

This practice direction is issued by the State Planning Commission (the Commission) under section 42 of the *Planning, Development and Infrastructure Act 2016* for the purposes of section 144 of the Act to require certain councils to carry out inspections of certain developments in their respective areas.

### Introduction

Section 144 of the Act requires the Commission to issue a practice direction that requires councils to carry out inspections of development in their respective areas.

Section 156 of the Act provides that the Commission may also issue a practice direction that requires councils to carry out inspections of swimming pools and buildings to ascertain compliance with that section relating to designated safety features. A separate practice direction has been issued in respect of swimming pool safety features.

In issuing this direction, the Commission has taken into account the matters set out in section 144(3) of the Act. These are:

- (a) the financial and other resources of councils;
- (b) the impact that a failure to inspect a certain number of developments over a period of time may have on local communities;
- (c) the various sizes of the areas of councils and differences in population;
- (d) the amount of development undertaken in the various areas of the State;
- (e) the type of development that predominates in the various areas of the State;
- (f) in relation to building work, building conditions in the various areas of the State; and
- (g) the public interest in ensuring that development is undertaken in accordance with the requirements of this Act.

While the Act envisages that the Commission may require councils to carry out inspections relating to 'development', as that term is defined in the Act, more broadly, this practice direction is limited to mandating inspections directed towards securing the objects stated in clause 3 of Part 1 of this practice direction.

The public interest in protecting public safety and in maintaining confidence and integrity in the development control system within the State has been balanced against other matters outlined in s 144(3).

The Commission has sought to identify the risks posed by certain building types. This practice direction reflects the Commission's view that the risks associated with certain buildings, particularly in relation to safety, including, for example fire protection and other safety features, should be treated equally irrespective of where they are constructed in the State and that this approach reflects community expectations.

Associated with the above, while this practice direction mandates certain inspections, councils should continue to appropriately address broader compliance issues, whether these are detected during an inspection that is required under this practice direction or otherwise.

This may include inspections related to planning or building rules consent matters, which councils may choose to carry out through a separate council policy or on an as-needs basis.

## Practice direction

### Part 1 – Preliminary

#### 1 – Citation

This practice direction may be cited as the *State Planning Commission Practice Direction (Council Inspections) 2020*.

#### 2 – Commencement of operation

This practice direction will commence operation in each council area on the day on which, pursuant to Schedule 8, clause 9(7) of the Act, the Minister for Planning, by notice in the Gazette, revokes the Development Plan created under the *Development Act 1993* as it is relevant to the particular council area.

#### 3 – Objects of practice direction

- (1) The objects of this practice direction are to, in relation to areas within a council, require councils to carry out inspections so as to:
  - (a) provide for occupant and public safety; and
  - (b) maintain confidence and integrity in the development control system.
- (2) Councils must have regard to the objects in sub-clause 3(1) of Part 1 in making determinations under this practice direction.
- (3) Without limiting sub-clause 3(2) of Part 1, councils must have regard to the objects when determining:
  - (a) the timing of inspections;
  - (b) the elements and buildings to be inspected; and
  - (c) whether to carry out additional inspections.

#### 4 – Interpretation

- (1) In this practice direction, unless the contrary intention appears –

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

**Accredited Professionals Regulations** means the Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019;

**authorised officer** has the same meaning as within section 3(1) of the Act;

**Building Code** has the same meaning as within section 3(1) of the Act;

**Building Rules** has the same meaning as within section 3(1) of the Act;

**building work** has the same meaning as within section 3(1) of the Act;

*Note: 'building work' includes any work or activity that results in a change to the classification of a building under regulation 3E of the Regulations.*

