Development Act 1993

GUIDE TO DEVELOPMENT ASSESSMENT

An Integrated Planning and Development Assessment System for South Australia

Planning SA

Government of South Australia

GUIDE TO DEVELOPMENT ASSESSMENT

An Integrated Planning and Development Assessment System for South Australia

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GUIDE TO DEVELOPMENT ASSESSMENT

A significant feature of the integrated planning and development system applying to South Australia is that it establishes a strong framework, through the Development Act and the Regulations under the Development Act 1993, for the ongoing integration of various pieces of legislation relating to development assessment. This process of integration has as one of its principal aims the achievement of a ‘one stop shop’ development assessment procedure for its users.

A consequence of this integration is the need for coordination and cooperation within the organisational structures of decision making bodies, the multi–skilling of the professionals working with the legislation (especially in the public sector) and the operation of a single court to deal primarily with appeals and enforcement in the development and environmental protection areas.

This guide is oriented towards the practitioners of the development assessment procedures in the public and private sectors.

REQUIREMENTS FOR A DEVELOPMENT APPLICATION

THE RELEVANT AUTHORITY

Sections 4 and 34

The term ‘relevant authority’ applies to the body responsible for making an assessment of and decision on a development application. This may relate to the Development Plan and/or the Building Rules or to land division issues. The assessment and decision will be undertaken in accordance with the provisions of the Development Act and the Regulations. The term relevant authority can refer to the Development Assessment Commission a Council or a regional development assessment panel. The State Heritage Authority can also be a relevant authority but only in respect of enforcement procedures for breaches of the Act, in accordance with Part 11 of the Act. It does not refer to the Governor or a Minister.

WHAT IS DEVELOPMENT?

Section 4

One of the primary functions of the Development Act is to regulate development in order to:

- enhance the conservation, use, and management of land and buildings
- enhance the amenity of buildings
- provide for the health and safety of people who use buildings
- protect the environment
- ensure efficient and uniform technical requirements for building
- advance the public interest.

Development is defined in the Act as:

- the construction, demolition or removal of a building or the making of any excavation or filling for, or incidental to, the construction, demolition or removal of a building
- a change in the use of land
- the division of an allotment
- the construction or alteration (not by the Crown, a Council or other public authority) of a road, street or thoroughfare (including excavation or other preliminary or associated works)
- in relation to a State Heritage Place – the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work that could materially affect the heritage value of the place

- in relation to a local heritage place – the demolition, removal, conversion, alteration of, or addition to, the place, or any other work (except painting) that could materially affect the heritage value of the place
- tree damaging Activity in relation to a significant tree
- prescribed mining operations on land
- any other Act or Activity in relation to land (other than an Act or Activity that constitutes the continuation of an existing use of land) as listed in Schedule 2 of the Regulations.

Acts and Activities excluded from the definition of development are set out in Schedule 3 of the Regulations. Regulation 7(3) states that the exemptions from the definition of development set out in Schedule 3 do not apply to State Heritage Places.

DEVELOPMENT APPROVAL AND CONSENT

Development approval

Section 32 of the Act states that any Acts or Activities defined as development can be undertaken with a development approval. A development approval could be made up of one or more of six consents. In this regard, the required number of consents depends on the nature and kind of development proposal. When all necessary consents have been issued, the relevant authority can issue a development approval to the applicant.

Types of consent

Section 33 of the Development Act describes the types of consent that may need to be obtained for development approval. They are:

(1) a provisional development plan (PDP) consent

(2) a provisional building rules (PBR) consent

(3) a consent in relation to the division of land, other than by strata plan or community title. This includes the satisfaction of the requirements for the provision of water supply and sewerage services, adequate open space, and adequate easements and reserves

(4) a consent in relation to the division of land by strata plan or community title including the requirements for the payment of a cash contribution to the Planning and Development Fund being satisfied, that any building or structures on the land comply with the building rules and each unit or lot to be created being appropriate for separate occupation

(5) a consent in relation to the encroachment of a building over a public place

(6) a consent in relation to any other prescribed matter.

Provisional Development Plan consent

All forms of development (including strata plans and community titles) require a provisional development plan (PDP) consent. Each proposal is assessed by the relevant authority with regard to its conformity and consistency with the provisions of the relevant Development Plan. This Plan sets out provisions dealing with the design and location of development and includes matters such as zoning and design criteria. It should be noted that division of land under the Community Titles and Strata Legislation is subject to the policies applying to land division in Development Plans, and accordingly Strata or Community Title division cannot be used as a mechanism to facilitate land division contrary to Development Plan policy.

Provisional Building Rules consent

A provisional building rules (PBR) consent is applicable to all development where building work is involved unless exempted by the Regulations. Each proposal is assessed with regard to its conformity with the technical requirements of the Building Rules by either the relevant authority or a private certifier.

The Building Code of Australia (BCA) and the South Australian Housing Code are called up by Regulation 4 as part of the Building Rules. In general, the Building Rules cover structural matters, fire protection, safety of occupants, health and amenity and equitable access. Once the technical requirements of the Building Rules have been satisfied, building rules consent can be issued.

Staged consent

An applicant can choose to obtain each of the required consents sequentially, under separate applications. This approach to the assessment system is called a ‘staged consent’. It may be influenced by two major factors:

- the unwillingness to pay for the preparation of detailed building plans and specifications until the application has been assessed in relation to the Development Plan
- the possibility of appeal proceedings in relation to the decision on the PDP consent.

The alternative to a staged consent is an application for a development approval in which all of the necessary consents are sought in the one application. The applicant can choose whichever process he or she prefers.

The granting of consent does not enable a development to be physically undertaken. This can only happen when the applicant receives a development approval from the relevant authority.

Consent signifies a proposed development has been assessed in relation to the Development Plan, the Building Rules or the other consent matters and has been subsequently supported by the relevant authority in respect of each.

A proposal for development will usually require more than one consent to be obtained to enable the issue of a development approval by a relevant authority.

DEVELOPMENT APPLICATION FORM

Application form

The applicant must apply for development approval (which may include a land division certificate) or staged consent using the standard development application form (see figure 1). Development application forms are available from all Councils and the Development Assessment Commission (DAC).

Filling in the development application form

The applicant should fill in all relevant parts of the development application form. If there is any doubt about the information required on the form, assistance can be obtained from Council officers (and officers of Planning SA in the case of applications involving land division).

If the applicant is not the owner then the owner's name and address must be written in the space provided. However, the owner is not required to sign the form if he or she is not the applicant.

LODGING APPLICATIONS

Where to lodge a development application - Regulation 15

All applications for development other than land division are to be made to the Council in the area where the development is to be located. Applications on land outside of Council areas must be lodged with the DAC. All applications involving land division (whether wholly or in part) must also be lodged with DAC. This includes land division into normal allotments, strata allotments or community titles.

Systems are now in place for lodgment of land division applications by mail, in person or through electronic means.

This centralised arrangement for the receipt of applications involving land division has several advantages:

- it enables DAC to coordinate the consultation on applications with Government agencies
- it enables DAC to place all land division plans on a computer mapping service to minimise delays in the decision making process and in the issue of titles.
- it enables Planning SA to monitor the level of allotment creation across the State and thereby allows the Government to maintain land supply and efficiently provide infrastructure.

Where an application is lodged with a Council (not being a land division) and DAC is the relevant authority for that proposed development, the Council must forward the application to DAC.

Figure 1

DEVELOPMENT APPLICATION FORM

Please use BLOCK LETTERS and Black or Blue ink so that photocopies can be made of your application.

COUNCIL: _____

APPLICANT: _____

Postal Address: _____

_____

OWNER: _____

Postal Address: _____

_____

BUILDER: _____

Postal Address: _____

_____ Licence No: _____

CONTACT PERSON FOR FURTHER INFORMATION

Name: _____

Telephone: _____(work)_____(Ah)

Fax: _____(work)_____(Ah)

EXISTING USE:

_____

FOR OFFICE USE

Development No: _____

Previous Development No: _____

Assessment No: _____

☐ Complying	Application forwarded to DA
☐ Non complying	Commission / Council on:
☐ Notification Cat 2	/ /
☐ Notification Cat 3	Decision: _____
☐ Referrals / Concurrences	Type: _____
☐ DA Commission	Date: / /

	Decision required	Fees	Receipt No	Date
Planning:				
Building:				
Land Division:				
Additional:				
Development Approval:				

DESCRIPTION OF PROPOSED DEVELOPMENT: _____

LOCATION OF PROPOSED DEVELOPMENT:

House No: _____ Lot No: _____ Street: _____ Town / Suburb: _____

Section No (full / part): _____ Hundred: _____ Volume: _____ Folio: _____

Section No (full / part): _____ Hundred: _____ Volume: _____ Folio: _____

LAND DIVISION:

Site Area (m^2) _____ Reserve Area(m^2) _____ No of existing allotments: _____

Number of additional allotments (excluding road and reserve): _____ Lease: **YES** ☐ **NO** ☐

BUILDING RULES CLASSIFICATION SOUGHT: _____ Present classification: _____

If Class 5, 6, 7, 8 or 9 classification is sought, state the proposed number of employees: Male: _____ Female: _____

If Class 9a classification is sought, state the number of persons for whom accommodation is provided: _____

If Class 9b classification is sought, state the proposed number of occupants of the various spaces at the premises: _____

DOES EITHER SCHEDULE 21 OR 22 OF THE DEVELOPMENT REGULATIONS1993 APPLY? **YES** ☐ **NO** ☐

HAS THE CONSTRUCTION INDUSTRY TRAINING FUND ACT 1993 LEVY BEEN PAID ? **YES** ☐ **NO** ☐

DEVELOPMENT COST (do not include any fit - out costs):$_____

I acknowledge that copies of this application and supporting documentation may be provided to interested persons in accordance with the Development Regulations 1993

SIGNATURE: _____ Dated: / /

_____

Copies of plans - Regulation 15

An application for a development approval or a staged consent must be accompanied by:

- three copies of plans and drawings of the proposed development OR
- nine copies of plans for a proposal involving land division and three copies of supporting information, including copies of the Certificate(s) of Title for a proposal involving land division OR
- three copies of specifications and other supporting information for an application comprising a PBR consent.

Plans, drawings and specifications must be prepared in accordance with Schedule 5 of the Regulations. A relevant authority may require a greater or lesser number of copies and may decline to proceed further until the applicant has submitted them.

Land division plans - Schedule 5 of the Regulations

The Regulations set out extensive requirements for the drafting of plans showing proposed land divisions. As applications involving land division are lodged with the DAC, it will ensure, where necessary, applicants are advised of these requirements. Detailed plans are necessary for servicing authorities (such as the SA Water Corporation) to determine the location of existing services and the best method of providing required new services.

Plan number

All plans lodged with development applications should be clearly numbered for ready identification of:

- the proposed development
- components of the application that may have already been granted a provisional consent
- amendments to plans
- scheme description if Community Title application and >6 lots or development lot
- clear identification of the plans that are subsequently approved with the application.

Fees - Schedule 6 of the Regulations

An application for a development approval or staged consent must be accompanied by the prescribed lodgment fee (in accordance with Schedule 6 of the Regulations). Other components of the fee can be paid at the time of lodgment. Some fees may require further consideration and subsequent advice from the relevant authority. Components of the overall fee could include public notification, referral to a prescribed body and Building Rules assessment fee.

The relevant authority has the discretion to waive or refund all or part of an application fee.

The development number

All development applications will be given a development number by the body receiving the application. For applications involving land division the body will be the DAC.

Development numbers have components denoting the relevant Council, an application number and the year.

Land division applications lodged with DAC are also given an identification number, usually with a prefix to distinguish allotment divisions, Strata Titles or Community Titles.

The ‘office use only’ portion

The applicant must leave this section blank.

The body receiving the development application will complete the part of the section relating to whether the application is for development approval or a staged consent and allocate a development number.

the relevant authority will also complete the section concerning the nature and kind of development proposed, the notification category and the requirement for referral to a prescribed body.

The nature of the development - Schedule 1 of the Regulations

The body receiving a development application has the task of determining the nature of a proposed development. Schedule 1 of the Regulations contains a list of defined generic Activities that should be used as a first point of reference in determining the nature of development.

Schedule 1 defines many of the terms used in lists of complying and non–complying development that appear throughout the Development Plan. This approach encourages consistency across Council areas in the procedures used for the assessment of development proposals. However, many terms are adequately defined in the dictionary and hence do not require a definition in the Regulations.

It is likely the body receiving development proposals for change in land use or building work will need to determine the nature of the development (having regard to Schedule 1 of the Regulations). Usually, no such consultation is necessary on proposals involving land division.

By determining the nature of a proposed development, the body receiving the application will be better able to determine:

- the kind of development (complying, non–complying and development on consideration of merit)
- the relevant authority for the application

- whether the application needs to be referred to prescribed bodies or other Government agencies
- whether the public needs to be notified of the application.

THE KINDS OF DEVELOPMENT

All development, as defined by the Act and Regulations, requires the lodgment of a development application to seek development approval or a staged consent. There are three kinds of development: complying, non–complying and development on consideration of merit.

Complying development - Sections 35 and 36, Regulation 8 and Schedule 4 of the Regulations

The forms of development and building work deemed to be complying are listed in Parts 1 and 2 of Schedule 4 of the Regulations. Councils can also choose to include more extensive lists of complying development within the relevant Development Plan.

If an application requires referral to another authority or agency under Section 37 of the Act, the proposal is not a complying form of development. This enables the decision maker to consider referral advice.

When a development application is lodged in relation to one of the forms of development listed in the Regulations or Development Plan as complying, (and subject to any referral requirements), the relevant authority must grant a PDP consent (subject to any conditions attached to a complying list). Likewise, with the forms of building work listed in Part 2 of Schedule 4 of the Regulations, the relevant authority must grant a PBR consent. Some of the forms of building work listed in Part 2 are excluded from the definition of development in accordance with Schedule 3 of the Regulations. As a result, it will not be necessary to obtain a PDP consent (except where the building work affects a State or local heritage place) for those forms of building work.

Non–complying development - Section 35

Non–complying development is development of a particular nature listed in the Development Plan as being non–complying in a particular zone or policy area. Development listed as non–complying in the Development Plan will generally be inconsistent with the statements of objective and principles of development control for a particular zone or policy area. Accordingly non–complying development is not usually approved without some form of unique or special circumstances.

In its assessment of a non–complying development, the relevant authority must assess an application in the same manner as if it were a ‘merit’ application, and must not grant a development approval or a consent if the proposed development is considered by the relevant authority to be seriously at variance with the relevant development plan.

If the relevant authority wishes to approve a non–complying development, it must seek the required concurrences.

Development for consideration on merit

Development for consideration on merit refers to any nature of development that is not listed as either a complying development or a non–complying development in a development plan or Schedule 4 of the Regulations.

An application for a development for consideration on merit is assessed by the relevant authority, having regard to the objectives and principles of development control within the relevant development plan. In its assessment of this type of development application, the relevant authority must not grant a development approval or a consent if the proposed development is seriously at variance with the relevant development plan. A development can be seriously at variance whether or not it is non–complying.

AMENDED APPLICATIONS

Section 39(4) and Regulation 20

A relevant authority may permit an applicant to submit an amended application at any time before the application is decided. The date of receipt of the amended application then becomes the new date of receipt of the application for the purposes of decision time limits. If an application is for development approval, the amendment of the application could occur at any time before the relevant authority granted development approval. In circumstances where the application is one only for PDP consent, the amendment could only occur prior to the decision on the PDP consent.

Where an application has been varied by the applicant following its referral to a prescribed body or the completion of public notification and consultation, the relevant authority can decide not to repeat these procedures if the variation is not substantial.

If the relevant authority considers that the amendment changes the essential nature of the proposed development, then the amendment is considered to be a new application with a new lodgment date and time limits. In these circumstances, the relevant authority can agree with the applicant to treat the amended application as a new application and continue to assess it. In this situation, the relevant law and Development Plan will be that in place at the time to new application is received.

ADDITIONAL INFORMATION

Section 39 and Regulation 19

A relevant authority may request, in writing, that the applicant provide additional information. The relevant authority may decline to proceed further until the applicant has complied with the request.

The time limits applying to the making of a decision are then extended by the period between the date the relevant authority requested the additional information, and the receipt of it.

The applicant has three months to comply with the request. If the applicant fails to provide the information within this time, the relevant authority may refuse the application. This enables the relevant authority to finalise applications where there does not appear to be any strong intention or commitment on the part of the applicant to undertake the proposed development.

The applicant has a right of appeal to the Environment, Resources and Development Court (ERD Court) over a relevant authority's decision to refuse an application because of failure to provide the information, or over the type of additional information sought. This protects the applicant should he or she consider the request unreasonable.

WITHDRAWN APPLICATIONS

Regulation 22

Applications may be withdrawn by the applicant.

It is the responsibility of the applicant to inform the relevant authority of the decision to withdraw the application. The relevant authority must be notified in writing or by a facsimile transmission of the decision to withdraw. Oral advice, whether in person or over the telephone, is inadequate.

Upon receipt of the advice from the applicant, the relevant authority must notify, in writing, any agency consulted on the application under Part 5 of the Regulations and any representative on the application under Part 6 of the Regulations of any such withdrawal.

The refund of the application fee to the applicant is entirely at the discretion of the relevant authority, usually depending on the extent of assessment work already undertaken.

CONTRAVENING DEVELOPMENT

Section 86 and Regulation 23

If development has taken place, or is continuing in contravention of the Act and Regulations, an application for development approval or a staged consent may be made to the relevant authority.

If proceedings have already been initiated, in accordance with the Act, to remedy or restrain the contravening development, the relevant authority can decide not to deal with the assessment of the development application until the conclusion of any proceedings. This empowers the Environment, Resources and Development Court, after hearing the parties involved, to make an order to:

- require the respondent to refrain from the course of Action constituting the contravention or to make good the breach
- cancel or vary any development approval and/or
- require the respondent to compensate any person who has suffered loss or damage as a result of the contravention.

Alternatively, the relevant authority may decide to deal with the application and possibly defer any further proceedings until a decision has been made on the development application. The Court also has the power to defer enforcement proceedings pending the result of an application.

STAGED DEVELOPMENT

Section 39(8) and Regulation 60

It is important, in respect of relatively large–scale development, for the applicant to be aware of the opportunities and constraints in relation to the financing and marketing of such development proposals. Such awareness will usually enable the applicant to take advantage of the flexibility available in the provisions of the Act and Regulations for staged development.

Staging can be achieved by applying for a development in stages, thus obtaining a number of development approvals over an extended period of time. Alternatively, the applicant can submit one application for development approval in relation to the total development proposal. Conditions can be imposed on the development approval that recognise the need to have longer than normal periods of time for the lawful commencement and the substantial completion of the development.

The Act and Regulations do not allow for only parts or sections of an approved development to be completed. The development that receives development approval must be constructed and substantially or fully completed to the satisfaction of the relevant authority within the prescribed time. If the applicant is unable to satisfy the requirements of a development approval then the original approval will need amendment. If this happens, the applicant must submit a new application for development approval to the relevant authority.

For a land division, the applicant can stage the development by obtaining a land division certificate in relation to each defined stage of the total land division. The development approval for the land division must remain valid to enable the completion of each of the stages. This can be achieved by:

- the imposition of conditions on the development approval which allow longer than normal periods of time for the lawful commencement and the completion of the development
- the applicant fully completing each of the defined stages within the time period allowed by the development approval.

Each defined stage for which a land division certificate is sought must not be different in any material respect from the original development approval. Should variations be desired, the applicant may apply for a variation to the original approval.

Lapse of "Aged" applications

A relevant authority may lapse an aged application if it is more than 2 years old, under Regulation 22A. This enables the authority to prevent applications continuing in existence beyond a reasonable period.

WHO WILL BE MAKING THE DECISION?

Section 34 and Regulation 38, Schedule 10 of the Regulations

No person or body can undertake development, as defined by the Act and Regulations, without the approval of the relevant authority.

The significant majority of decisions on applications for development are made by Councils, regardless of whether the applicant is seeking a development approval, a PDP consent alone, a PBR consent alone or land division requirements.

Panels

Section 56A of the Act requires each Council to establish a Development Assessment Panel. The Council has discretion as to panel membership, and subject to exceptions set out in the Section, the panel has discretion on procedures in determining any applications delegated by the Council to the panel.

