of the development.
- (5) If there is any ambiguity as to whether the circumstances specified in subclause (1) are met, the applicant must declare in writing whether the subsequent application will incorporate certain characteristics to the satisfaction of the relevant authority to allow it to determine the category of the subsequent application (and assessment of the outline consent may proceed on that basis).
- (6) If a relevant authority is unable to determine the application for outline consent separately from a matter that will require planning consent, it may refuse the application for outline consent and advise the applicant that an application for planning consent should be lodged instead.

- (7) An outline consent must not be granted if one or more of the aspects referred to in subclause (3), or the application as a whole, is, in the opinion of the relevant authority, seriously at variance with the Planning and Design Code (disregarding minor variations).

## **6 – Procedural matters (outline consent application)**

- (1) An application for outline consent will be assessed against the relevant provisions of the Planning Rules that would apply as if the application for an outline consent were an application for planning consent.
- (2) If a subsequent application would be required to be publicly notified under section 107(3) of the Act (in relation to any aspect being assessed under clause 5(3)), then the application for outline consent must be publicly notified in the same manner (except that any process required to occur via the SA planning portal by any relevant practice direction may occur via an alternate mechanism where it is unable to occur via the SA planning portal).
- (3) If a subsequent application would be required to be referred to a prescribed body under section 122 of the Act (in relation to any aspect being assessed under clause 5(3)), the application for outline consent must be referred in the same manner.
- (4) If there is any ambiguity as to whether public notification or referral of an application for outline consent is required, the applicant must provide such additional information as is requested by the relevant authority (and this may include details on what the subsequent application will comprise).

## **7 – Procedural matters (subsequent application)**

- (1) For the purposes of section 107(3)(a) of the Act, a subsequent application must be publicly notified where:
  - (a) the application for outline consent was publicly notified pursuant to clause 6(2) of this Practice Direction; or
  - (b) there has been a material change, in the opinion of the relevant authority, to one or more elements of the development; or
  - (c) there are one or more new or additional matters or elements that require assessment.
- (2) Where an application for outline consent was referred to a prescribed body pursuant to clause 6(3), a subsequent application will also require referral pursuant to section 122(1) of the Act where one or more of the following apply:
  - (a) there has been a material change, in the opinion of the relevant authority, to one or more elements of the development; or
  - (b) there are one or more new or additional matters (including new or additional information regarding design and appearance) or elements that require assessment.
- (3) For the avoidance of doubt, if an application for outline consent was not publicly notified or referred, a subsequent application may be publicly notified or referred if required under section 107 or 122 of the Act.

## **8 – Operative period**

- (1) Subject to subclause (2), an outline consent will remain operative for a period of three years from the date consent is granted by the relevant authority unless a subsequent application is lodged within that period, in which case it will lapse five years from the date the outline consent is granted.
- (2) The relevant authority who granted an outline consent may, on its own initiative or on the application of a person who has the benefit of the outline consent, extend the operative period of the outline consent.

### **Issued by the State Planning Commission on 22 February 2024.**

Note: This practice direction commences operation in accordance with 'Part 2 – Commencement of operation'.

### **Versions**

Version 1: Commenced operation on 22 February 2024