**business day** has the same meaning as within section 3(1) of the Act;

**Chief Executive** has the same meaning as within section 3(1) of the Act;

**Commission** means the State Planning Commission established under Part 3 Division 1 of the Act;

**construct** has the same meaning as within section 3(1) of the Act, and **construction** has a corresponding meaning;

**council** has the same meaning as within section 3(1) of the Act;

**designated building product** has the same meaning as within regulation 3(1) of the Regulations;

**farm buildings and farm sheds** have the same meaning as within the Building Rules;

**fire authority** has the same meaning as within section 3(1) of the Act;

**floor area** has the same meaning as within the Building Rules;

**Metropolitan Adelaide** means Metropolitan Adelaide as defined by a plan deposited in the General Registry Office by the Minister for the purposes of this definition and identified by the Minister by notice in the Gazette;

**performance solution** means a performance solution under the Building Code;

**private bushfire shelter** has the same meaning as within regulation 3(1) of the Regulations; and

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

*Note: The terms above have been included merely for ease of reference. Section 14 of the Acts Interpretation Act 1915 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 – Inspections

### 1 – Application

- (1) Upon commencement this practice direction applies to the councils.
- (2) This practice direction does not apply to development not within a council area.

*Note: Practice Direction 8 - Councils Swimming Pool Inspections has been issued detailing inspection requirements for swimming pools and designated features for swimming pools.*

### 2 – Mandatory inspections

- (1) A council must comply with the requirements set out at **Appendix 1** relating to:
  - (a) the kinds of development which require inspection;
  - (b) the proportion of developments which require inspection in each council area;
  - (c) the timing of any inspection required in relation to each building; and
  - (d) the number of inspections required in relation to each building,**(mandatory inspection requirements).**
- (2) A council must take all reasonable steps to ensure that each inspection carried out under this practice direction includes an inspection and assessment of the following elements **(elements)**, as may be present at the time of inspection:
  - (a) primary structural elements;
  - (b) structural framing and roof trusses;
  - (c) wet areas and waterproofing;
  - (d) barriers to prevent falls;
  - (e) cladding;
  - (f) egress provisions;
  - (g) bushfire protection systems;
  - (h) passive and active fire safety elements;
  - (i) private bushfire shelters; and
  - (j) performance solutions.
- (3) In this clause, 'passive and active fire safety elements' includes, but is not limited to, the following elements, as may be applicable in the circumstances:
  - (a) fire rated construction;
  - (b) fire safety elements, including, but not limited to, smoke alarms; and
  - (c) fire protection systems, including, but not limited to, bushfire protection systems.

### 3 – Additional inspections

- (1) Clause 2 of Part 2 is not an exhaustive statement as to when a council should carry out an inspection.

- (2) A council should consider carrying out an inspection in addition to any specified in clause 2 of Part 2 (**additional inspection**) if it has information to indicate that the circumstances warrant it, having regard to the objects of this practice direction.
- (3) Circumstances that may warrant an additional inspection, having regard to the objects of this practice direction, include building work in relation to, but not limited to:
  - (a) a building intended for use or occupation by large numbers of people, particularly simultaneously;
  - (b) a building intended for use or occupation by vulnerable persons or persons with a disability;
  - (c) a building in respect of which the council has been made aware of a complaint or regulatory issue, whether directly or indirectly, relating to the building or any person involved in the building work;
  - (d) a building with energy efficiency requirements;
  - (e) a building constructed by a person who is not a licensed building work contractor under the *Building Work Contractors Act 1995*;
  - (f) a building subject to local environmental conditions in respect of which additional measures are required to protect the environment, the building and its occupants or users; or
  - (g) a building incorporating construction properties or products, including but not limited to fire-rated construction, fire safety elements or designated building products.

#### **4 – Inspections generally**

- (1) The proportion of developments in each council area to be inspected in accordance with the mandatory inspection requirements above and the tables at **Appendix 1** are to be calculated each year commencing 1 July and ending 30 June of the following year (**relevant reporting year**).
- (2) Where a council elects to carry out an inspection in accordance with the mandatory inspection requirements on completion of construction the inspection must be carried out:
  - (a) within 2 business days of receipt of the completed Statement of Compliance in respect of development within Metropolitan Adelaide; and
  - (b) within 3 business days of receipt of the completed Statement of Compliance for development outside Metropolitan Adelaide.
- (3) Building work listed in Schedule 7 of the Regulations is not subject to the mandatory inspection requirements, however, councils should consider if an additional inspection may be appropriate.