A Council must regularly review membership of the Panel and can choose the extent of delegation.

For its operations, a panel is not bound by Local Government Act procedures.

In addition, Section 34 enables a group of Councils to establish a regionally based panel with appropriate delegations. Such a panel must be constituted by separate Regulation.

DAC

The Development Assessment Commission is the relevant authority on applications for development where:

- the proposal is a commercial development to be undertaken by a Council (Schedule 10 states that while a Council can normally deal with its own development proposals, where the development is a form of shop, office, industry or major residential development, DAC will usually be the relevant authority. Schedule 10 sets out in detail the types of Council development that must be considered by DAC)

- the proposal is to be undertaken in a part of the State that is not wholly or in part within the area of a Council
- the proposal is for a class of development that is of State significance, such as some types of land division in the Mount Lofty Ranges water protection area, waste disposal operations, or prescribed mining operations
- the Minister, Acting at the request of a Council, declares DAC to Act as the relevant authority on the application
- both DAC and a Council or regional development assessment panel are constituted as the relevant authorities
- the Minister 'calls–in' the application to DAC under Section 34.

A detailed list of the classes of development for which DAC is the relevant authority is contained in Schedule 10 of the Regulations.

Also, DAC is responsible for the issue of the land division certificate (following extensive consultation with the Council, or regional development assessment panel) in regard to development proposals to divide land and buildings under Community Titles, Strata Plan or for full freehold allotments.

Where the proposed development is declared to be a major project and is subject to Section 48 of the Act, the Governor makes the decision. The Governor can delegate this decision–making authority to DAC (see the separate Guide to the Assessment of Major Developments or Projects).

For the Building Rules assessment on the application, DAC or a regional development assessment panel can require the assessment to be undertaken by a private certifier or some other class of person it determines. A description of the powers and responsibilities of a private certifier is included in the Section Provisional building rules consent. Alternatively, DAC can refer the Building Rules assessment to the relevant Council. Subject to any directions by DAC, the Council undertakes the assessment and issues the Building Rules consent and then the development approval.

DEVELOPMENT ON COUNCIL LAND

As pointed out earlier, Council can Act as development authority even where it is involved in the development. This can include development by other parties on Council land, or where Council has an interest, or can include development directly by the Council (such as Council recreation buildings).

Where Council is the authority for such development, it must comply with the full procedures under the Act, including the giving of public notice and conduct of hearings. Appeal rights against Council decisions are available for Category 3 development (see the section in the guide Public Notice and Consultation).

The only exception to the ability for a Council to deal with its own development relates to where the Council is undertaking specified 'commercial' type development. Schedule 10 sets out the forms of development undertaken by a Council that must be determined by DAC.

It should be noted that Section 34(1)(b)(iii) of the Act enables the Council to request the Minister to declare DAC as authority instead of the Council. This section enables a Council to refer applications where it sees good reason. It is not expected this provision will be used often, as the Act clearly envisages Councils can deal with applications in which it has an interest.

Where a Council is proposing a development itself, a good practice for the Council will be to ensure the allegation of bias is minimised by methods such as:

- Council not committing to a development prior to planning consent
- Council separating its assessment from its development functions at officer level
- where this is not feasible, seeking outside planning advice.

It should be noted no development fees are payable on Council development unless the proposal by Council is for the purpose of revenue raising.

COLLECTING INFORMATION

The relevant authority collects information from the following sources, where appropriate, and this information is taken into account when decisions on applications for a development approval or a staged consent are made:

- public notification and consultation
- voluntary consultation with State agencies or bodies with specific expertise, where the Council or Commission does not have 'in house' expertise
- consultation with State agencies where required under Regulation 29 and Schedule 8, including :
    - consultation with the Coast Protection Board on development near the coast
    - consultation with Commissioner of Highways
    - consultation with the Minister responsible for the State Heritage Act on a State Heritage Place
    - consultation with the Minister responsible for the Water Resources Act on some classes of development within a water protection area
    - consultation with the Minister responsible for the Mining Acts on development for a mineral resource
    - consultation with the Federal Airports Corporation on the height of development within a designated area
    - consultation with the relevant Environment Minister on Acts or Activities of environmental significance
    - consultation with the South Australian Metropolitan Fire Service or the Country Fire Service on development requiring specific fire safety measures.

PROVISIONAL DEVELOPMENT PLAN CONSENT

CONSULTATION WITH STATE AGENCIES - Regulation 29

For a development application involving land division, the DAC coordinates the consultation with the State agencies that have an interest in the development. Each agency must forward its comments to DAC within 28 days of receipt of the application if the agency's comments are to be taken into account in the advice by DAC to the Council. If no comment is received within that period it will be assumed by DAC that the agency has no interest in the application. Schedule 8 prescribes some agencies that require mandatory referral for some land divisions, different referral times are prescribed for each agency.

This procedure provides for a single, consolidated response on an application for land division by DAC, on behalf of all interested State agencies, to the Council. Copies of all comments will accompany the response by the State agencies. If it chooses, a Council can also directly contact any State agency for additional comment or clarification.

This process applies to all land division, including division into allotments, strata lots or community titles.

For some land division proposals, this process will be conducted electronically, depending on whether the applicant lodges an electronic form, and whether the relevant Council participates in the electronic scheme.

For a development application involving development other than land division, the relevant authority for the development coordinates any consultation with State agencies deemed necessary. The time allowed for an agency to provide its comments to the relevant authority is the same as that for providing land division comments.

The report by a State agency must be made in writing but may be provided by facsimile transmission. Where an agency has no report to make to DAC or the relevant Council, this advice may be given orally in order to speed up the process. Where oral advice is received by a Council or DAC, a written file note should be placed in the relevant file to record such advice.

Comments forwarded by a State agency to DAC or council may contain:

- advice to which the relevant authority should have regard when deciding the application
- suggested conditions that the relevant authority should attach to any development approval or PDP consent that it may issue.

For a development application involving land division, DAC has eight weeks from the date of receipt of the application to forward its advice to the council. If the council does not receive advice from DAC within this time, it will be assumed it has no report to make on the proposed land division. In most cases DAC will be able to provide its

advice to the council in a considerably shorter time than the statutory period of eight weeks. This is most likely to happen when the development proposed is considered to be of a relatively minor nature and consistent with the relevant development plan and there are no outstanding issues from the viewpoint of the consulted State agencies.

When the proposed development is considered to be major or there is an outstanding issue to be negotiated, DAC may take the full eight weeks to provide its advice to the council. A council or regional development assessment panel should check with DAC if no reply is received after eight weeks to ensure there is no major issue outstanding.

REFERRAL TO PRESCRIBED BODIES

Section 37 and Regulation 24

Referral to the Coast Protection Board (See figure 2)

The relevant authority must consult the Coast Protection Board on applications involving development on coastal land. Some relatively minor forms of development are exempted from this requirement to consult. They include:

- the construction, alteration or addition to a farm building
- development that is of a minor nature in the opinion of the relevant authority and comprises the alteration of an existing building or the erection or construction of a building to facilitate the use of an existing building
- development listed as complying.

The term ‘coastal land’ is described in Schedule 8 of the Regulations.

When consulting the Board, the relevant authority must send a copy of the development application form and copies of plans and supporting information with it.

The Board is then required to forward a report to the relevant authority. This report must be made in writing (but may be provided by facsimile transmission) and may contain:

- comments that the relevant authority must have regard to when deciding the application
- conditions which the relevant authority should attach to a PDP consent that it may issue
- a direction on conditions that the relevant authority must attach to a PDP consent that it may issue
- a direction that the application be refused.

While the Board’s advice is usually discretionary to the relevant authority, it can make a direction in relation to development that comprises or includes:

- the excavation or filling of land within 100 meters of the coast and where the volume of material excavated or filled exceeds nine cubic meters
- the placing or making of any structure or works for coastal protection within 100 meters of the coast.

In these cases the coast is measured from the mean high water mark on the seashore at spring tide.

If a report has not been received from the Board six weeks after the date the application was forwarded, the relevant authority may assume the Board has no report to make on the proposed development. Where the Board has no report to make to the relevant authority, this advice may be given orally.

If the Board directs that conditions be imposed or a refusal of PDP consent be issued, the relevant authority must impose and separately identify such conditions or reasons for refusal. The applicant has a right of appeal against a direction by the Board. In such circumstances, the Board is a party to the appeal with the relevant authority.

Referral to Commissioner of Highways (See figure 2)

(1) Land division adjacent to main roads

The Development Assessment Commission must consult the Commissioner of Highways on applications involving land division proposals that:

- abut a controlled access road declared pursuant to the Highways Act
- abut an arterial road and create new road junctions on that arterial road.

When consulting the Commissioner, DAC must send a copy of the development application form, and copies of plans and supporting information to him/her.

The Commissioner is then required to forward a report to DAC. This report must be made in writing (but may be provided by facsimile transmission) and may contain:

- conditions that the relevant authority must attach to a PDP consent that it may issue
- a direction that the application be refused.

If a report has not been received from the Commissioner six weeks after the date of forwarding the application, DAC may assume the Commissioner has no report to make on it. Where the Commissioner has no report to make to DAC on the application, this advice may be given orally. If the Council or regional development assessment panel has not received its consolidated report from DAC twelve weeks after the date of the application being lodged, it may assume DAC (including the Commissioner) has no report to make.

If the Commissioner directs that conditions be imposed or a refusal of PDP consent be issued, the relevant authority must impose and separately identify such conditions or reasons for refusal. Regulation 31 prevents any right of appeal against a direction by the Commissioner.

(2) Development adjacent to main roads

Where, in the opinion of the relevant authority, a proposed development would be likely to:

- alter an existing access
- change the nature of movement through an existing access
- create a new access
- encroach within a road widening setback under the Metropolitan Adelaide Road Widening Plan Act 1972

to an existing or proposed arterial road or to an existing or proposed primary road or primary arterial road as delineated in the Development Plan, then it must consult the Commissioner of Highways.

When consulting the Commissioner, the relevant authority must send a copy of the development application form and copies of plans and supporting information.

The Commissioner is then required to forward a report to the relevant authority. This report must be made in writing but may be provided by facsimile transmission, and may contain:

oconditions which the relevant authority must attach to a PDP consent that it may issue

- a direction that the application be refused
- comment to which the relevant authority should have regard when deciding the application
- conditions which the relevant authority should attach to a PDP consent that it may issue.

The time limit for a response by the Commissioner is four weeks from the date of forwarding the application. The terms for providing the report are similar to those set out in (1) above.

If the Commissioner directs that conditions be imposed or a refusal of PDP consent be issued, the relevant authority must impose and separately identify such conditions or reasons for refusal. Regulation 31 prevents any right of appeal against a direction by the Commissioner.

(3) Advertising displays on or adjacent to arterial roads

The relevant authority must consult the Commissioner of Highways on development proposals involving an advertising display where:

- the proposal is on or adjacent to an arterial road, a primary road, a primary arterial road, or a secondary arterial road as delineated in the relevant Development Plan
- the proposal is within 100 meters of a signalised intersection or a pedestrian Activated crossing

- the display will be internally illuminated and incorporate red, yellow, green or blue lighting or incorporate a moving display or message.

The consultation and reporting procedures for both the relevant authority and the Commissioner are the same as those already mentioned in paragraphs (1) and (2) above. The report by the Commissioner may contain:

- comment to which the relevant authority should have regard when deciding the application
- conditions which the relevant authority should attach to a PDP consent that it may issue.

The time limit for a response by the Commissioner is four weeks from the date of forwarding the application.

Referral to the Minister responsible for the Heritage Act 1993 (See figure 2)

The Act requires the relevant authority to forward to the Minister responsible for the Heritage Act 1993 any application for development that affects a State Heritage Place. In practice such applications should be sent to the Manager, Heritage SA.

An application is required for any development that materially affects the context within which a State Heritage Place is situated. The exclusions from the definition of development as set out in Schedule 3 of the Regulations do not apply to a State Heritage Place.

The relevant authority must not make a decision on an application until it receives a report from the Minister. It must have regard to the comments of the Minister and, in the case of a council, seek the concurrence of DAC to its decision if it wishes to grant a PDP consent to the development at variance to any advice from the Minister. However, the council can refuse the development without seeking the concurrence of DAC, or can approve it without seeking concurrence where council adopts the heritage advice.

If the relevant authority does not receive a report from the Minister within eight weeks of the date of the application being forwarded, it may assume the Minister has no report to make on it. When a council or Regional Development Assessment Panel does receive a report from the Minister and it proposes to issue a PDP consent to the proposed development, but without totally adopting the recommendation or conditions provided in the report, the council must seek the concurrence of DAC. DAC has six weeks from the date the council forwarded the concurrence request to make its decision.

In each case, the reports made by the Minister and DAC must be in writing but may be provided by facsimile transmission. Where the Minister and/or DAC has no report to make to the council on the application, this advice may be given orally.

Usually the Manager of Heritage SA, as delegate of the Minister, gives the heritage

advice, although in some parts of the State (most notably heritage towns) the Minister may have delegated to an appointed expert heritage advisor.

Referral to the Minister responsible for the Mining Acts (See figure 2)

The relevant authority must consult the Minister responsible for the Mining Acts on any development within a zone or area delineated for mining or an extractive industry by the relevant Development Plan or designated as being for a mineral resource. Development that is of a minor nature in the opinion of the relevant authority is excluded from the requirement to consult the Minister.

The consultation and reporting procedures for both the relevant authority and the Minister are the same as those already mentioned for other prescribed bodies. The report by the Minister may contain:

- conditions which the relevant authority must attach to a PDP consent that it may issue
- a direction that the application be refused
- comment to which the relevant authority should have regard when deciding the application
- conditions which the relevant authority should attach to a PDP consent that it may issue.

The time limit for a response by the Minister is six weeks from the date of forwarding the application.

Referral to the Commonwealth Transport Agency

The relevant authority must consult the Commonwealth transport agency on development that would exceed a height shown on a map entitled ‘Airport Building Heights’ and contained in the relevant Development Plan.

The consultation and reporting procedures are the same as those already mentioned for other prescribed bodies. The report by the Commonwealth may contain:

- conditions which the relevant authority must attach to a PDP consent that it may issue
- a direction that the application be refused.

The time limit for a response is four weeks from the date of forwarding the application.

If the Commonwealth directs conditions be imposed or a refusal of PDP consent be issued, the relevant authority must impose and separately identify such conditions or reasons of refusal. The applicant has a right of appeal against a direction. In such circumstances, the appeal lies against the Commonwealth, as well as the relevant authority.

Referral to the Environment Protection Authority (EPA) on developments in areas proclaimed under the Mount Lofty Ranges Water Protection Area and the River Murray Water Protection Area. (See figure 2)

The relevant authority must consult the EPA on any non–complying development situated in the Mount Lofty Ranges Water Protection Area or the River Murray Water Protection Area (proclaimed under the Water Resources Act), other than where it is located in a township with a sewerage or common septic tank effluent disposal scheme.

The consultation and reporting procedures for both the relevant authority and the EPA are the same as those already mentioned for other prescribed bodies. The report by the EPA may contain:

- comment to which the relevant authority should have regard when deciding the application
- conditions which the relevant authority should attach to a PDP consent that it may issue.

The time limit for a response by the EPA is six weeks from the date of forwarding the application.

Referral to the EPA on Activities of environmental significance and major environmental significance. (See figure 2)

The relevant authority must consult the EPA on any application for development involving one or more of the Acts or Activities listed in Schedules 21 and 22 of the Regulations.

When consulting the EPA, the relevant authority must send a copy of the development application form and copies of the plans and supporting information.

(1) Activities of environmental significance

The EPA, when consulted by the relevant authority on an application involving an Activity of environmental significance, must forward a report to the relevant authority. This report must be made in writing but may be provided by facsimile transmission, and may contain:

- comment to which the relevant authority must have regard when deciding the application
- conditions which the relevant authority should attach to a PDP consent that it may issue.

If a report has not been received from the EPA four weeks after the date of forwarding the application, the relevant authority may assume the EPA has no report to make on it. When the EPA has no report to make, this advice may be given by telephone.

(2) Activities of major environmental significance

The EPA, when consulted by the relevant authority on an application involving an Activity of major environmental significance must forward a report to the relevant authority. This report must be made in writing but may be provided by facsimile transmission, and may contain:

- conditions which the relevant authority must attach to a PDP consent that it may issue
- a direction that the application be refused.

If a report has not been received from the EPA six weeks after the date of forwarding the application, the relevant authority may assume the EPA has no report to make on it. When the EPA has no report to make, the advice may be given by telephone.

If the EPA directs conditions be imposed or a refusal of PDP consent be issued, the relevant authority must impose and separately identify such conditions or reasons of refusal. The applicant has a right of appeal against a direction by the EPA. In such circumstances, the appeal lies against the EPA with the relevant authority.

Other referrals

The Regulations contain a range of other referrals all of which operate in the matter described above. They apply to referral to the Minister responsible for the Water Resources Act for development in areas with concern about water use to major retail development, crematoriums, marine aquaculture and to dwellings in bushfire areas.

Figure 2

APPLICATION PROCEDURE INVOLVING REFERRAL AGENCIES

Applicant for Development …….	**A copy of the application is sent to …**	**Time given to referral body …….**	**Decision by the relevant authority** **Schedule 8 lists which development the relevant authority must have regard to the comments or must comply with a direction of a relevant authority.**
Development on Coastal Land (other than minor)	The Coast Protection Board	Six weeks	Direction for coastal works. Regard for other
Adjacent to a main road or arterial road including: – land division – some advertisements – new access arrangements	The Commissioner of Highways	Six weeks for land division adjacent to a main road. Four weeks for development adjacent to a main road and advertising displays adjacent to a signalized intersection on an arterial road.	Directions for land division junctions. Direction for widening encroachment Regard for other.
Affecting a State Heritage Place	The Minister responsible for the Heritage Act	Eight weeks	Regard – except concurrence of DAC needed if Council wish to Act against Heritage advice.
Within an extractive industry or mineral area	The Minister responsible for the Mining Acts	Six weeks	Direction
Development within Airport Height Limits	Commonwealth ‘transport’ agency	Four weeks	Direction
Environmentally significant Activity	The Environment Protection Authority	Four to six weeks	Direction for major impact. Regard for lesser impact.
Development requiring Irrigation within Water Management Areas	Minister for Water Resources Act	Six weeks	Regard

Major retail development in Centre Zones	Development Assessment Commission	Eight weeks	Direction
Crematorium	'Health' Minister	Six weeks	Direction
Marine Aquaculture	Fisheries Act Minister	Six weeks	Direction
Dams in Water Management Area	Minister for Water Resources Act	Six weeks	Direction
Development near Historic Shipwrecks	State and/or Commonwealth Heritage Ministers	Six weeks	Direction
Dwellings/Tourist Accommodation in Bushfire areas	Country Fire Service	Six weeks	Regard

PUBLIC NOTICE AND CONSULTATION

Part 6 of the Regulations

Which applications require public notice and consultation?

The relevant authority may be required to undertake some form of public consultation on an application for development before making its decision.

The Act and Schedule 9 of the Regulations outline the types of development which:

- should be exempt from any form of public notification and consultation (Category 1 development)
- should be subject to a personal notice to abutting owners(Category 2 development)
- require a more general public notification with attendant appeal rights (Category 3 development).

A council, through amendments to its Development Plan, can list a development as Category 1 or 2, or can change the listing of a class of development from that which appears in Category 1 or Category 2 of Schedule 9 of the Regulations. This means that the development described in Category 1 in the Regulations can be listed as a Category 2 development in the relevant Development Plan. Alternatively, the development described in Category 2 can be listed as a Category 1 development in the relevant Development Plan. Such placements in the relevant Development Plan take precedence over the lists contained in parts 1 and 2 of Schedule 9 of the Regulations.

However, where a development is listed as a Category 1 development in either Schedule 9 of the Regulations or by a Council in its Development Plan, and it is for or involves any Activity specified in Schedule 22 of the Regulations it must, for the purposes of public notice and consultation, be treated as a Category 2 development.

Generally, these arrangements recognise the different impacts of development between Council areas, from the inner suburban Councils to the metropolitan fringe Councils to rural Councils, and the possible need for different levels of community consultation on proposals for development.

In most cases, non–complying development requires general public notification (Category 3 development).

The only forms of non–complying development exempt from any notification are applications:

- for an alteration or addition to any building and is of a minor nature only
- for the erection or construction of a building to be used as ancillary to or in association with an existing building and which will facilitate the better enjoyment of the purpose for which the existing building is being used and is of a minor nature only
- land division, where no additional allotments would be created.

Method of giving notice - Section 38(4) and Regulation 33

Category 2 development (See figure 3)

The relevant authority must give notice of an application for development approval or PDP consent to the owners or occupiers of each piece of land adjacent to the development site. Section 4 of the Act contains definitions of ‘adjacent land’ and ‘adjoining owner’.

This notice must:

(a) describe the nature of the proposed development

(b) identify the land concerned in the application

(c) indicate:

- where the application may be examined
- the time when the application may be examined
- the person to whom the representation should be sent
- the time within which any representation should be lodged
- whether it is an application for a non–complying development.

(d) advise of the existence of any Land Management Agreement entered into in respect of the development the subject of the application.

Category 3 development - Section 38(5) (See figure 4)

The relevant authority must give notice of an application for development approval or PDP consent by:

(1) Giving notice of the application to owners or occupiers of:

- each piece of adjacent land (including land across a road or reserve no more than 60 meters from the land) (Section 4 of the Act describes in more detail the definition of adjacent land)
- other land in the locality which, in the opinion of the relevant authority, would be directly affected to a significant degree by the development.

(2) A notice published on at least one occasion in a newspaper circulating generally throughout the area within which the relevant development site is situated.

The notice must:

(a) describe the nature of the proposed development

(b) identify the land concerned in the application

(c) state whether it is an application for a non–complying development and

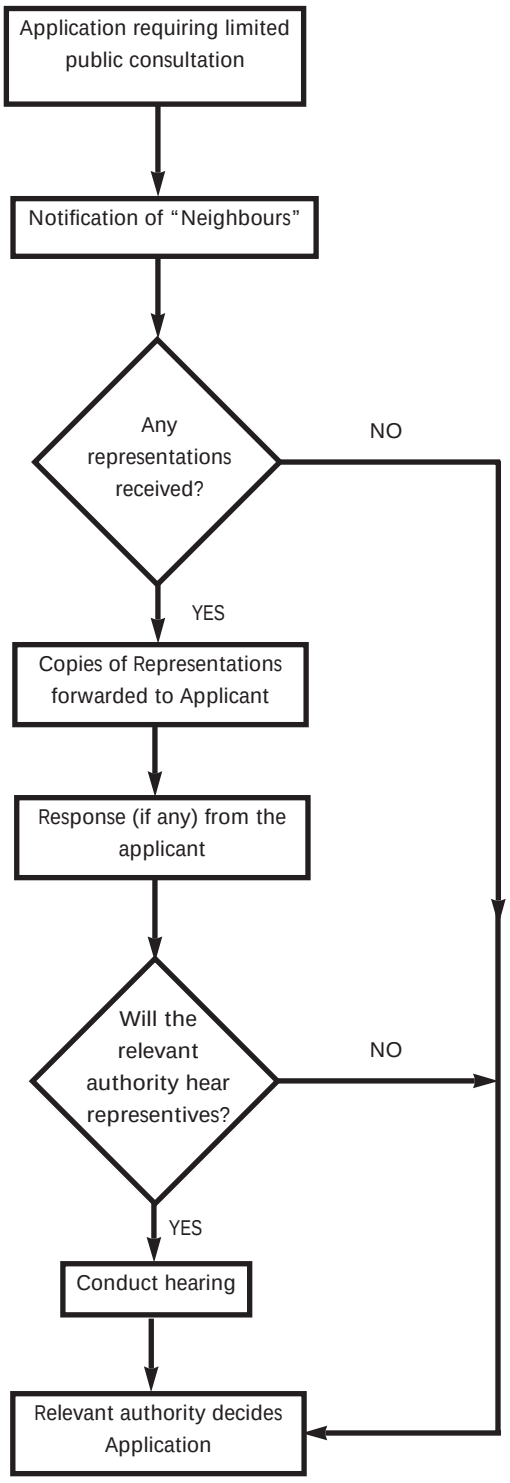
(d) indicate:

- where the application may be examined
- the time when the application may be examined
- the person to whom the representation should be sent
- the time within which any representation should be lodged.

(d) advise of the existence of any Land Management Agreement entered into in respect of the development the subject of the application.

Figure 3

PUBLIC NOTIFICATION AND CONSULTATION (PROCEDURE FOR GIVING NOTICE) - CATEGORY 2 DEVELOPMENT



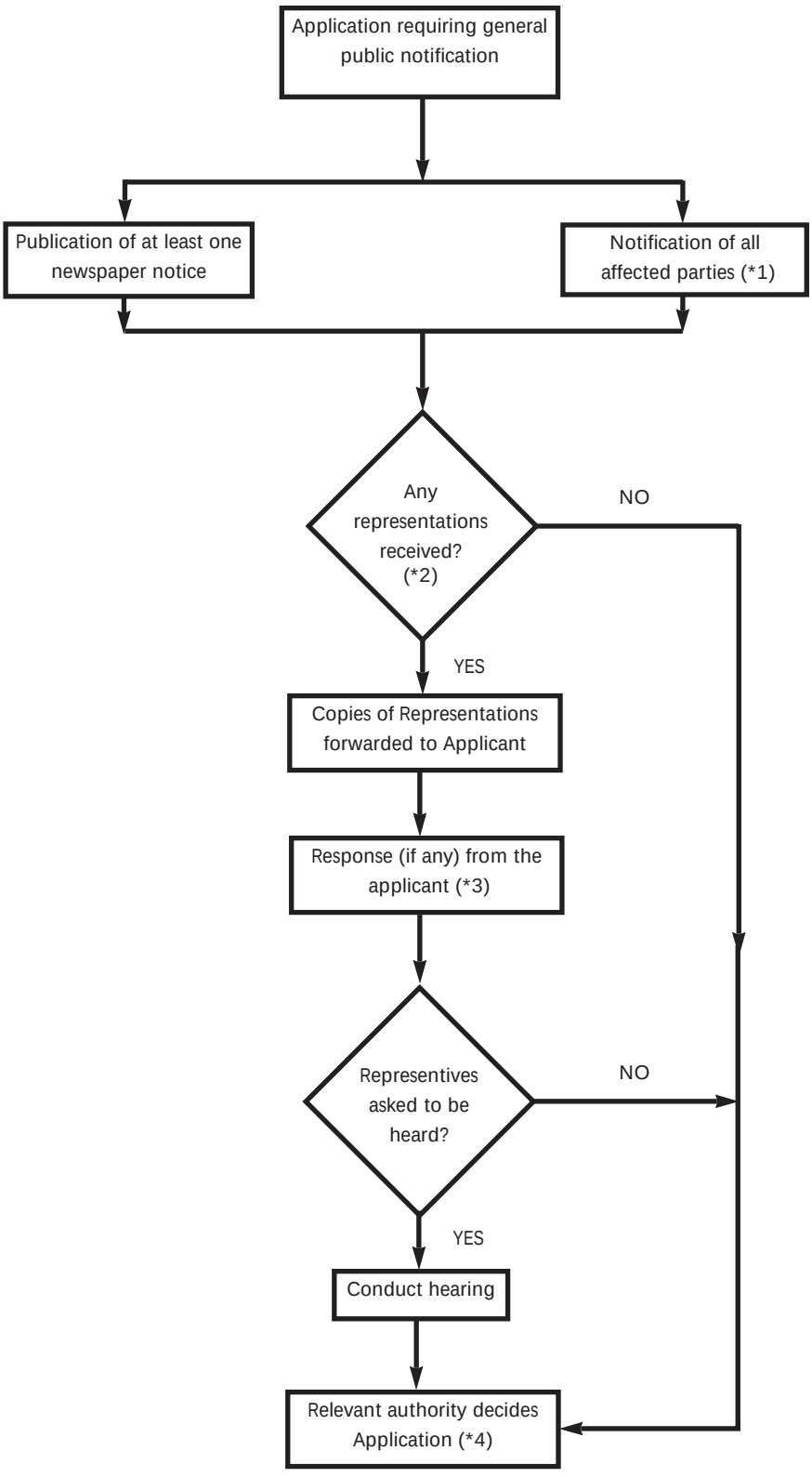
NOTE:
"Neighbours" means owners or occupiers of adjacent land.

NOTE:
Representations must be lodged within ten business days from the date of notification.

NOTE:
Response must be made within ten business days from the forwarding of representations by the relevant authority (unless an extension of time has been granted).

Figure 4

PUBLIC NOTIFICATION AND CONSULTATION (PROCEDURE FOR GIVING NOTICE) - CATEGORY 3 DEVELOPMENT



*1 NOTE:
Affected parties may include owners or occupiers of adjacent land and other persons which the relevant authority is of the opinion are likely to be affected.

*2 NOTE:
Representations must be lodged within ten business days from the date of the first newspaper notice.

*3 NOTE:
Response must be made within ten business days from the forwarding of representations by the relevant authority (unless an extension of time has been granted).

*4 NOTE:
Representors are advised of the decision and have appeal rights to the ERD Court.

Public inspection of the application - Regulation 34

From the time notice of an application is given by the relevant authority until the time available for the lodging of representations is completed, copies of the following must be made available for public inspection:

- the application for development approval or PDP consent
- the plans
- any supporting information or documents on the proposed development
- for a non–complying development, a statement of effect on the proposed development.

The relevant authority must make this information available for public inspection:

- without fee
- at its principal office
- during normal office hours.

The relevant authority may make copies of the plans and the supporting information available to the public for purchase at whatever cost it thinks reasonable.

However, the relevant authority is not required to make available for inspection any plans or supporting documents that relate to the assessment of the proposed development for the PBR consent and are not considered necessary to the decision for the PDP consent. It must not make available for inspection any plans or other documents that could jeopardise the present or future security of a building, unless it has the approval of the applicant and the owner of the land.

Costs - Regulation 33

All reasonable charges and costs incurred by the relevant authority in giving notice of an application for development approval or PDP consent will be recoverable from the applicant. Such charges and costs may be recovered from the applicant before proceeding further with the assessment of an application. Alternatively, the relevant authority can decide to recover the charges and costs from the applicant before making its decision on the application.

Lodging written representations - Section 38(7) and Regulation 35

Any person who received a notice or saw a newspaper notice may lodge a written representation with the relevant authority. Written representations may be made either individually or as part of a group. If representations are made by petition, a spokesperson should be identified. If a representation is in the name of more than one person it should nominate a person or body who will be regarded as the representative (if there is no nomination, the first named person will be regarded as the representor).

Individual representations will carry as much weight with a relevant authority as a petition, as the intent of the public consultation process is to ascertain the effects a proposed development may have on adjacent and other owners and occupiers of land. Individual representations provide opportunity to raise specific concerns or to highlight the good points about a proposed development.

The written representation must be lodged with the relevant authority within:

- ten business days of the date of the notice given by the relevant authority in respect of a Category 2 development OR
- ten business days of the date of the first general public notice arranged by the relevant authority in respect of a Category 3 development.

If the ten business day period for the general public notice includes any days between 24 December and 2 January (inclusive), the period will extend beyond 2 January for the same number of affected days. This is because of the difficulties in conducting normal business during this period.

Representations lodged must state:

- the full name and address of the person making the representation
- the reasons for the representation
- whether the person making the representation wishes to be heard by the relevant authority.

The reasons for the representation should relate to the proposed development's consistency or otherwise with the policies contained in the relevant Development Plan.

Applicant considers representations - Regulation 36

The relevant authority must forward a copy of each representation to the applicant, and allow an opportunity for the applicant to respond in writing to each representation. Response must be made within ten business days after the relevant authority has forwarded the representations to the applicant. A longer period of time may be allowed for a response to each representation if it is agreed between the relevant authority and the applicant. This agreement must be in writing but may be by facsimile transmission.

The applicant, following consideration of the matters raised by representatives, may choose to amend the application.

Hearing of representors - Section 38(10) and Regulation 37

If a person who has lodged a representation has indicated that they wish to be heard before the relevant authority in support of their representation, the relevant authority:

- in the case of a Category 2 development, may provide the person or their representative, or all the members of a group that made a representation or their representative, and the applicant, an opportunity to appear before it to be heard in respect of the representation lodged

- in the case of a Category 3 development, must provide the person or their representative, or all the members of a group that made a representation or their representative and the applicant, an opportunity to appear before it to be heard in respect of the representation.

Any representor who wishes to be heard in support of their representation and the applicant must, unless otherwise agreed, be notified in writing or by facsimile transmission by the relevant authority at least five business days in advance, advising of:

- the time of the hearing
- the place where the hearing is to be held.

The five business days advance notice does not include the period between 24 December and 2 January inclusive.

Notifying representors of the decision - Section 38(12) and (13)

When the relevant authority has decided upon an application relating to a Category 2 or a Category 3 development, the persons who made the representation to the relevant authority within the appropriate ten business days period, are to be notified in writing by the relevant authority on the outcome of the application. This advice must include a copy of the decision notification form (for the PDP consent) containing any conditions of provisional consent or reasons for refusal, and the date of decision. It must be provided to the representor within five business days of the decision date.

In the case of a Category 3 development, the relevant authority must also advise:

- a representor of their right of appeal to the Environment, Resources and Development Court
- that an appeal (if any) must be commenced within fifteen business days of the decision date
- the court of its decision on the application, the date of the decision, and the names and addresses of all representors on the application.

The right of appeal to the court against the decision by the relevant authority is available only to third parties who made a representation to the relevant authority on a Category 3 development within the appropriate ten business day period.

MAKING THE DECISION

Timing - Section 41 and Regulation 41

In general, the relevant authority should make a decision on a PDP consent within eight weeks of the registered date of receipt of the application. The exceptions to this are:

- where the application must be referred to one or more of the prescribed bodies listed in Schedule 8 of the Regulations, the decision should be made within fourteen weeks of the receipt of the application
- where the application involves land division and DAC has referred the application to one or more State agencies for a report, the decision should be made within 12 weeks of the receipt of the application
- where the application involves development other than land division and has been referred to one or more State agencies for a report, the decision should be made within twelve weeks of the receipt of the application
- where the application is for a non–complying development (refer to 'Non–complying development').

Matters to be considered - Section 33

A relevant authority, in deciding whether to grant or to refuse PDP consent to an application for development, or on conditions that should be imposed on a PDP consent, must have regard to:

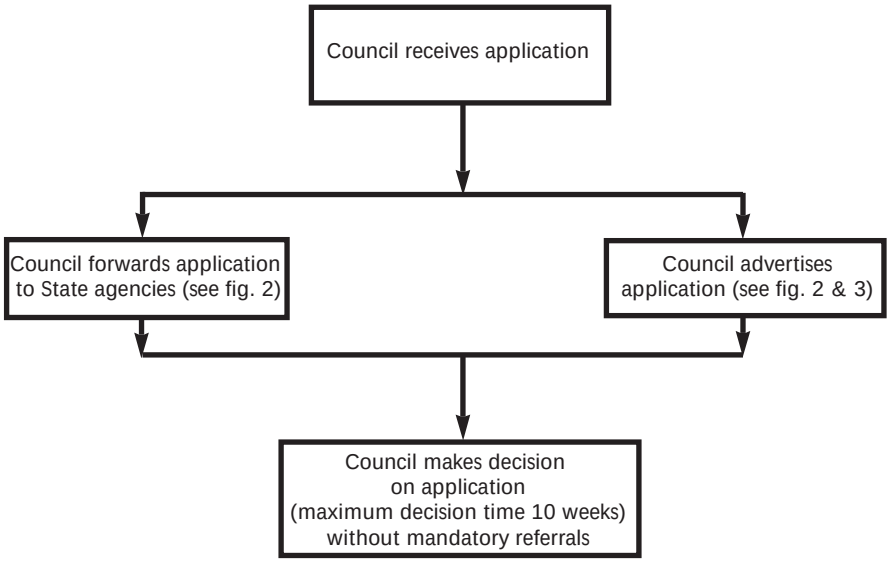
- the provisions of the relevant Development Plan in force at the time the application was lodged provided the provisions are relevant to the decision
- where relevant, any comments by a State agency, the report of a prescribed body, or advice from the Development Assessment Commission, provided such advice relates to the provisions of the Development Plan
- any representations received as a result of public notification and consultation on the application, provided those representations relate to the provisions of the relevant Development Plan.

The relevant authority must also comply with any directions made as a result of referrals under Schedule 8.

A PDP consent cannot, as a matter of law, be granted by a relevant authority if the decision would be, in the opinion of that authority, seriously at variance with the relevant Development Plan. In deciding what is serious and what is not serious, a degree of judgment is required. Reference to the objectives of the Plan applying to the development will frequently assist in determining what is serious, and what is a matter of detail.

Figure 5

COUNCIL AS RELEVANT AUTHORITY (MERIT APPLICATION - NOT LAND DIVISION)



DAC AS RELEVANT AUTHORITY (MERIT APPLICATION - NOT LAND DIVISION)