### **Part 3 – Authorised officers**

#### **1 – General requirements**

- (1) Only authorised officers appointed by a council may carry out inspections for the purpose of this practice direction.

- (2) A council must ensure that an inspection under this practice direction and subsequent assessment of each of the applicable elements in sub-clause 2(2) of Part 2 is carried out by a person who has the appropriate qualifications, skills, knowledge and experience to carry out an inspection assigned to that officer under this practice direction.
- (3) A person with the qualifications prescribed by r 112(1) of the Regulations may carry out an inspection under this practice direction. However, an assessment of the adequacy of applicable elements may require a person to hold particular knowledge, skills and qualifications and should be taken into account when applying this practice direction.

## **Part 4 – Other matters**

### **1 – Record keeping**

- (1) In relation to developments that received final development approval under the Act, councils must keep records of inspections carried out in accordance with this practice direction, and keep those records in a register that is available for inspection by the Commission upon 5 business days' notice.
- (2) In relation to developments that received final development approval under the *Development Act 1993*, councils must ensure that records of these inspections are available for inspection within a timeframe determined by the Commission.
- (3) Records of inspections should include, without limitation, the following details: date and time of an inspection, type of inspection, who undertook the inspection, elements inspected, breaches, issues, or faults found, rectification required, requirements for re-inspections (including timing) and enforcement action, as is appropriate in the circumstances.
- (4) This clause does not derogate from any authorisation to dispose of records under the *State Records Act 1997*.

### **2 – Counting inspections**

- (1) The first inspection of a building under the mandatory inspection requirements is to be counted as one inspection.
- (2) Where a building is inspected at a particular stage, and any issue is detected requiring further inspection, any further inspection related to the particular issue is to be counted as part of the prior inspection related to that issue.
- (3) Except as provided by sub-clause 2(2) of Part 4, an inspection of a building at a later stage is to be counted as a separate inspection, even if the building was inspected at an earlier stage.

### **3 –Review**

- (1) This policy will be reviewed after two years of operation or at an earlier time if appropriate.

## **Versions**

**Version 2    25 March 2021**

Version 1    12 March 2020

## Appendix 1 – Mandatory Inspection Requirements

**Table 1. Class 1 buildings**

The inspection requirements in Table 1 apply to building work in relation to a class 1 building under the Building Rules.

Timing of inspection	Minimum number of inspections for each development	Proportion of developments in council area to be inspected
<b>During construction or on completion</b>  An inspection may be carried out at any time during construction or on completion.	At least one inspection of each development.	Minimum 66% of building work commenced in the relevant reporting year.

**Table 2. Farm buildings and farm sheds**

The inspection requirements in Table 2 apply to building work in relation to a farm building or a farm shed with a floor area of 500m<sup>2</sup> or greater, under the Building Rules.

Timing of inspection	Minimum number of inspections for each development	Proportion of developments in council area to be inspected
<b>During construction or on completion</b>  An inspection may be carried out at any time during construction or on completion.	At least one inspection of each development.	Minimum 50% of building work commenced in the relevant reporting year.



**Table 3. Class 2-9 buildings**

The inspection requirements in Table 3 apply to building work in relation to a class 2 to 9 buildings inclusive (other than a farm building or a farm shed) under the Building Rules.

Timing of inspections	Minimum number of inspections for each development	Proportion of developments in council area to be inspected
<b>During construction or on completion</b>  An inspection may be carried out at any time during construction or on completion.	At least one inspection of development.	Minimum 90% of building work commenced in the relevant reporting year.