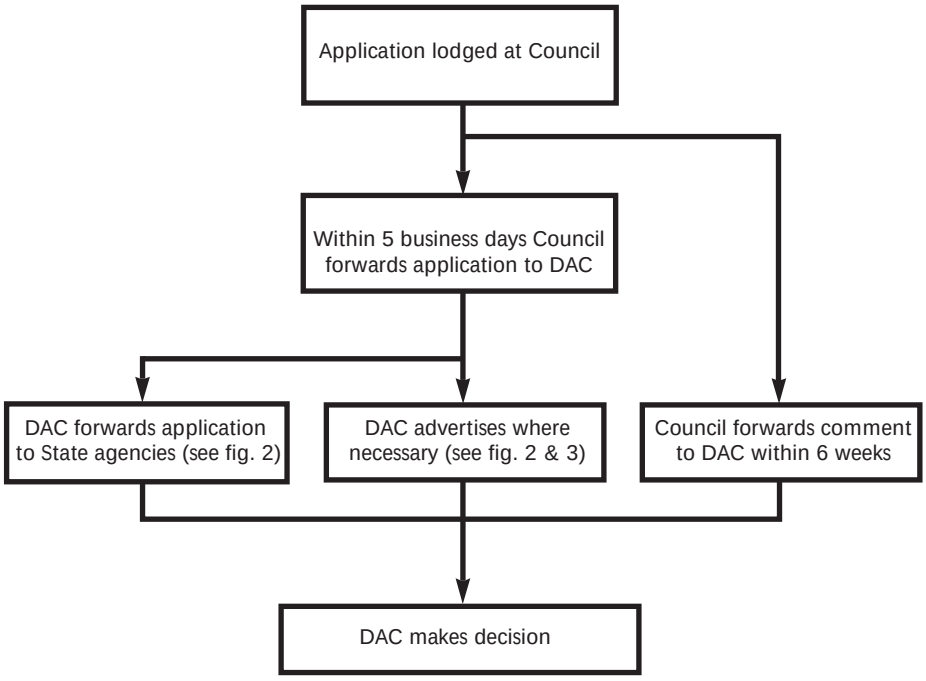
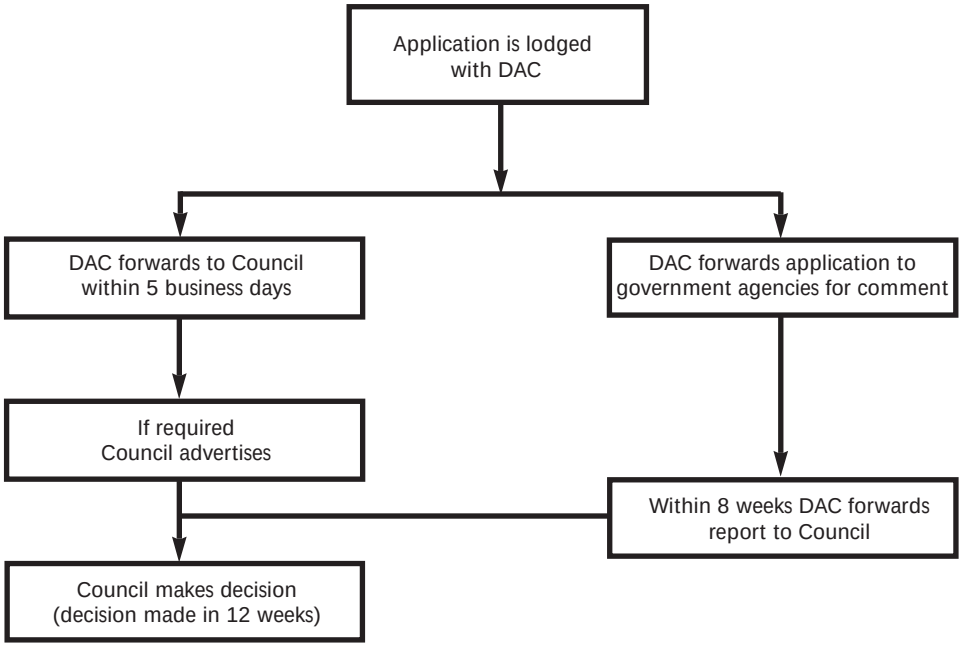
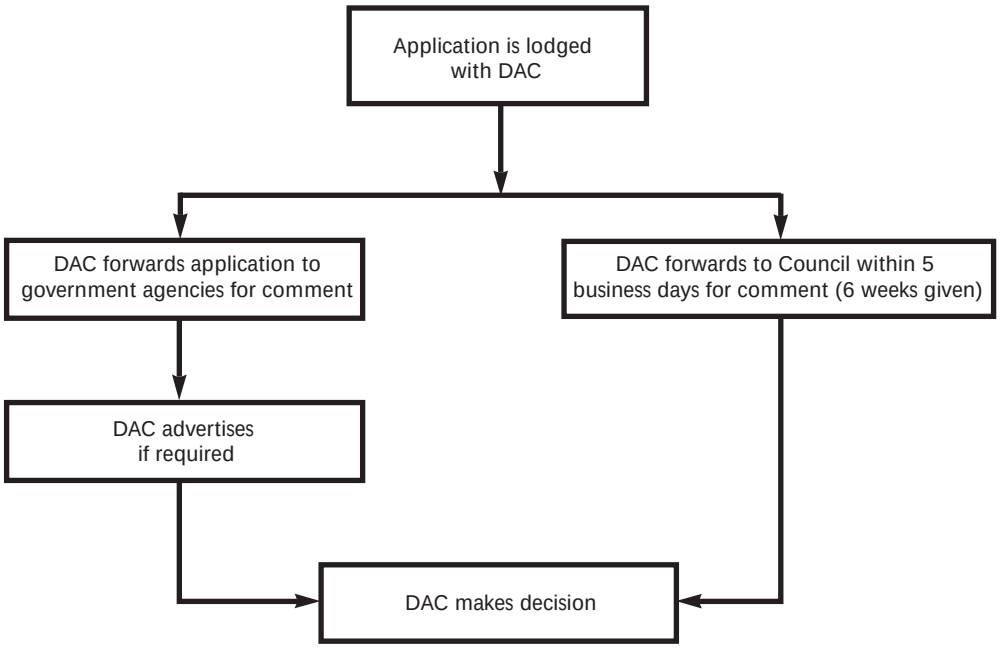


Figure 6

LAND DIVISION (MERIT) - COUNCIL AS RELEVANT AUTHORITY



LAND DIVISION (MERIT) - DAC AS RELEVANT AUTHORITY



Community Titles endorsement

In addition, when granting consents to a community title application, the relevant authority must, under Section 3(11) and (12) of the Community Titles Act, endorse the scheme description. This endorsement enables the relevant authority to ensure any prospective purchasers are aware of any Development Act constraints on a Community Titles scheme. In particular Section 30(4) of the Community Titles Act enables the authority to add comments on a scheme endorsement, including notes to the effect that a scheme may be subject to subsequent planning consents, which may or may not be forthcoming.

It is very important a relevant authority ensures a scheme which envisages future proposals for a development lot, is endorsed only subject to notes which advise purchasers of the scheme, that future development is subject to future approval, under the Development Act provisions at the time future approval is sought.

It should be noted a scheme description is only required for a proposal with greater than 6 lots, or where a development lot is proposed.

As future development stages will require the appropriate approval, the scheme description should ensure that it specifies the need for further approval as appropriate.

Deferral of matters - Section 33(3)

A relevant authority, when assessing a development proposal in the form of an application for either a development approval or a PDP consent, can defer its decision on a specific matter of the proposal. The assessment of the deferred matter can be completed during the assessment for the PBR consent, or one of the other consents that may be relevant under Section 33 of the Act.

For example, the development of a major tourist accommodation complex in a rural area requires development approval. Some of the factors that need to be addressed by the relevant authority include the treatment and disposal of effluent and the layout of landscaping. Preliminary information on such matters, to assure the relevant authority of the proposed development's consistency with the provisions of the relevant Development Plan, is all that would be required as part of the assessment for the PDP consent. The applicant could then provide the full details on such matters during the assessment for the PBR consent. At that stage, the applicant has a greater degree of certainty in respect of the proposed development and would be more inclined to commit resources towards providing the required detailed information to the relevant authority, but without wasting resources prematurely.

The ability to defer such matters can help to eliminate unnecessary duplication in the assessment process and provides the opportunity to delegate decisions on matters of detail, thereby speeding up the decision making process. However, it would be unwise to defer any matter of a fundamental nature. Deferral should really only relate to relatively non–controversial details.

In all cases, deferred matters must be resolved prior to issue of final development approval.

The Development Plan

The Development Plan provides guidance to achieve suitable development that would merit the granting of a PDP consent and the conditions that might be appropriate for it.

Therefore, the Plan assists the relevant authority in its consideration of applications and of conditions that should be placed on a PDP consent. Conditions placed on a PDP consent are binding but may be subject to appeal. Conditions placed on a PDP consent for a non–complying development are not subject to appeal, except insofar as the works related to an application are required under other legislation.

A relevant authority must impose and separately identify conditions of provisional consent or reasons of refusal on the decision notification form in relation to a PDP consent where that condition or refusal result from direction in a referral under Schedule 8.

Any right of appeal against such directions, in accordance with the Act and Regulations, would be against the prescribed body, as well as the relevant authority, except where Regulation 31 specifically excludes appeal rights.

Conditions on a provisional Development Plan consent - Section 42

Provisional Development Plan consents granted under the Development Act may be subject to such conditions as the relevant authority thinks fit, and are binding on subsequent persons or companies having the benefit of the PDP consent. While the Act specifies such conditions are at the discretion of the relevant authority, there are a number of principles governing the validity of such conditions. These principles have evolved through court judgment and some of the more significant of these principles are discussed below.

Finality

Except where it is deferred to a later consent (not approval), a condition must be clear and final and not require further approval, possibly under other legislation, to enable the condition to be met. A condition requiring the relevant authority or some other person or body to be satisfied on a particular matter would essentially mean no decision had yet been made on the application. Where sufficient information is not available on a proposal, Section 39(2) of the Act provides that further information can be sought, and a final decision made with complete details of the proposal.

Substantial variation

A condition cannot be used to alter the fundamental nature of an application. While conditions can alter details of a proposal, a condition seeking to substantially alter the proposal would be invalid. If the application as lodged does not fundamentally comply with the development plan, refusal is the best option.

Relate to development

A condition must be directly related to the subject of the application. A condition seeking to reach an objective unrelated to the proposal would be invalid.

Fettering statutory powers

A condition cannot bind future decisions of a relevant authority nor can it fetter the discretion of an authority under any other legislation.

Planning purpose

A condition must be for a purpose envisaged by the Development Act. Conditions that do not seek to attain objectives set out in the relevant Development Plan may be invalid.

Fair and reasonable

Conditions must be fair and applied in a reasonable manner. Conditions that are unduly harsh or require Acts beyond the power of the developer may be invalid. In such cases, a refusal may be more appropriate.

Certainty and clarity

A condition must be clear and definite. Vague and uncertain conditions may have no effect or may be unenforceable.

Timing conditions

Regulation 48 sets time limits on the commencement and completion of development. Conditions limiting the operation of this Regulation are more than likely to be invalid. In addition, a condition limiting a development approval to temporary operation is more than likely to be invalid. A better approach would be to refuse permanent development that is unacceptable, but grant development approval should the application be for temporary development. Therefore the application limits the development approval, not the condition.

Payment of money

A condition requiring cash contribution to public works will generally be invalid. Only in rare circumstances could it be valid, and only if the works can directly and solely be attributed to the development proposal, and it is clear the cash will be directly applied to address the planning concern.

Further approval

Informing an applicant of the need to seek approval under other Acts can be given only as advice or notes set out on the decision notification form and not as a condition because compliance with other legislation is not a matter for consideration under the Development Act.

Severing of Conditions

When the Environment, Resources and Development Court finds a condition of the relevant authority to be invalid, it must make a decision as to whether the condition can be deleted or whether it is of a fundamental nature and would substantially alter the nature of a PDP consent if deleted. In the latter circumstances, the PDP consent itself would be held to be invalid.

While the above list may not be comprehensive, it is clear there are limits on the type of conditions that may be imposed under the Act. If in doubt, legal advice should be sought.

Delays in decision making - Section 41

The Act gives an applicant some measure of protection (by means of access to the Environment, Resources and Development Court) in the event that a relevant authority takes no Action or delays making a decision in relation to the application.

If the relevant authority fails to notify the applicant of a decision on an application within the time periods prescribed or agreed to under Regulation 41, the applicant may notify the relevant authority in writing that he/she is aggrieved by the failure of the relevant authority to notify him/her of the decision.

If no decision is made after fourteen days from that notification, the applicant may apply for an order from the court to direct the relevant authority to make a decision on the application. Section 41 states that the court should award costs in favour of the applicant unless it is satisfied there was good reason for the delay. In any event the court will be likely to fix a date for a decision, taking into account the reasons for the delay.

In addition, the Minister can, under Section 34, refer an application before a council, to DAC for decision, where the council has delayed beyond statutory time limits.

Car parking fund - Section 50A

Section 50A of the Act enables a council, with approval of the Minister to establish a ‘car parking fund’. The fund is established by Gazette Notice, and enables an applicant to choose to contribute to a central parking fund administered by the council in lieu of on–site car parking. This system is particularly useful in congested ‘centre’ areas where consolidated car parking may be a better solution than smaller individual car parks.

AFTER THE DECISION

Notification of the decision

The form - Part 8 of the Regulations

The relevant authority must notify the applicant and the owner of the land of its decision on a proposed development in relation to a development approval or a PDP consent. The decision notification form (see figure 23), or a form to like effect, is used for this purpose. A copy of it is contained in Schedule 11 of the Regulations. The relevant authority, must also, where necessary in accordance with the Act and Regulations, send a copy of the completed decision notification form to any representatives and prescribed bodies listed for referral under Schedule 8.

Notification to applicant - Sections 40 and 86 and Regulation 42

If a PDP consent is being granted subject to conditions, or if the application is refused, the relevant authority must advise the applicant of:

- the reasons for the imposition of conditions (if any) or of refusal
- the right of appeal against the decision (if any).

This advice must be given to the applicant within five business days from the date of the decision. If dissatisfied with either the decision made by a relevant authority or any condition(s) that may be attached to the PDP consent, the applicant can lodge an appeal with the Environment, Resources and Development Court. The appeal must be made within two months of the applicant receiving the notification of the decision by a relevant authority. The time can be extended only in exceptional circumstances and at the discretion of the court.

If the application is for a Category 3 development, it was subject to representations and is granted a PDP consent with or without conditions, then the relevant authority must notify the applicant that the provisional consent will not operate:

- until after fifteen business days from the date of the decision, thus allowing time for lodgment of appeals by representatives (if any)
- until the determination of an appeal, if there is one.

The applicant should be advised to contact the court after fifteen business days to determine whether an appeal has been lodged.

Notification to prescribed bodies - Regulation 43

The relevant authority must send a copy of the decision notification form to:

(1) the Development Assessment Commission on applications:

- for land division
- for a non–complying development

(2) a prescribed body where it has been consulted in accordance with Section 37 of the Act on an application.

The relevant authority must send a copy of the decision notification form to the prescribed body within five business days after the notice has been given to the applicant. A prescribed body does not have a right of appeal against any decision of the relevant authority. It may become directly involved in an appeal against its direction to the relevant authority to impose conditions or to refuse an application.

Notification to third parties and the ERD Court - Section 38(12) and (13)

As well as notifying the applicant on an application for a Category 2 or 3 development, the relevant authority must, within five business days of the decision:

(1) notify each person, group or body that made representations of the decision and the date of the decision

(2) if a Category 3 development, also give notice to the Environment, Resources and Development Court:

   a. of the decision and the date of the decision

   b. of the names and addresses of each person, group or body which made representations to the relevant authority.

The right of appeal to the court against the decision by the relevant authority is available only within15 business days of the decision, to persons who made written representations on a Category 3 development to the relevant authority.

Notification to owner of land - Regulation 45

In the case of a development application where the owner of the land involved is not the applicant, the relevant authority must send a copy of the decision notification form to the owner. This advice must be provided to the owner within five business days after the notice has been given to the applicant.

Lapse of PDP consent - Regulation 48

For all types of development, including land division, a PDP consent will lapse twelve months after the date of the decision if the applicant takes no further action.

The time period for a PDP consent may be extended by the relevant authority either at the time it makes its decision on an application for a staged consent or, upon receipt of a written request by the applicant for an extension prior to lapse, within 12 months of the date of its decision.

Where an appeal has been made against a decision by a relevant authority, the date of the decision becomes the date when the appeal is dismissed, struck out or withdrawn or finally determined.

Extension of PDP consent

The applicant must make a written request to the relevant authority when seeking an extension of time for a PDP consent. Such an application must be lodged prior to the PDP lapsing. The reasons given for seeking extensions commonly include delays in arranging finance or difficulties in establishing construction agreements.

When the relevant authority is considering a request for extension, it should have regard to all relevant matters, which may include:

- whether there is evidence of substantial commitment to the development
- whether the policies in the Development Plan upon which the original PDP consent was based have been substantially changed
- whether the character of the locality has changed since the original PDP consent was granted.

Because of the likelihood of changes to the policies in the Development Plan along with changing community attitudes, it is good planning practice to grant only one extension with a time limit of a maximum of 12 months.

The register - Regulation 98

The details of the application, whether it is for a development approval or a staged consent, must be kept in a register as described in the register on page 58 of this guide.

APPLICATIONS DECIDED BY THE DEVELOPMENT ASSESSMENT COMMISSION

Which types of development? - Section 34 and Regulation 38

The Development Assessment Commission is responsible for deciding development applications for:

(1) the classes of development listed in Schedule 10 of the Regulations

(2) development where the Minister, Acting at the request of a council, has directed it to Act as the relevant authority

(3) development that has been 'called in' by the Minister to DAC under criteria set out in Section 34(1) of the Act. These criteria relate to council bias, regional impact and delays in decision–making

(4) development located, wholly or in part, outside of council areas

(5) major developments or projects in which the Governor has delegated the decision-making authority to DAC.

Other than proposals involving land division and development located outside of a council area, the application must be lodged at the offices of the council for the area in which the development is to be undertaken.

As pointed out earlier in this guide, the Minister can direct DAC to Act as authority for a development at council's request or can 'call in' an application under the criteria set out in Section 34 of the Act. Where the Minister exercises a 'call in', DAC becomes the authority instead of the council but must apply the same process and Development Plan as a council would apply.

Action by Council - Regulation 15

For applications decided by DAC, the council will retain one copy of the development application form, the plans and copies of supporting information. The council is then required to forward to DAC such number of copies of the development application form and any supporting information and plans as DAC may require. This must be done within five business days of receipt of the application.

The council may, within six weeks of lodgment of the application, forward to DAC a written report, or one sent by facsimile transmission, containing:

- any comment it wishes to make
- conditions it may wish to have imposed on the PDP consent.

If no report is received within six weeks, DAC may assume the council has no comment to make and proceed to make a decision on the application.

Where an application is 'called in' to DAC, Regulation 38 sets out time limits under which the council can offer comment.

Development Assessment Commission declared to be the relevant authority - Regulation 38

The DAC may be declared to be the relevant authority where this is normally the responsibility of a council if:

- the council requests to the Minister that it wishes DAC to Act as the relevant authority for the proposed development
- the Minister agrees because:
    1 there is a matter of State significance involved
    2 the proposed development straddles a council boundary or significantly affects a neighboring council and the two councils are not in agreement about the process for dealing with the proposed development
    3 a council has an interest in the land
- the Minister declares by notice in writing, sent personally or by post to the applicant and the council(s), that DAC will be the relevant authority.

Alternatively, Section 34 enables a 'call–in' to be exercised where:

- council has a publicly declared conflict of interest
- the development impacts on more than one council
- the council has delayed the application beyond decision time limits.

Within five business days of the receipt of the Minister's notice the council must forward to DAC:

- the completed development application form
- any supporting information and plans
- a report describing the Action taken by the council on the application up to the date of the notice by the Minister.

If, on the application, the council has undertaken:

- public notification and consultation
- referral to one or more prescribed bodies
- consultation with one or more State agencies.

DAC may, under Regulation 38, and at its discretion, decide to adopt, disregard or reject any Action or decision of the council relating to the assessment of the application.

Except where a 'call in' applies because of council delay, within eight weeks of the lodging of the application the council may forward a report to DAC containing any comment the council wishes to make or conditions it may wish to have imposed on the PDP consent.

If no report is received by DAC from the council within the eight weeks, the council is deemed to have no report to make on the application and DAC may proceed to decide the application.

Where a 'call in' applies because of delay, Regulation 38 sets out alternative time limits for council comment.

Assessment transferred from council to the Development Assessment Commission

The procedures that normally apply to the council will apply to DAC if it is declared the relevant authority.

When notifying the applicant of its decision, DAC must forward a copy of the decision notification form and any attachments to the council.

Decision Making on 'Call in' Applications

When an application is 'called in' by the Minister under Section 34, the process and Development Plan used by DAC is the same as would apply to the council. However in these circumstances, the composition of DAC is varied.

Regulation 103A requires that the existing commission be expanded to include the Mayor or Chairman of the affected council (or councils), or a nominee of that person. This gives the council clear access to the decision making process in addition to the rights of council as a body to make comment. The additional member increases the quorum of DAC to five.

Development outside Council areas

Outside council areas, DAC or a Regional Development Assessment Panel regulated by the Governor is constituted as the relevant authority for deciding applications. The procedures to be applied by DAC or the panel for the assessment of such applications are the same procedures that apply to a council when assessing applications, except that DAC must consult, under Regulation 38(4), any council where its boundary is within 1 kilometer of the development site.

In the case of the assessment of a proposed development against the Building Rules, DAC may require the assessment to be undertaken by a private certifier or some other person determined by DAC.

Council taken to be the relevant authority - Section 34(2) and Regulations 39 and 40 (See figure 15)

While the Development Assessment Commission or a regional development assessment panel may be constituted as the relevant authority for a proposed development, the council for the area in which the development is to be undertaken can become the relevant authority for the Building Rules assessment. The responsibilities of DAC, the regional development assessment panel and the council in relation to the Building Rules assessment are further explained in the section Provisional building rules consent – council taken to be relevant authority.

NON–COMPLYING DEVELOPMENT

Procedures for a non–complying development - Section 35(3) and (4), Regulation 17 (See figures 7 and 8)

Development that is non–complying cannot be given a PDP consent by a council or the Development Assessment Commission Acting alone. However, if the proposal has merit, the Act provides a process of development assessment that may result in approval.

Alternatively, when a proposal does not display merit, the Act provides for the relevant authority to refuse the application at an early stage or after public notification and to notify the applicant and the owner of the land involved accordingly.

Council or the Regional Development Assessment Panel is the relevant authority.

A non–complying development may be given a PDP consent when the relevant authority is satisfied that the proposal is not seriously at variance with the relevant development plan and where the following steps are carried out:

(1) A person makes an application to the council for a development approval or a PDP consent with a brief statement outlining the reasons why the proposed development should proceed, notwithstanding that it is listed as being non–complying in the relevant development plan.

(2) The council or Regional Development Assessment Panel decides it should proceed with the assessment of the application

(3) The council or Regional Development Assessment Panel seeks and obtains from the applicant a statement of effect on the proposal which describes:

  (a) the nature of the development and its locality

  (b) the provisions of the development plan relevant to the proposal

  (c) the extent to which the proposal complies with the provisions of the relevant development plan

  (d) the anticipated social, economic and environment effects on the locality

  (e) any other relevant matters.

(4) The council or Regional Development Assessment Panel proceeds to publicly notify the application and to consult with State agencies and prescribed bodies where necessary.

(5) The council or regional development panel

  (a) hears any representors (if required)

  (b) considers the comments (if any) received by State agencies and/or prescribed bodies.

(6) The council or panel makes a decision to support or not support the application.

(7) The council or panel seeks the concurrence of DAC.

(8) DAC concurs or declines to concur with the decision of the council or panel.

(9) The council or panel issues the PDP consent to the applicant.

The lists of non–complying development are inserted into the Development Plan as an important strategy in the realisation of the goals of the Plan. While the mechanism exists for a development approval or PDP consent to be granted to a non–complying development, the process should not be taken lightly because of the centrality of the Development Plan in the planning process. All applications for a non–complying development must be considered as to whether they are seriously at variance with the provisions of the Plan. Before the council or panel decides whether the proposed development is seriously at variance with the provisions of the relevant development plan, it is important it forms a view as to the aims of the plan as a basis for the assessment.

The following criteria may prove to be of assistance to the council in the assessment of proposals for non–complying development:

(1) While contrary to a statement of objective proposals or principles of development control, is the proposed development nevertheless deemed acceptable when balanced against all the relevant statements in the relevant plan of that kind?

(2) Will the proposed development threaten the attainment of the objectives of the zone by:

(a) further entrenching an inappropriate use

(b) the seriousness of its variation from the intended character of a zone

(c) further compounding, in a particular locality, an incremental variation from the intended character of zone?

(3) Will the proposed development, by lessening the detrimental impact of a non–conforming Activity, assist in gradually achieving the provisions of the relevant plan?

(4) Is the proposed development so minor that there is no significant variance from the provisions of the relevant plan?

If the council or panel considers the proposal is not seriously at variance, it can decide to proceed with the assessment of the application and undertake any referral and public notification and consultation procedures that may be required.

The council, if it decides to grant a PDP consent for the application, must seek the concurrence of DAC.

Both the council or panel and DAC are bound by time limits when considering non–complying development. The council or panel has twelve weeks from the date it decides to proceed with the application to make its decision. While there is no statutory time limit, it is expected DAC will deal with applications within ten weeks from the date of the concurrence request by the council or panel in which to make its decision.

Concurrence of the Development Assessment Commission - Section 35(3) and Regulation 24

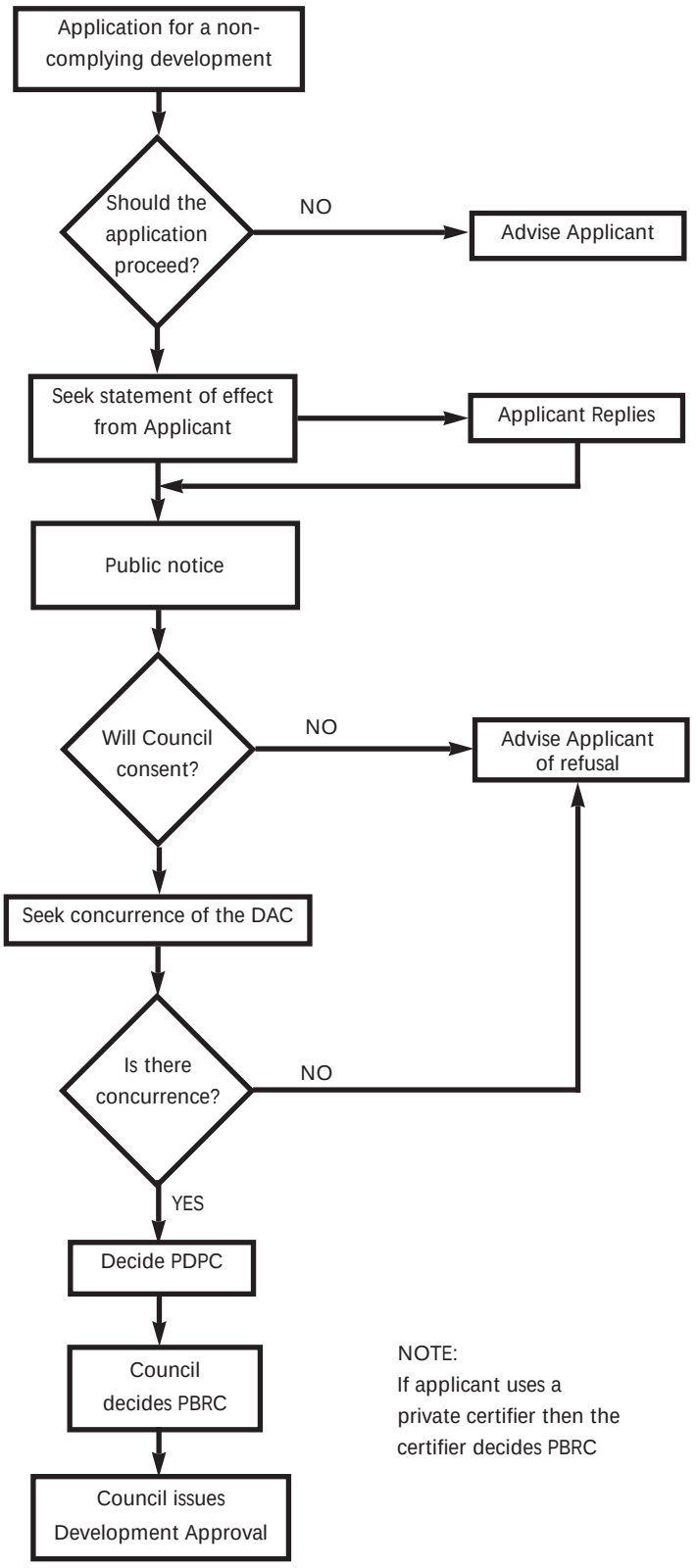
When seeking the concurrence of the Development Assessment Commission, the council must forward to it copies of the following:

- the completed development application form
- any supporting information and plans (but not the Building Rules specifications, plans and drawings)
- any advice from State agencies and any reports received from prescribed bodies in accordance with Part 5 of the Regulations Referrals and Concurrence
- any representations and responses in accordance with part 6 of the Regulations Public Notice and Consultation
- a copy of the statement of effect
- a copy of any planning advice including a commentary on the statement of effect
- any conditions and notes that the Council proposes to attach to its PDP consent.

If DAC concurs with the PDP consent that the council proposes to give to the application, DAC notifies the council of its concurrence.

Figure 7

NON-COMPLYING DEVELOPMENT (THE COUNCIL AS THE RELEVANT AUTHORITY)



NOTE:
An application for a non-complying development must include a statement of support for the proposal

NOTE:
The Applicant has no right of appeal

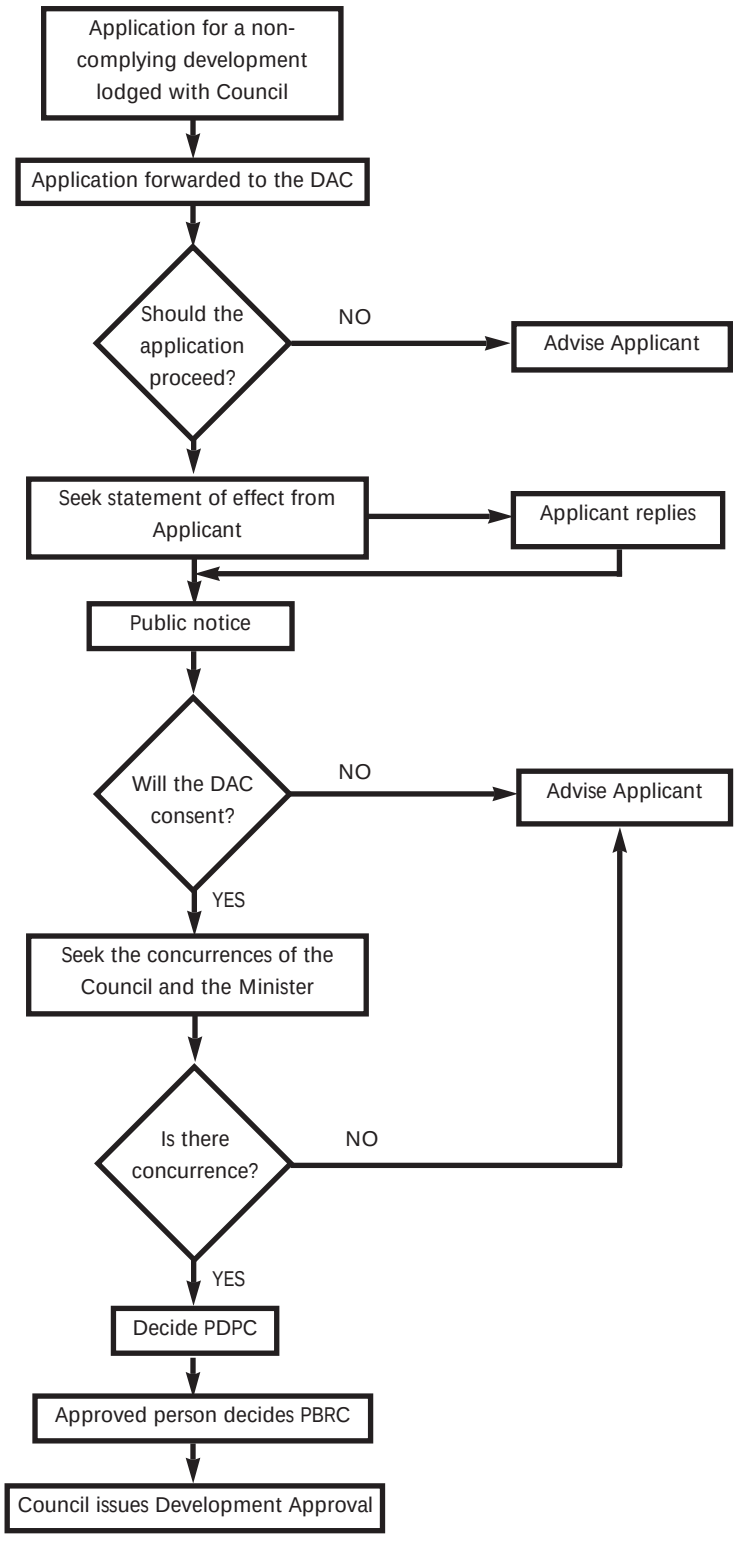
NOTE:
Some non–complying developments are exempt from public notice.

NOTE:
The Applicant has no right of appeal

NOTE:
If applicant uses a private certifier then the certifier decides PBRC

Figure 8

NON-COMPLYING DEVELOPMENT (THE DAC AS THE RELEVANT AUTHORITY)



Note:
An application for non-complying development must include a brief statement of support for the development.

Note:
The Applicant has no right of appeal.

Note:
Some non–complying developments are exempt from public notice.

Note:
The Applicant has no right of appeal.

Note:
The concurrance of the Council is not required in some circumstances - see Section 35.

The Development Assessment Commission is the relevant authority - Section 34 and Schedule 10

Where an application is listed in Schedule 10 to the Regulations or DAC is the relevant authority pursuant to Section 34, the council must forward the application to DAC within five business days of it being lodged.

DAC must then:

- decide whether to proceed with the assessment of the application for a PDP consent. If DAC declines to proceed it must refuse the application and notify the applicant and the owner of the land. DAC may seek further information from the applicant before making this decision. A decision to proceed does not imply, on the part of DAC, an intent to grant a PDP consent
- seek and obtain from the applicant a statement of effect on the proposed development
- proceed to publicly notify the application and to consult State agencies and prescribed bodies where necessary
- decide whether to grant a PDP consent after consideration of any advice from State agencies, reports from prescribed bodies and any representations. If DAC refuses the application it must notify the applicant, the owner of the land, any prescribed bodies consulted and representatives
- seek the concurrence of the council and then the Minister to its decision. If either the council or the Minister decline to give concurrence then the application must be refused by DAC. The concurrence of the council is not required pursuant to Section 34(b)(ii) or (iii) or (vi)(A), where the development is a council development of a prescribed class or the council has a conflict of interest
- issue the PDP consent and notify the applicant, the landowners, representatives (if any) and any prescribed bodies consulted on the application.

If the application requires an assessment in relation to the Building Rules, DAC, after issuing the PDP consent, may:

- refer the assessment of the PBR consent to the relevant council OR
- require the assessment of the PBR consent to be undertaken by a private certifier or by some other person of a class determined by DAC.

The council for the area in which the development is to be undertaken can be taken to be the relevant authority where arrangements have been made for it to decide on the PBR consent. This authority is subject to any limitations specified by DAC.

If the council grants a PBR consent it may also make a decision on the application in relation to development approval if no other consents are necessary.

Appeals - Sec. 35(4)

Where non–complying development is being considered, there are no appeal rights to the applicant available against:

- a refusal by the relevant authority to proceed with the assessment of an application
- a refusal by the relevant authority to give a PDP consent
- a refusal by the council, the Development Assessment Commission or the Minister (whichever the case may be) to grant concurrence
- any conditions attached to a PDP consent by the relevant authority, except where the application was lodged due to requirements of other legislation or the Act itself.

However, if PDP consent is granted to a non–complying development, the third party representatives do have a right of appeal against any approval and/or any conditions imposed on a provisional consent.

MAJOR PROJECTS AND DEVELOPMENT DETERMINED BY THE GOVERNOR

What are Major Projects and when is an Environmental Impact Statement required? - Sections 46 to 48

The Governor is the decision maker in relation to development proposals declared by the Minister to be of major environmental, social or economic importance and for which the Minister considers a declaration is ‘necessary or appropriate for proper assessment".

A declaration by the Minister can relate to a specific project or development, development in specified geographic area, or a specific type of development in an identified area.

When a declaration is made, the Governor may issue an ‘early no’, thus making it clear to the proponent and community further detailed assessment is not warranted. If the matter is to be further assessed, Sections 46 to 48 set out 3 levels of detail in the assessment process, with varying levels of investigation, reporting and public involvement. The process includes an independent panel to determine on the appropriate level of investigation, including where appropriate, a comprehensive Environmental Impact Statement.

The purpose of the process is to ensure comprehensive advice to the Governor to assist in a decision to approve or refuse the development or project.

In addition, the Governor may delegate decision responsibility to DAC.

A detailed description of the assessment of major projects is contained in the Guide to the Assessment of Projects of Major Significance.

LAND DIVISION CONSENTS

TYPES OF CONSENT

Section 33 (See figures 15, 16 and 17)

A development approval involving land division will usually be comprised of only two consents:

(1) a Development Plan (PDP) consent

(2) a land division consent for the statement of requirements.

For a small number of development proposals, which may involve a combination of building work and land division (including strata plans and some community titles), a greater number of consents will probably need to be obtained for development approval covering matters such as building construction. When a land division has been completed (construction work may be necessary) in accordance with the conditions and requirements of the development approval, a land division certificate can be issued.

A PDP consent signifies that a development proposal (in this case one for land division) has been assessed in relation to the relevant development plan. The PDP consent does not enable the applicant to construct and/or register the land division. (The steps relevant to the assessment and decision–making on a PDP consent are contained in Provisional Development Plan consent on page 9 of this guide.)

The land division consents refer to two different statements of requirements: one in relation to the division of land into allotments (including community titles, but not by strata plan), the other in relation to the division of land by strata plan.

THE APPLICATION

The development application form for a land division consent must be submitted to the Development Assessment Commission either by post, in person or through electronic lodgment. If the applicant is seeking a development approval, DAC can Act as a ‘one stop shop’ for the lodgment of:

- the completed development application form
- copies of the plans, prepared in accordance with Schedule 5 of the Regulations, and supporting information
- the fees prescribed by Schedule 6 of the Regulations
- scheme description if a community title application greater than 6 lots or if a development lot is proposed.

The application will involve an assessment on the Development Plan (PDP) consent and land division consent. However, if the application is for a staged consent, the applicant will need to submit a completed development application form, a copy of the decision notification form granting the PDP consent and the payment of the fee prescribed by Schedule 6 of the Regulations.

With either application, DAC will forward a copy of it to the relevant council (where applicable).

Figure 9

LAND DIVISION: DEVELOPMENT APPROVAL

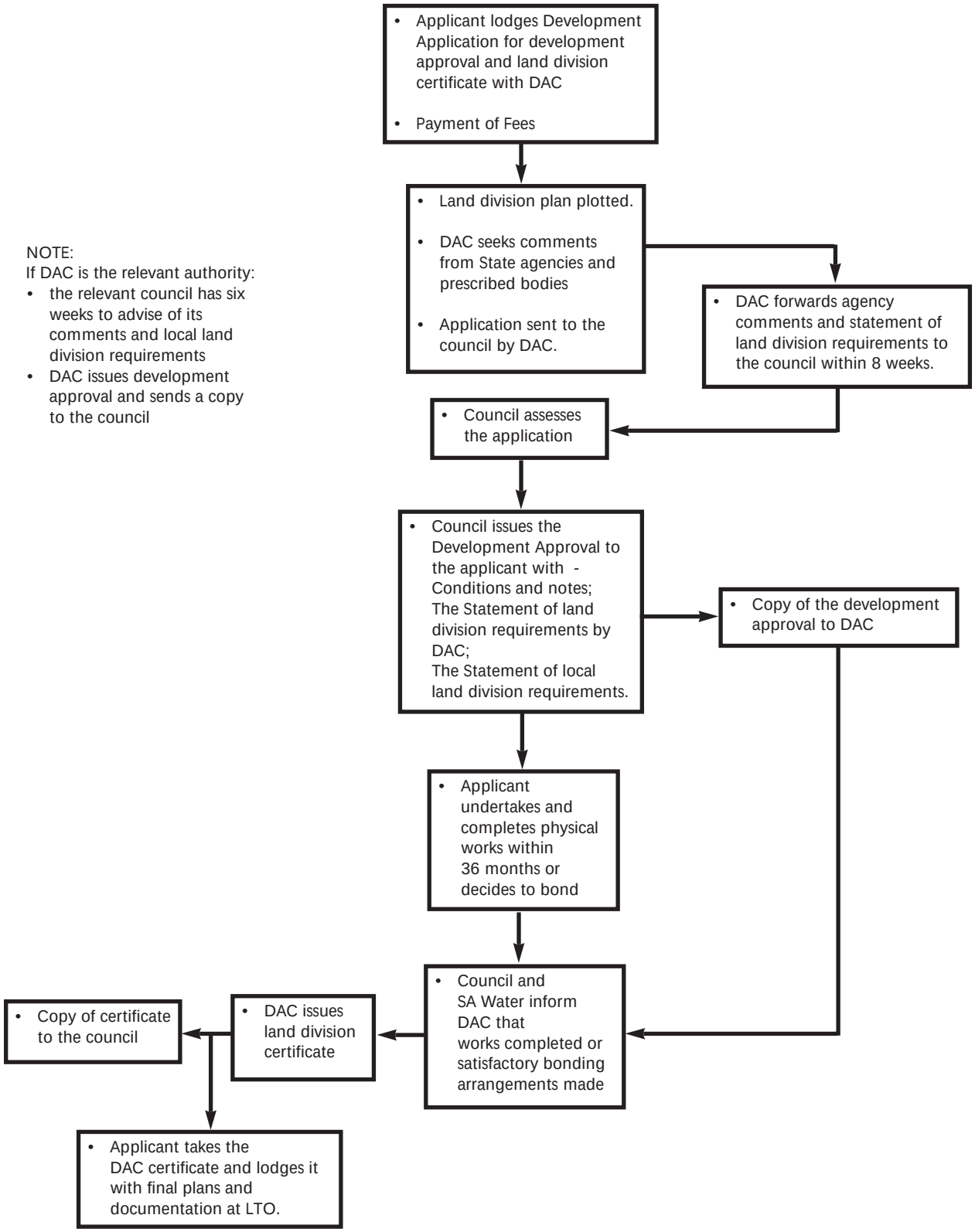


Figure 10

LAND DIVISION: STAGED CONSENT

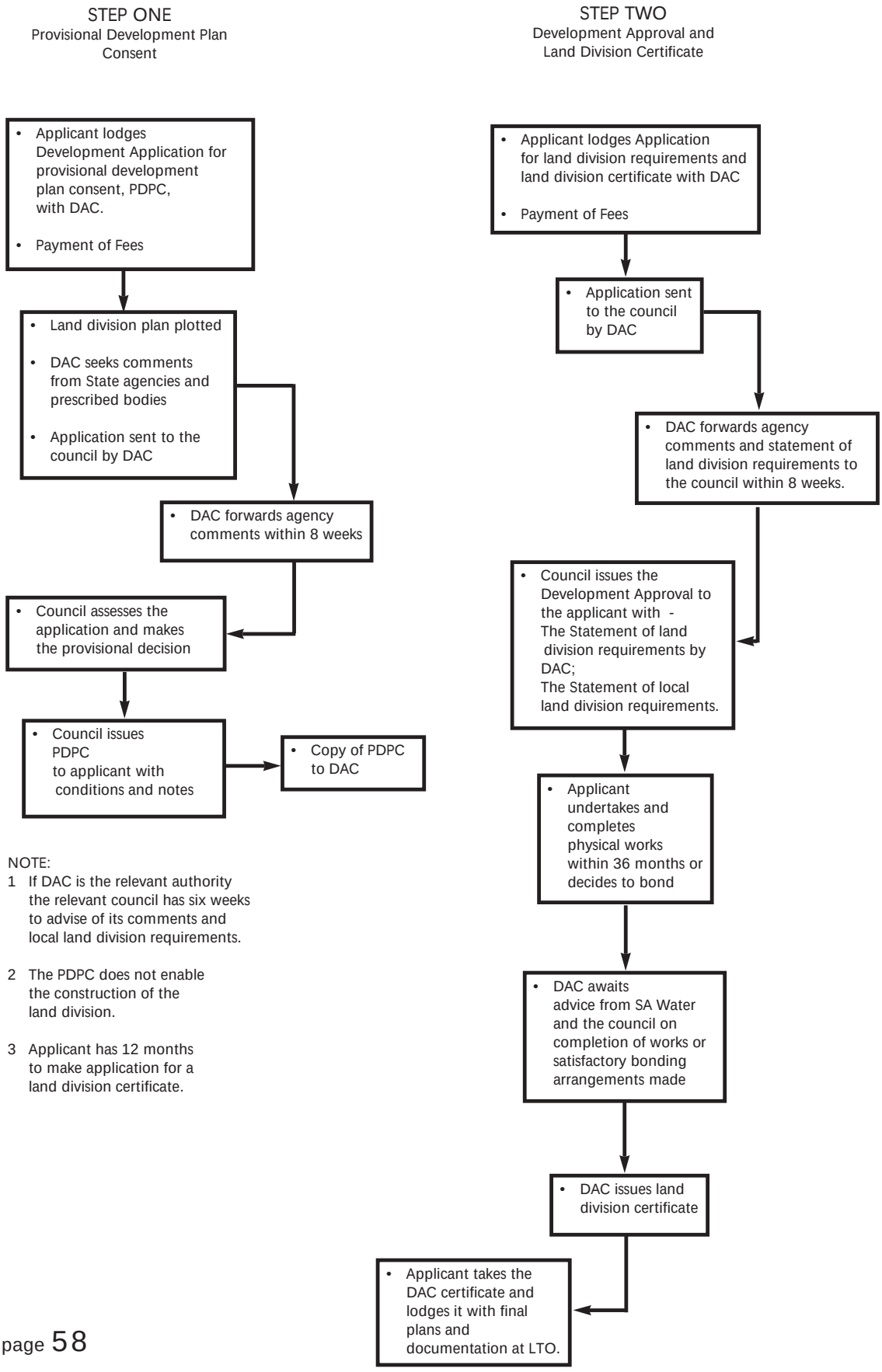
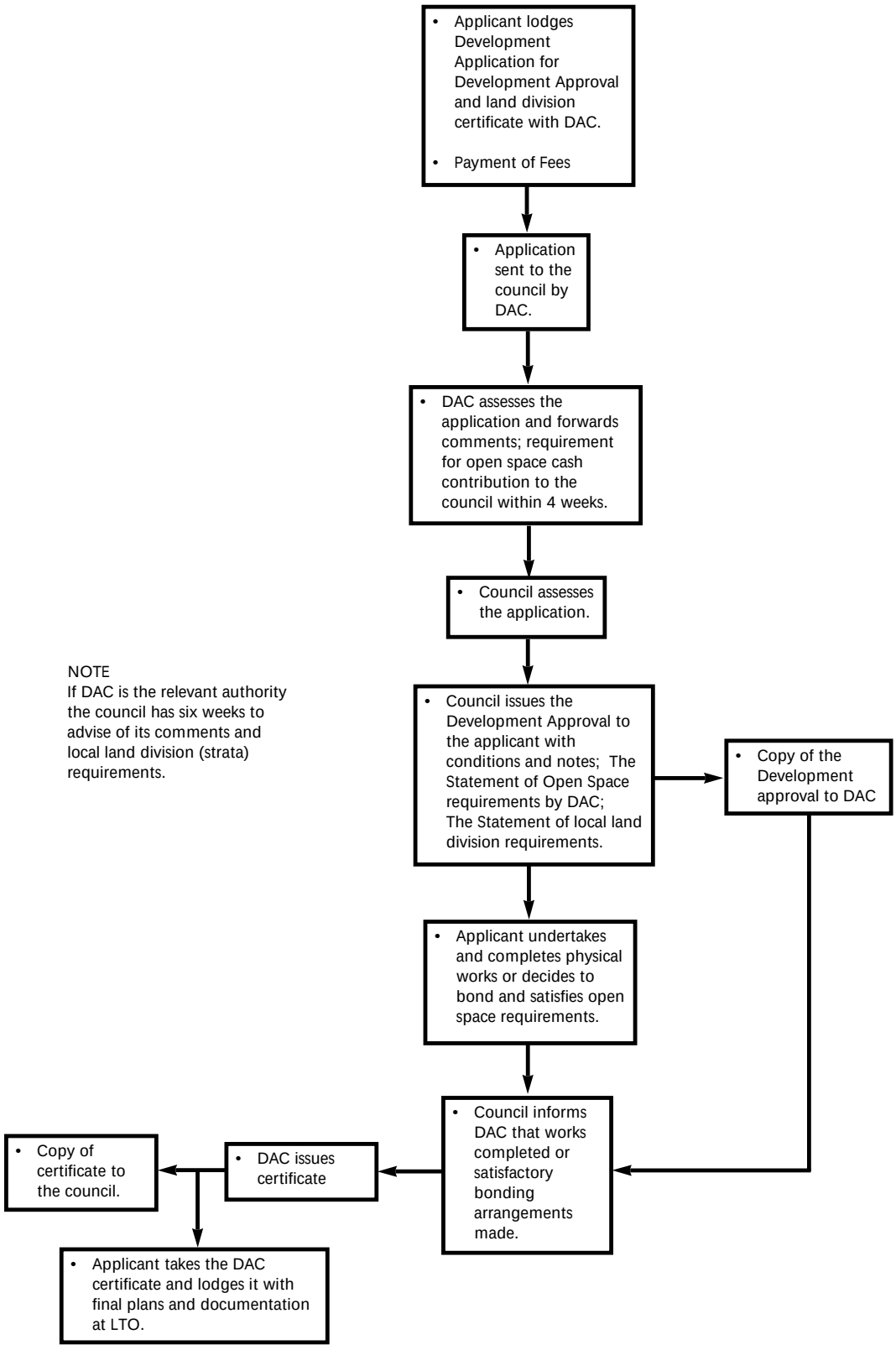


Figure 11

LAND DIVISION (STRATA/COMMUNITY PLAN): DEVELOPMENT APPROVAL



MAKING THE DECISION

Application for development approval

The decision by the relevant authority in relation to a PDP consent and a land division consent can be made almost simultaneously. The decision notification form for the development approval will need to contain:

- any conditions and notes (where applicable) resulting from the assessment of the proposal against the Development Plan (PDP consent)
- a statement of requirements (where applicable) from the relevant Council or regional development assessment panel (if any) and DAC in relation to a land division consent.

If a council or Regional Development Assessment Panel is the relevant authority, DAC (as the coordinating body for consultation with State agencies and prescribed bodies on land division proposals) must forward its advice to the council within eight weeks of receipt of the application. The advice forwarded by DAC must contain copies of any written comments and directions received from the agencies and bodies consulted as well as its statement of requirements for land division consent.

If DAC is the relevant authority, the relevant council (if any) must forward its comments to DAC within six weeks of receiving the application. The advice forwarded by the council may contain:

- comment to which DAC should have regard when deciding the application
- conditions and notes that DAC should attach to a PDP consent as part of the development approval
- the local statement of requirements which DAC must attach to a land division consent as part of the development approval.

If DAC does not receive comments from the council within this time, it will assume the council has no comment to make.

The relevant authority must separately identify on the decision notification form:

- any conditions and notes or reasons of refusal imposed at the direction of a prescribed body
- the land division statement of requirements of the relevant council or DAC (whichever the case may be).

When a council is the relevant authority it must send a copy of the decision notification form to DAC. A copy of the notice must be provided to DAC within five business days after it has been given to the applicant.

Application for land division consent (See figure 9)

The applicant will have already received a PDP consent (as a staged consent) containing any conditions and notes considered necessary by the relevant authority.

If a council or regional development assessment panel is the relevant authority, DAC must forward its advice on the land division statement of requirements to the council within eight weeks of receipt of the application. In preparing such advice, DAC may need to consult with the SA Water Corporation regarding any requirements for the provision of water and sewerage services.

In most cases DAC would be able to provide its advice to the council in a considerably shorter time than the statutory period of eight weeks.

If DAC is the relevant authority, the relevant council or regional development assessment panel (if any) must forward its comments on the land division statement of requirements to DAC within six weeks of receipt of the application. If DAC does not receive the land division statement of requirements from the council within this time, DAC may assume the council has no requirements to make in relation to the land division.

Upon receipt of the statement of requirements from the relevant council or DAC (whichever the case may be), the relevant authority can make its decision on the land division consent and then proceed to issue the development approval. The relevant authority must separately identify the land division statement of requirements of DAC or the council or the Regional Development Assessment Panel (whichever the case may be) on the development approval. When a council or panel is the relevant authority it must send a copy of the decision notification form to DAC. A copy of the notice must be provided to DAC within five business days after it has been given to the applicant.

THE LAND DIVISION REQUIREMENTS

Open space

If the plan of division is dividing land into more than twenty allotments (including by community title) and one or more of the allotments is smaller than 1 hectare in area, the relevant authority shall, at its discretion, either:

- require up to 12.5 per cent of the land being divided to be vested in the relevant council as open space (if the land is outside of a council area and DAC is the relevant authority, the land becomes Crown land)
- require a once–only monetary contribution for each new allotment not exceeding one hectare in area
- require a combination of part land and part money to develop land as open space in accordance with the following formula

$$P = \frac{PC\ [(12.5 - OS)\ X\ NA]}{12.5}$$

where:

P = the contribution payable.

PC = the prescribed contribution in respect of open space.

OS = the area of land (expressed as a percentage of the land delineated on the plan of division) to be vested in the Council or the Crown as open space.

NA = the number of new allotments delineated on the plan of division that do not exceed one hectare in area.

The relevant authority is always the council, except where the land concerned is not situated within a council area. The relevant authority has full discretion as to land or a contribution, except that a council must require land as reserve where the Development Plan delineates reserve, unless the council and DAC agree otherwise.

The monetary contribution for each new allotment is set out in Section 50(5) of the Development Act. This contribution may be varied by the Minister, on advice from the Valuer General and by notice in the SA Government Gazette, in proportion to the average variation in the market value of land during the previous financial year. This ensures the real value of such contributions does not decline through the passage of time.

Money received by a council under this provision (Section 50) is to be paid into a council trust fund for use in acquiring and developing land as open space.

If all allotments are more than one hectare in size, no open space requirement applies but if twenty allotments or less are proposed, DAC may require a monetary contribution instead of open space or, if the council agrees, accept land in accordance with the above formula to vest in council as reserve. Money paid under these circumstances is paid into the Planning and Development Fund administered by the Development Act Minister for the purposes set out in Section 81 of the Act.

In the case of a strata plan under the Strata Tiles Act or Community Titles Act, DAC will require the applicant to pay a monetary contribution for each unit shown on the plan of division. The monetary contribution for each unit is the same amount as for each new allotment as set out in Section 50(5) of the Act. Also, the Minister may vary the amount in accordance with land value movement as described above. The Regulations provide that monetary contribution is not applicable to an existing building unit scheme that was divided and used for units before 22 February, 1968 unless the strata plan proposes additional units that were built after this date. In this case only the additional units would be charged for.

Water supply and sewage disposal

DAC must ensure water supply and sewage disposal facilities and easements are satisfactory. Generally, these requirements will be determined by the SA Water Corporation.

Electricity supply and underground mains - Regulation 54

A council must ensure electricity supply details are satisfactory and the supply is to be installed in accordance with recognised engineering practice.

A council has the authority to declare an area of land as an ‘underground mains area’. Before making the declaration it must consult the relevant electricity authority responsible for distribution of electricity in the area. If the land concerned is the subject of a current application for land division, at the time the council decides to consult the electricity authority, the authority has up to eight weeks to provide a report to the council. If no report is forwarded to the council by the electricity authority within the statutory period, the council may presume that the authority has no report to make. Even if an area becomes affected by such a declaration after a development application involving land division over the land has been lodged, the relevant authority can impose a condition on its decision on the application requiring any electricity mains to be laid underground.

Roads and drainage - Regulations 51 to 54

A council must ensure drainage details are satisfactory and determine its requirements for roads.

Condition of building

When a proposal is for a community title division, the council must ensure the building containing the proposed units complies with the fire resistance requirements of the Building Rules.

Furthermore, a council must be satisfied that each unit is appropriate for separate occupation.

AFTER THE DECISION

Notification of the decision

The form (See figure 16)

Once the decisions have been made by the relevant authority in relation to a PDP consent and a land division consent, it must issue a development approval or refusal. At the very least, the relevant authority must notify the applicant and the owner of the land of its decision. The decision notification form contained in Schedule 11 of the Regulations, or a form to like effect, is used for this purpose. If the development application is one for a development approval rather than a staged consent, the relevant authority must also, where necessary in accordance with the Act and Regulations, send a copy of the completed decision notification form to any representatives, prescribed bodies and the ERD Court.

The procedures in respect of the notification of concerned parties such as the applicant, the owner of the land, representatives, prescribed bodies and the ERD Court are mentioned in Notification of the decision on page 31.

Status of the decision

The advice contained in Status of the decision on page 54 is applicable to this decision.

The register

The details of the application, whether it is for a development approval or a staged consent, must be kept in a Register as described in The register on page 58.

Community Titles

Where the division is for community tiles, the relevant authority must also endorse the scheme description (if applicable), under Section 3(11) and (12) and 30(4) of the Community Titles Act. See Making the Decision for more details.

PROVISIONAL BUILDING RULES CONSENT - PRIVATE CERTIFICATION

Part 12 of the Act and part 15, division 2 of the Regulations

The function

Private certification is the process that enables assessment of an application involving proposed building work against the Building Rules by an appropriately qualified person instead of the relevant authority.

Authorised functions of a private certifier

A private certifier has the authority to make a decision in regard to a PBR consent, the same as a council. However, a private certifier cannot issue a development approval or grant a PDP consent as that authority remains only with a council, DAC or the Governor.

A detailed list of the authorised functions of a private certifier is contained in regulation 89. The functions of a private certifier are subject to two significant limitations:

(1) other than for complying development, a private certifier must not grant a PBR consent for a proposed development requiring a PDP consent, before the PDP consent is granted

(2) a private certifier must, in deciding whether to grant a PBR consent, have regard to the PDP consent and any imposed conditions and notes (if a PDP consent is required).

Who may Act as a private certifier?

A person may not Act as a private certifier unless he or she holds a current certificate of registration from the registration authority pursuant to Regulation 93A. A private certifier must possess the following qualifications and experience :

(1) current accreditation as a building surveyor or approval from the Minister

(2) at least eight years post–graduate experience as a building surveyor, architect or civil engineer in respect of buildings.

In addition, a private certifier must hold a current professional indemnity insurance policy as prescribed by Schedule 23 of the Regulations.

A person MUST NOT Act as a private certifier:

(1) if they have a direct pecuniary interest in any aspect of the development or any body associated with the development

(2) if they are employed by any person or body associated with the development (except when they are an officer or employee of the Crown)

(3) if they have been involved in the preliminary planning or design of the development (other than through the provision of preliminary advice of a routine or general nature)

(4) if they are employed by a council in relation to a development within that council area

(5) where they have been disqualified from practicing by the Minister.

Who may use a private certifier?

A person or body can choose to use a private certifier to obtain a PBR consent or for any of the other authorised functions listed in Regulation 89. Organisations involved in high–volume construction, such as in the housing industry and service industry (for example, service stations and fast food restaurants) may find it more convenient to use the services of a private certifier than a private individual. In situations where DAC is the relevant authority on proposed development, it can require the assessment against the Building Rules to be undertaken by a private certifier or some other suitable person.

Action by a private certifier

A private certifier must notify the relevant authority as soon as practicable after being engaged to perform any of the authorised functions listed in Regulation 89.

When a private certifier makes a decision to grant a PBR consent in relation to building work they must:

- notify the relevant authority in writing of the decision
- if required, present evidence to the relevant authority that he or she holds a current Certificate of Registration
- provide the relevant authority with:

  (1) two endorsed copies of the plans, drawings and technical details forming the application

(2) if relevant, a list of the schedule of essential safety provisions in the appropriate form

(3) a certificate that the PBR consent is consistent with the PDP consent and any applicable conditions and notes (if such consent is relevant).

When an applicant engages a private certifier, a relevant authority must accept the building rules consent granted by the certifier. If all other consents have been granted, once a relevant authority has been notified in writing of the decision to grant a building rules consent, it cannot refuse or delay the issuing of a development approval.

The decision of a private certifier in relation to an assessment against the Building Rules is subject to appeal to the Environment, Resources and Development Court in the same manner as a decision by a council or DAC. Alternatively, if a private certifier refuses an application for PBR consent the applicant may submit a new application to the relevant council

THE APPLICATION

Regulation 21

The procedures for lodging a development application involving building work are detailed in Lodging applications on page 3. Generally, the procedures involved and the information required are the same irrespective of whether the application is for a development approval or a staged consent. If the application is for a staged consent concerning a PBR consent then, in most cases, the applicant will have already obtained a PDP consent. Where applicable, a copy of the decision notification form for the PDP consent must be lodged with the application. The relevant authority must be satisfied the PDP consent has not lapsed. On any application involving a Building Rules consent, the relevant authority or private certifier (if engaged):

(1) cannot grant a PBR consent until it has seen evidence of payment of the levy or that no levy is payable under the Construction Industry Training Fund Act, 1993

(2) must obtain from the landowner a certificate of building indemnity insurance for domestic building work costing over $12,000. Please refer to the definitions of ‘certificate of insurance’, ‘domestic building work’ and ‘licensed builder’ in Regulation 21.

A person must not commence domestic building work unless a certificate of insurance under (2) (above) has been supplied to the relevant authority.

A certificate of insurance for domestic building work ensures the owner has protection against:

- non–completion of the work by the builder
- failure by the builder to rectify faulty work
- disappearance or death of the builder
- bankruptcy of the builder.

ADDITIONAL INFORMATION

Section 37 and Regulations 18 and 19

A relevant authority may require the applicant to provide additional information on the proposed development that it reasonably requires to assess the application. It may decline to proceed further until the applicant has made the information available. As detailed in Additional information on page 7, a relevant authority can refuse the application if the applicant does not provide the information within the time prescribed by the Act and Regulations.

A relevant authority or private certifier must accept and may rely on a certificate from an independent technical expert that an application complies with the structural requirements of Part B1 or the services and equipment requirements of the Building Code. Where an application involves complex or novel forms of construction that are beyond their usual experience or expertise, the relevant authority or private certifier may also rely on a certificate from an independent technical expert.

CONSULTATION

Fire authority Regulation 28 (See figure 12)

In the interests of public safety, specific classifications of buildings may require the provision of fire detection and control devices. A relevant authority must refer proposals for building work to the fire authority:

(1) where the proposal incorporates fire–safety devices which do not comply with the Building Rules or at variance with a performance requirement

(2) the relevant authority considers special fire fighting problems could arise of a kind described in Clause E of the Building Code

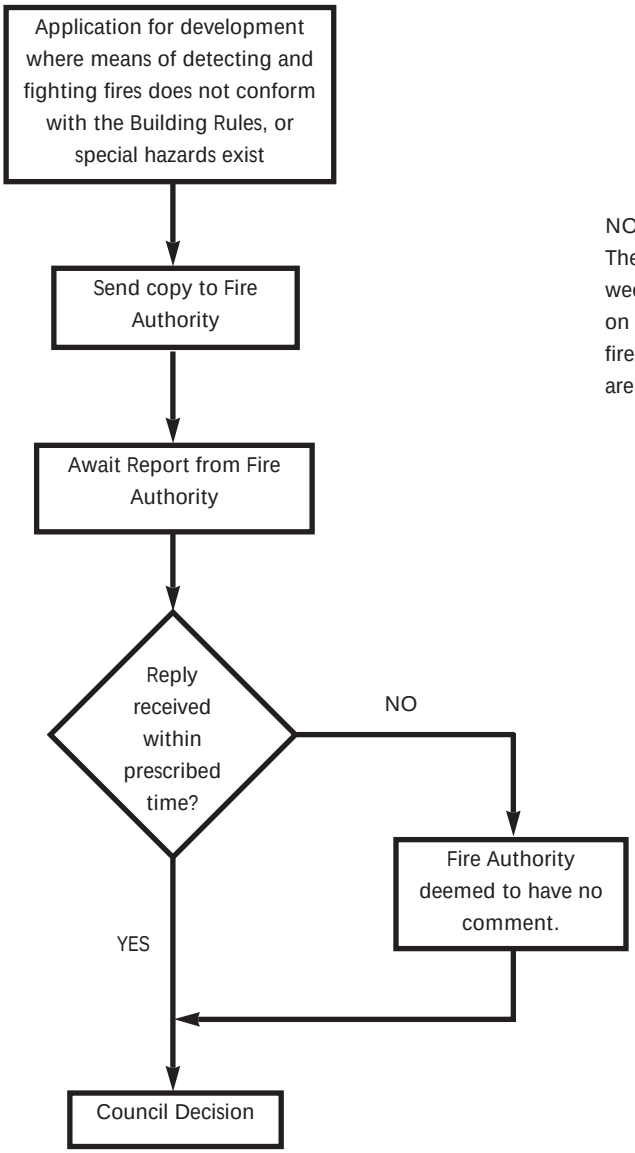
(3) the site is subject to a bushfire risk as described in Regulation 28.

In such cases a relevant authority must refer the application for building work to the fire authority and must not make its decision on the application until it has given consideration to the report of the fire authority.

If the fire authority, after being consulted by the relevant authority, has not provided its report to it within 20 business days from the time the consultation request was made, the relevant authority may assume there is no report to make and proceed to make a decision on the PBR consent.

Figure 12

APPLICATION PROCEDURE WITH FIRE AUTHORITY (THE COUNCIL AS THE RELEVANT AUTHORITY)



NOTE:
The Fire Authority has four weeks to report to the Council on the development where fire fighting safety measures are required.

MAKING THE DECISION

Timing - Section 41(1) and Regulation 41

A relevant authority should endeavor to make its assessment and decision on any application for a proposed development as quickly as possible.

For a proposed development classified as a Class 1 or Class 10 under the Building Code, the time limit for a decision on Building Rules consent is four weeks. For any other classification the time limit is twelve weeks. This time limit assumes that a PDP consent either has already been obtained or is not necessary.

If referral to the fire authority is deemed necessary, the time limit for a decision is to be extended by a further four weeks.

The Building Rules - Section 36

Where a proposed development complies with the Building Rules, a relevant authority must grant it a PBR consent. The consent may be issued subject to certain conditions in accordance with the regulations.

In the case of a proposed development that seeks a variation of the Building Rules, a relevant authority may agree to a modification in the application of the rules only when one or more conditions in Section 36(2) of the Act are satisfied.

In the case of a State Heritage Place or a Local Heritage Place, where there may be an inconsistency with the relevant development plan, a relevant authority may modify the application of the Building Rules but must also ensure safety standards are ‘as good as can reasonably be achieved in the circumstances’. The Act provides liability protection is such circumstances.

Essential safety provisions - Part 12 of Regulations

Where applicable, when making its decision on an application for development a relevant authority must issue a list of:

(1) essential safety provisions for the building or structure that are required to be maintained

(2) the requirements for maintenance and testing in regard to each of the safety provisions.

The list of safety provisions must be issued on a copy of the form contained in Schedule 16 of the Regulations.

Assignment of a building classification - Section 65 and 66

When it grants a PBR consent to a proposed development, a relevant authority must assign a classification for the whole of or the parts of buildings and/or structures comprising the development. The building classification(s) given by a relevant authority must be filled out on the decision notification form, as contained in Schedule 11 of the Regulations, or a form to like effect.

The classification helps to determine the requirements for fire safety, weatherproofing, sanitary facilities, room sizes and other matters. The assignment of a building classification is not applicable to development owned, occupied or carried out by the Crown, its agencies or instrumentalities.

Delays in decision-making - Section 41

The Act provides a mechanism that gives an applicant some measure of protection, by means of access to the Environment, Resources and Development Court, in the event that a relevant authority declines to or delays making a decision in relation to an application. As detailed in Delays in decision making, a relevant authority is expected to make a decision on an application for building work within the time prescribed by the Act and Regulations.

AFTER THE DECISION

The form - Section 40 and Regulation 42 (See figure 16)

A copy of the decision notification form contained in Schedule 11 of the Regulations, or a form to like effect, must be used by a relevant authority to advise the concerned parties of its decision.

In the case of a proposed development involving building work, a decision by either a relevant authority or a private certifier on a PBR consent will usually mean a development approval or a refusal can then be issued.

Consequently, following its decision on a PBR consent or the receipt of a private certifier's PBR consent, a relevant authority must fill out on the decision notification form:

- the columns relating to a PBR consent
- the building classification
- the columns relating to a development approval.

Notification to affected parties

If the application is for a development approval and not a staged consent, all of the affected parties contained in the section Notification of the decision on page 31, must be notified (if relevant). The notifications must be done in accordance with the procedures described in that section.

If the application is for a staged consent concluding in development approval, only the applicant and the owner of the land must be notified. This is because the notification of the affected parties, including (if relevant) any Category 3 development representatives, prescribed bodies and the Environment, Resources and Development Court, would have occurred when the decision on the PDP consent was made.

Lapse and extension of development approval

As the granting of a PBR consent will mean development approval can be issued by a relevant authority, the terms and conditions described in Lapse of development approval are relevant.

COUNCIL TAKEN TO BE THE RELEVANT AUTHORITY

Section 34 and Regulations 39 and 40

When the Development Assessment Commission has been constituted as the relevant authority on a proposal for development and the application involves an assessment in relation to the Building Rules, DAC may:

(1) require the assessment of the proposed development for a PBR consent be undertaken by a private certifier or by some other person of a class determined by DAC

(2) refer the assessment of the proposed development for a PBR consent to the relevant council.

If DAC requires the Building Rules assessment to be undertaken by a private certifier or some other suitable person, it is the applicant's responsibility to arrange for the assessment. It is expected that only in cases where a council is the applicant or owner of the land that DAC will require the Building Rules assessment to be done by a private certifier. When this occurs, after the Building Rules assessment, DAC must forward to the council for the area in which the development is to be undertaken:

- two copies of the plans and supporting documents lodged by the applicant, stamped or endorsed with the PBR consent
- if relevant, a list of the essential safety provisions set out in the form of Schedule 16 of the Regulations.

Alternatively, DAC can arrange for the council for the area in which the development is to be undertaken to do the assessment on the PBR consent. In such cases, the council must not make its decision on the PBR consent until DAC has completed its assessment on the PDP consent for the development. With the agreement of DAC and subject to any limitations it may specify, the council can be taken to be the relevant authority and proceed to make the decision for a development approval on the application.

If a council is the applicant for a proposed development DAC may require the assessment for a PBR consent to be undertaken by a private certifier or some other suitable person. It is desirable for councils to nominate the person who it is proposed will carry out the Building Rules assessment when making application for council development.

If the application is not within a council area, either a private certifier or DAC can assess the Building Rules.

DEVELOPMENT APPROVAL

(See figures 13, 14, 15 and 16)

NOTIFICATION OF DEVELOPMENT APPROVAL

(See figure 16)

Upon an applicant being granted the necessary consents by a relevant authority, it can proceed to issuing a development approval. In order to receive development approval, the applicant may have had to obtain one or more consents.

A copy of the decision notification form contained in Schedule 11 of the Regulations, or a form to like effect, must be used by a relevant authority to advise the concerned parties of its decision. A relevant authority must ensure that all of the columns have been filled out for the consents relevant to a proposed development before it fills out the columns relating to a development approval.

If an application for a development approval has involved a PDP consent, the notification of a decision must be done in accordance with the procedures described in Notification of the decision. Alternatively, if an application for a development approval does not include a PDP consent then only the applicant and the owner of the land must be notified.

LAPSE OF DEVELOPMENT APPROVAL

Regulation 48

For all development, a development approval will lapse after twelve months from the date of the decision if the applicant takes no further action. Where an approved development (other than land division) has been lawfully commenced, the development approval will lapse if the development has not been substantially or fully completed to the satisfaction of the relevant authority three years after the date of the development approval.

There is a difference between proposals involving land division and other forms of development in regard to the time after which a development approval lapses. For land division, the development approval will lapse after:

(1) three years from the date of the approval where the development has been lawfully commenced but not substantially or fully completed to the satisfaction of the Council and/or DAC

(2) three years from the date of the PDP consent where an application for development approval (involving a land division consent and a land division certificate) has been lodged with DAC within twelve months from the date of the PDP consent.

Figure 13

THE DEVELOPMENT APPROVAL PROCESS (OTHER THAN LAND DIVISION)

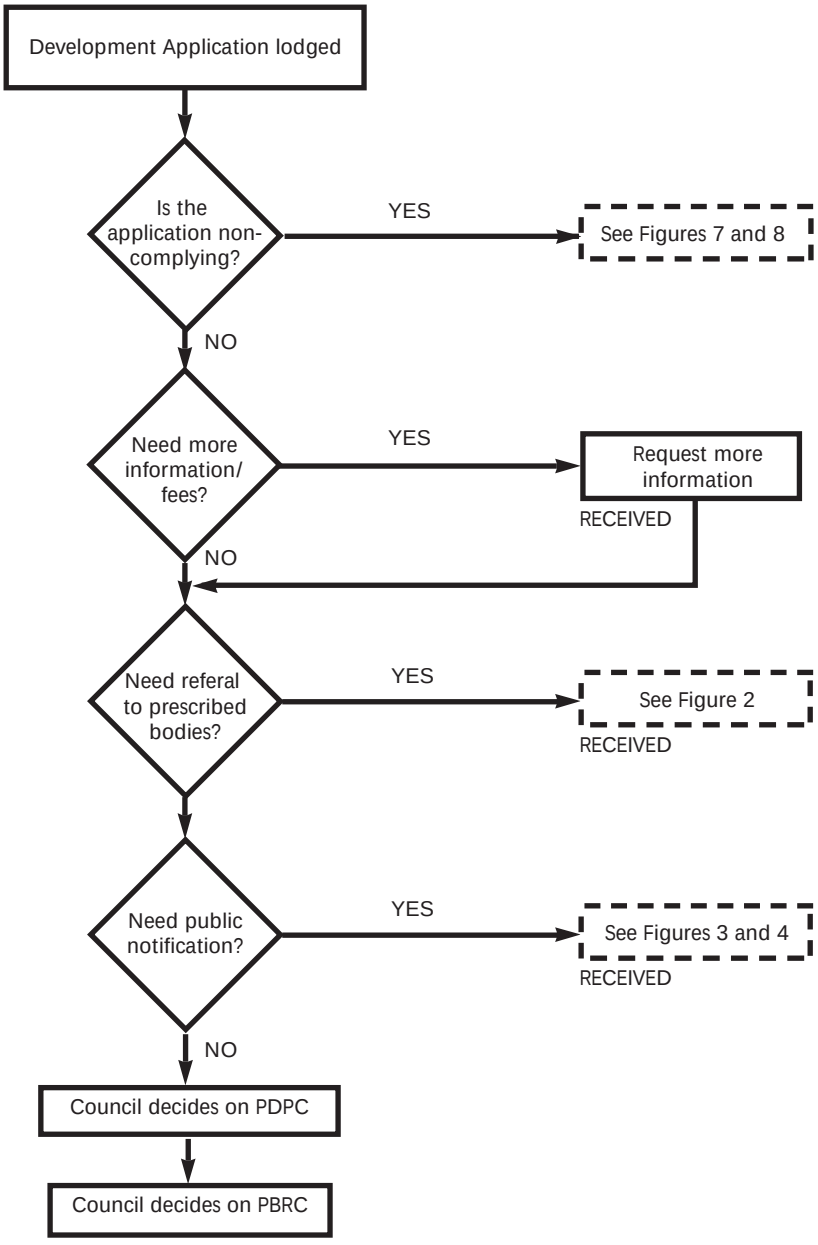
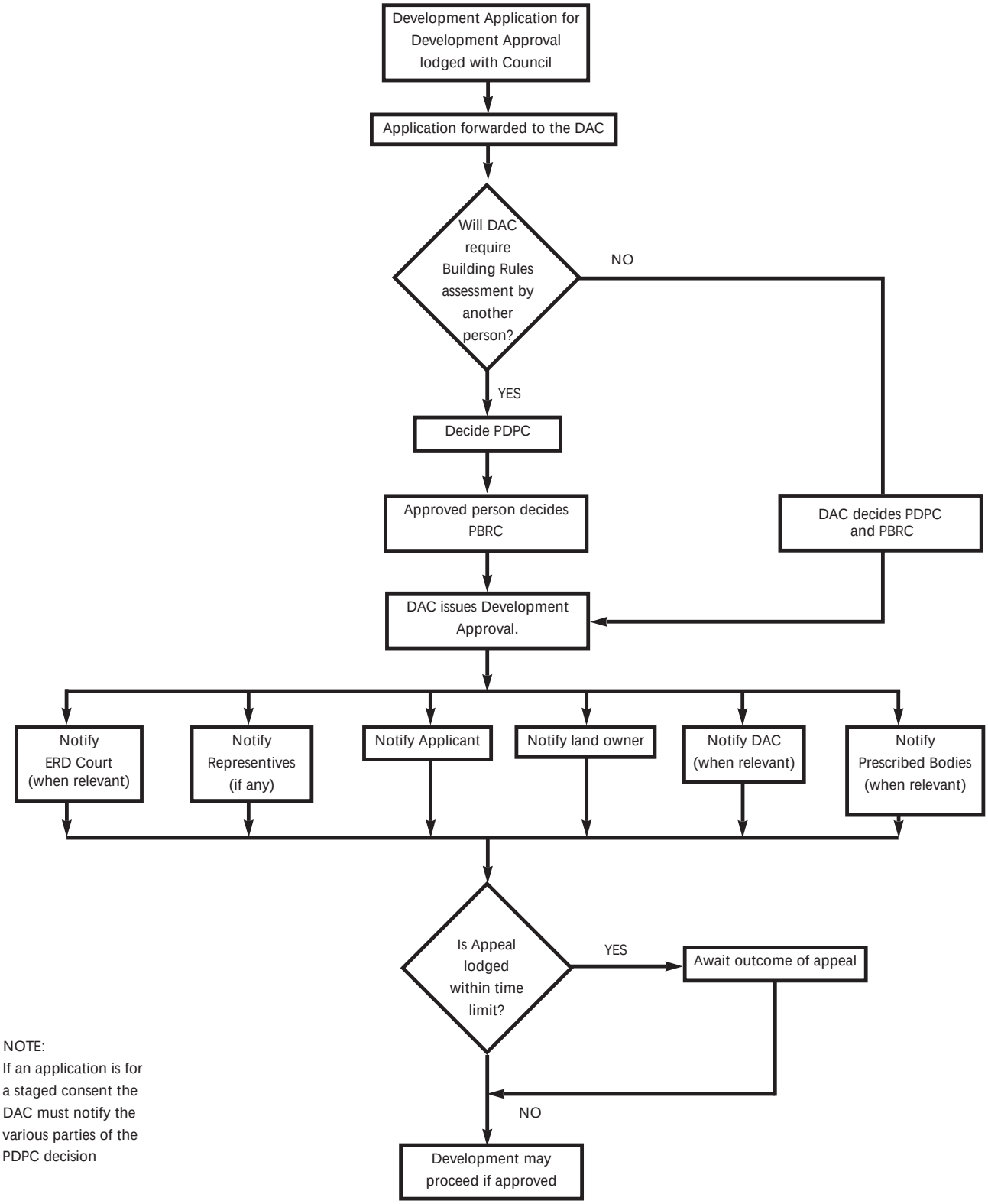


Figure 14

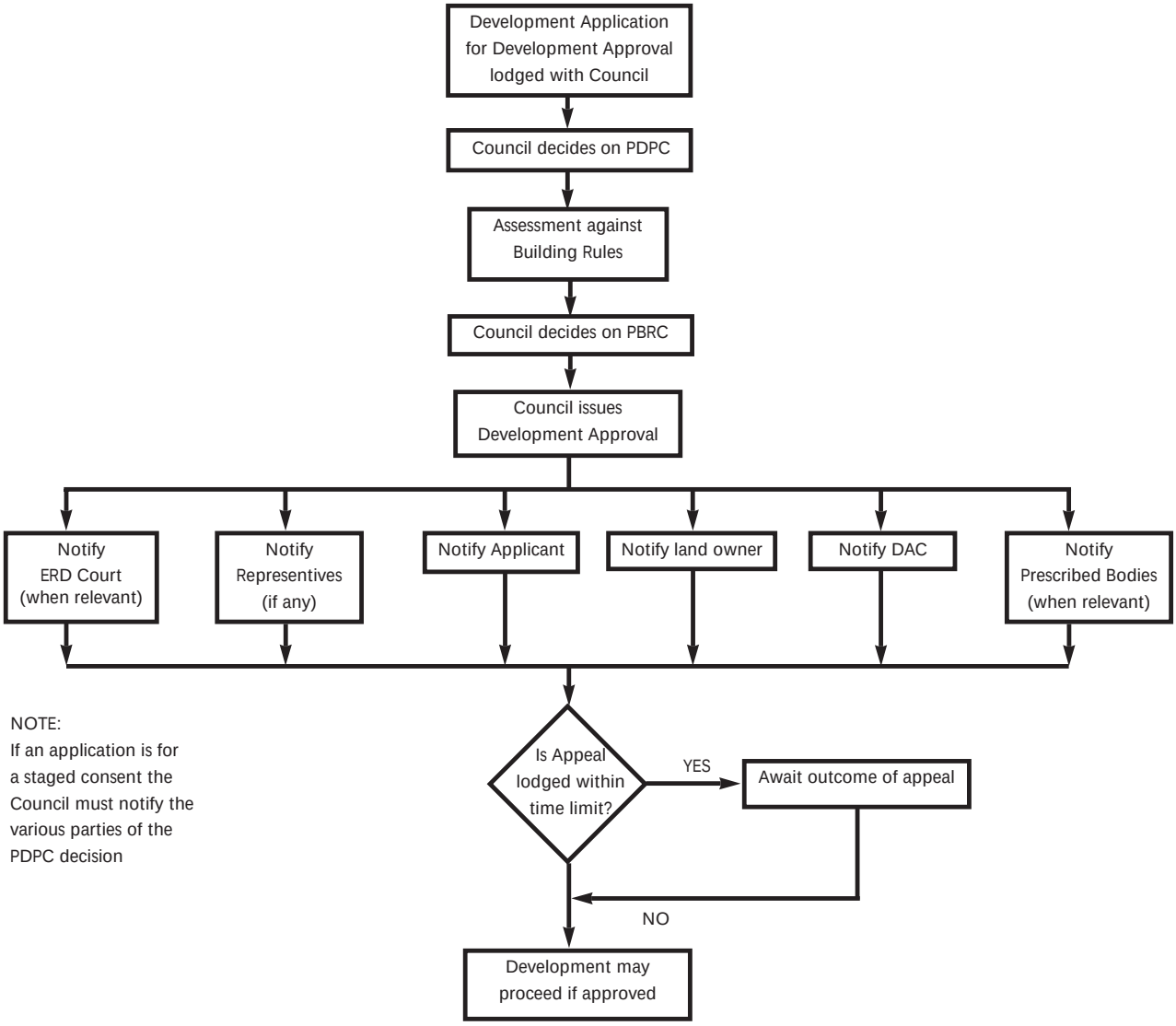
MAKING THE DECISION - DEVELOPMENT APPROVAL - (THE DAC AS THE RELEVANT AUTHORITY)



NOTE:
If an application is for a staged consent the DAC must notify the various parties of the PDPC decision

Figure 15

MAKING THE DECISION - DEVELOPMENT APPROVAL - (THE COUNCIL AS THE RELEVANT AUTHORITY)



NOTE:
If an application is for a staged consent the Council must notify the various parties of the PDPC decision

Figure 16

DECISION NOTIFICATION FORM

Development Number

FOR DEVELOPMENT APPLICATION DATED / /

REGISTERED ON / /

To

LOCATION OF PROPOSED DEVELOPMENT : _____

House No : _____Lot No: _____Street: _____Town/Suburb: _____

Section No (full/part): _____Hundred: _____Volume: _____Folio: _____

Nature of Proposed Development

From

In respect of this proposed development you are informed that :

Nature of Decision	Consent Granted	No. of Conditions	Consent refused	Not Applicable
Provisional Development Plan consent				
Land Division				
Land Division (Strata)				
Provisional Building Rules consent				
Public Space				
Other				
DEVELOPMENT APPROVAL				

Details of the building classification and the approved number of occupants under the Building Code are attached.

.....representation(s) from third parties concerning your category 3 proposal were received.

If there were third party representations, any consent/approval or consent/approval with conditions does not operate until the periods specified in the regulations have expired. Reasons for this decision, any conditions imposed, and the reasons for imposing those conditions are set out on the attached sheet.

No work can commence on this development unless a Development Approval has been obtained. if one or more consents have been granted on this Notification form, you must not start any site works or building work or change the use of the land until you have also received notification of a Development Approval.

Date of Decision: ..... ❑ Development Assessment Commission or delegate

Signed:..... ❑ Chief Executive Officer or delegate

Date: ...../...../..... ❑ Private Certifier

❑ Sheets Attached

Regulation 42

South Australia - Regulation under the Development Act, 1993

A relevant authority may extend the time period for a development approval, either at the time it makes its decision on an application or upon receipt of a written request by the applicant for an extension (received prior to lapse of the approval).

Where an appeal has been made against a decision by a relevant authority, the date of the decision becomes the date when the appeal is dismissed, struck out, withdrawn or otherwise finalised.

Where development, in relation to a development approval, has been lawfully commenced but not substantially or fully completed to the satisfaction of a relevant authority within the time prescribed by the Act and Regulations, a relevant authority may:

(1) apply to the ERD Court to seek an order for the removal of the work

(2) if the work is substantially but not fully completed, cause the work to be completed if after serving a notice on the owner to complete the work the owner fails to satisfy the requirements of the notice.

EXTENSION OF DEVELOPMENT APPROVAL

An applicant must make a written request to a relevant authority when seeking an extension of time for a development approval. This must be received prior to lapse of the approval. The reasons given for seeking extensions commonly include delays in arranging finance or difficulties in establishing construction agreements.

When a relevant authority is considering a request for extension, it should consider:

- if there is evidence of substantial commitment to the development
- if the policies in the Development Plan upon which the original development approval was based have been substantially changed
- if the character of the locality has changed since the original development approval was granted.

Because of the likelihood of changes to the policies in the Development Plan along with changing community attitudes, it is good planning practice to grant only one extension with a time limit of up to twelve months.

STATUS OF THE DECISION

Section 53

The law in force at the time the application was lodged is the law to be applied by a relevant authority in deciding the application.

This also applies to the law to be applied in resolving any issues arising from the decision.

The provisions of the development plan in force at the time the application was lodged are the provisions to be applied by a relevant authority in deciding the

application. Draft Plan Amendment Reports cannot be taken into account unless they have been given interim development effect in accordance with Section 28 of the Act.

This also applies to the provisions of the Development Plan to be applied in resolving any issues arising from the decision. The only exception to this rule relates to State Heritage Places where a listing is effective up until the time of a decision.

THE REGISTER

Regulation 98

The relevant authority must keep available for public inspection (without fee and during its office hours) a register of applications it has received for development approval, PDP consent or assignment of building classification.

This register must contain:

(1) the name and address of the applicant

(2) the date of the application

(3) the date the application was received by the relevant authority

(4) a description of the land that is the subject of the application

(5) a brief summary of the matters, Acts or things in respect of which development approval or PDP consent is sought

(6) whether the decision is to be made by the Council, DAC or the Governor

(7) whether the decision was made by the Council, DAC or the Governor

(8) the decision thereon—whether the application was refused, whether a development approval or PDP consent was granted or was granted subject to conditions (together with a statement of the conditions, if any)

(9) whether the decision was the subject of an appeal and, if so, the result of that appeal.

Copies of the development application form and the decision notification form may be used as the register.

The Regulations do not state at what stage an application should be placed in the register. A good practice is for the relevant authority to place a copy of the form in the register upon receipt of the application. Alternatively copies of both the form and decision notification form can be placed in the register at the same time, after the decision has been made.

The Regulations do not envisage copies of the Register being made available to the public.

CANCELLATION OF DEVELOPMENT APPROVAL

Section 43

A development approval which has not lapsed nor been lawfully commenced can be cancelled by a relevant authority. The cancellation can only be undertaken upon written application by the person, group or body that has the benefit of the approval.

The cancellation by a relevant authority can be subject to any conditions it may think reasonable to impose.

This provision will assist in the prevention of more than one development approval (for similar development proposals but in favour of the same or different applicants) being current on a property.

LAND DIVISION CERTIFICATE

COMPLETION OF LAND DIVISION PROPOSALS

While the Development Act provides a mechanism to ensure proposals for land division do not occur against the interests of the community, the Registrar–General is responsible for the issue of certificates of title for land division proposals.

Before titles are issued in response to a land division proposal, the process provides that a division has a development approval and any works required in association with such an approval are completed and that any required easements are provided. Therefore, Section 51 of the Development Act provides that DAC must issue a land division certificate to certify to the Registrar–General that all the requirements of DAC and the relevant council for land division have been met (or that satisfactory and secure arrangements have been made for works) and that titles can be issued.

An applicant to the Registrar–General for issues of titles must submit a land division certificate with the application.

Consequently, there are three broad requirements before a land division proposal is finalised:

(1) a development approval under the Development Act, in some cases comprising a statement of land division requirements, which signifies that the proposal has been considered to be generally consistent with the relevant Development Plan (and for Community Titles, a scheme endorsement under Section 3, 11 and 12 of the Community Titles Act)

(2) issue of a land division certificate by DAC under the Development Act, to certify that physical works (eg making roads) are completed or arrangements have been made for works and any required payments have been made

(3) a deposit of the plan of division and issue of certificates of title by the Registrar–General under the Real Property Act.

ROLE OF LAND DIVISION CERTIFICATE

The Development Act requires a land division certificate. Although the Development Assessment Commission is responsible for the issue of the certificate it must await the advice of the relevant Council and the SA Water Corporation in relation to the satisfaction of the land division requirements by the applicant. These may include local matters such as roads, storm water drainage and recreation reserves. The requirements of DAC relate to matters such as the provision of water supply and sewerage, the creation of easements and the payment of a monetary contribution in lieu of open space.

No separate application for a land certificate is necessary. This is because the application to DAC for a development approval in relation to land division also includes the procedures for the land division certificate.

TIME LIMIT ON COMPLETION OF REQUIREMENTS

Regulation 48

After receipt of the development approval for land division, the applicant has up to three years in which to satisfy the land division requirements and be issued with a land division certificate. The relevant authority may specify a longer period of time in the approval for the completion of the requirements or it may decide, in response to an application for extension, to allow a longer period of time.

If the requirements are not met within the time prescribed by the Act and Regulations, and no extension of the development approval has been granted by the relevant authority, the development approval will lapse. In such circumstances, the relevant authority is able to take certain action to ensure the incomplete work is either removed or completed. Such action is outlined in the section Lapse of development approval on page 53 or Provisional development plan consent on page 9.

BONDING

Regulations 58 and 59

The Regulations allow a Council and the SA Water Corporation to enter into bonding arrangements with the applicant to allow a land division certificate to be issued before all of the land division requirements are completed.

A Council can agree to bonding arrangements with the applicant on the completion of the land division requirements that may include:

- the formation of a roadway
- the construction, paving and sealing of a roadway
- the construction of any bridge, culvert or underground drain or inlet

- the construction of any footpath, water table, kerbing, or drain
- any works associated with a strata plan.

The SA Water Corporation can agree to bonding arrangements with the applicant in relation to the provision of water supply and sewerage services where they have been listed as land division requirements.

Where the provision of electrical services is listed as a land division requirement, and the requirement has not been fully satisfied, the applicant can agree to bonding arrangements with ETSA. However, it is the responsibility of the relevant Council to advise DAC that satisfactory bonding arrangements have been made.

COMPLETION OF REQUIREMENTS

When the applicant has satisfied all of the land division requirements listed on the development approval within the time specified, or has entered into bonding arrangements with the relevant Council and/or SA Water Corporation and/or ETSA, DAC, on advice, can issue the land division certificate.

ISSUE OF A LAND DIVISION CERTIFICATE

Regulation 60 (See figures 9, 10 and 11)

To issue the land division certificate, DAC must have received written confirmation from the relevant Council and/or the SA Water Corporation that the land division requirements have been completed or bonding arrangements have been made. Also, DAC must be satisfied that the amount of money required under the contribution scheme in lieu of open space has been paid and the development approval has not lapsed.

The land division certificate must be issued in the form of Schedule 12 of the Regulations and be accompanied by a final approved plan of land division or may be issued by notation on the final plan. The final plan of land division must be prepared in accordance with the requirements of Schedule 5 of the Regulations and be signed by an authorised officer of DAC. (However, it is the Registrar–General's responsibility to ensure plans are of a sufficient standard.)

DAC must forward a copy of the land division certificate and plan to the Council as soon as practicable following the issue of the certificate.

When DAC is not satisfied that the applicant has met the land division requirements, it may decline to issue the land division certificate.

A land division certificate is not required where the Crown is a party to a proposal for land division, or the proposal for land division comprises a lease or licence to occupy part of an allotment.

LAPSE OF A LAND DIVISION CERTIFICATE

A land division certificate will lapse twelve months after the date of its issue unless it is:

- lodged with the Registrar–General under the Real Property Act 1886 before its expiration
- extended by the Development Assessment Commission in response to an application made prior to its lapse.

When DAC considers a request for extension of the twelve–month period of the land division certificate it must consult with the relevant council before it makes its decision.

As a result of the certificate lapsing, the Registrar–General will not be able to deposit the plan and issue certificates of title.

PLAN DEPOSIT AND ISSUE OF TITLES

Land division certificate

After receiving the land division certificate from the Development Assessment Commission, the applicant may apply to the Registrar–General for deposit of the plan and the issue of new certificates of title.

The plans

With the land division certificate, the applicant must provide an endorsed copy of the plan of division, which has been correctly endorsed to certify that the certificate relates to the copy of the original plan of division. The endorsed copy must be identical to the original.

PROCEDURE FOR REGISTRATION OF PLANS OF DIVISION

Lodgment

At the lodgment counter of the Plans Section of the Lands Title Office, the applicant is required to lodge:

(1) the original of the plan

(2) the current land division certificate with the correctly endorsed copy of the plan

(3) any other documents that may be required to bring the division into effect (including additional documentation for community titles).

The application for deposit of the plan of division and issue of certificates of title, with the duplicate certificate(s) of title for the land, are then taken by the lodging party to the public counter of the Lands Titles Registration Office for lodging and payment of relevant fees.

Lodgment will not be accepted without all of the above documents, if the original of the plan of division is not correctly drawn or is of poor quality or if the land division certificate(s) has lapsed. (Real Property Act, Section 223 le[6] and Section 223 lg[6]).

Acceptance

Upon lodgment, the plan of division will be allocated a deposited plan number and the relevant fee collected.

The plan and land division certificate will then be examined to ensure the certificate relates to the same plan and that the plan is of sufficient detail and quality.

If the plan and the land division certificate are not acceptable, negotiation and re–drafting may be required before the plan of division can be accepted for deposit and title issued.

Material difference

The plans will not be accepted for lodgment if there is a material difference between the original plan and the endorsed copies. The following examples illustrate problems commonly encountered:

(1) width of easements vary

(2) allotment numbers differ

(3) number of allotments differ

(4) shape of an allotment altered

(5) incorrect spellings

(6) no legal access to ALL private allotments.

When all matters have been resolved the plan will be accepted for deposit.

Issue of titles

Plans will not be deposited and titles will not be issued until all relevant documents (eg transfers, mortgages) have been lodged in an acceptable form. Roads, reserves and service easements will vest in the ownership of the relevant authority (council or government agency). Copies of the deposited plan will then be distributed.

PLANS OF AMALGAMATION

The Real Property Act provides for a simple method of amalgamating abutting allotments into a single allotment, by application to the Registrar–General.

Application

Section 223 LL(1) provides that the owner of two or more contiguous allotments (as defined in the Real Property Act) may apply for amalgamation. The application must

be made on form 11 set out in the first schedule of the Real Property Act (Land Division) Regulations and accompanied by duplicates of the certificates of title.

Plan

If the Registrar–General is satisfied that the parcel of land as amalgamated will be uniquely identifiable, a plan may not be required. However, Regulation 30 of the Land Division Regulations sets out the requirements for a plan should the Registrar–General require one.

Encumbrances

The Registrar–General will not amalgamate allotments unless he is satisfied that any encumbrances, mortgages, liens or other interests are protected.

Notification

Upon accepting a proposal to amalgamate two or more allotments, the Registrar–General will issue a new certificate of title and notify the relevant council and the SA Water Corporation of the amalgamation.

The councils who wish to be consulted before deposit of a plan of amalgamation must request (in writing) the Registrar–General to consult with them.

LEASES

A person who wishes to lease land and requires the lease to be registered under the Real Property Act should use the services of a licensed land broker or a solicitor. The licensed land broker or solicitor will prepare the lease for registration under the provisions of the Real Property Act and will have a plan prepared for lodgment in the General Registry Office if the land being leased is not an allotment.

A development approval under the Development Act is not required for the leasing of the whole of an allotment. However, development approval may be required for the leased portion of an allotment where the term of the lease (including any right of renewal) is for greater than six years. Such a proposal is defined as land division (subject to some exceptions set out below).

The development approval for land division under the Development Act may be applied for and issued in accordance with the sections Provisional Development Plan consent on page 9 and Land division consents on page 40. The Registrar–General will require the person wishing the lease to be registered to certify that the development approval has been obtained where required.

A lease that does not require development approval can be lodged with the Registrar–General once it has been prepared, signed and the stamp duty paid. Leases exempted from approval include:

(1) the lease of existing shops, offices, factories and like commercial buildings for any term

(2) the lease of a portion of an allotment that is vacant for a term six years or less (inclusive of any right of renewal)

(3) the lease of a home unit under a 'company owned' home unit scheme.

The parties to the lease will be required to certify on the lease lodged with the Registrar–General whether development approval was required and, if so, whether such approval had been granted.

COMMENCEMENT AND COMPLETION OF BUILDING WORK

NOTIFICATION OF BUILDING WORK

Action by the builder - Regulation 74

Following the receipt of development approval, a person can make arrangements to commence the building work. Before commencing building work, a person must give a Council:

- one working day's notice of the commencement of the building work
- one working day's notice of the completion of the building work
- one working day's notice of the commencement and the completion of any stage of the building work specified in writing by a council on or before the date development approval is granted.

The appropriate method for giving notice to a council is by:

- delivering it to a responsible person at the office of the council
- sending it by pre–paid post to the office of the council
- telling the appropriate person at the council via telephone
- facsimile transmission to the council.

Action by a Council

Following receipt of a notice that building work is about to commence, the first step by a council must be to verify the development approval has not lapsed.

A council or a private certifier must advise the owner and/or applicant (in writing) of the minimum notification requirements in relation to building work. This advice must be given on or before development approval is issued. It is entirely at the discretion of a council how many notifications may be required. The number could be only one or as many as ten or more.

Where a council requires notification from the builder during the various stages of building work, such stages are called 'mandatory notification stages'. Unless otherwise advised by a council, the builder must give one working day's notice of the

intended commencement and completion of any of the mandatory notification stages and must stop work, if directed to do so by a council, when a mandatory notification stage has been reached, pending an inspection. Any such inspection must be carried out within 24 hours (see Section 59 of the Act).

COMPLETION OF BUILDING WORK

Application for certificate of occupancy - Section 67 and Regulation 83

A certificate of occupancy may be issued either by a council or a private certifier. A certificate of occupancy is not required for any building classified as class 1a or class 10a under the Building Code.

When approved building work has been completed the owner must request the council to issue a certificate of occupancy (if relevant).

It is an offence to occupy a building without a certificate of occupancy, unless of course one is not required for the particular building. A certificate of occupancy can apply to part or all of a building.

It is at the discretion of a council whether the request for a certificate of occupancy is to be made in the form of a notice or by way of an application form.

A council may require the owner of the completed building work to provide specific documentation to support the request for a certificate of occupancy to be issued. The documentation required may include:

- the fee prescribed by Schedule 6 of the Regulations (where appropriate)
- a written statement by the licensed building work that the building work has been carried out in accordance with the development approval
- a written statement by the contractor that the infrastructure connections have been carried out in accordance with the requirements of the various public utilities
- in the case of a building where specific fire safety facilities are required, a statement from the fire authority confirming they have been installed and operate satisfactorily
- in the case of a building where essential safety provisions are required, a certificate of compliance for each of the provisions notified in the form contained in Schedule 16 of the Regulations and endorsed by the installer, and a plan showing the location of each of the essential safety provisions which have been installed.

Where there is no licensed building work contractor, the written statement that is required to be submitted prior to issuing a certificate of occupancy must be signed by a registered building work supervisor or private certifier.

The complete list of the documentation that may be required to be submitted is contained in Regulation 83. However, note that a council must state what certificates it requires when it grants the development approval.

In the above, if there is no licensed builder, then a person must prepare a written statement with the prescribed qualifications listed in Regulation 87(5).

Following the receipt of all of the documentation it has requested, a council has five business days in which to make its decision on the application. A certificate of occupancy must be issued on a copy of the form contained in Schedule 19 of the Regulations or similar.

After the decision

On making its decision to approve or refuse the request for a certificate of occupancy, a council must:

(1) in the case of approval, notify the applicant in writing

(2) in the case of refusal:

- notify the applicant in writing
- advise of the reasons for the decision
- advise the applicant of the right of appeal and the time within which an appeal has to be commenced.

Inspection of building work - Section 71A

Section 71A requires councils to prepare and publish a policy on the extent to which it will inspect building works in progress. This requirement gives the community a clear understanding of the role a council will play in checking ongoing compliance.

REVOCATION OF A CERTIFICATE OF OCCUPANCY

Section 67(13) and Regulation 83

A council can revoke a certificate of occupancy where:

- a request has been made for the issue of a certificate of occupancy on a building and there is an existing certificate for that building or any part of that building
- the owner of the building has failed to show that the essential safety provisions of the building have been regularly maintained and tested as required by Regulations 76(5) and 83(7).

Completion and certificate of compliance for class 1a buildings - Regulation 83A and 83AB

A class 1a building must be structurally sound and weatherproof, and have facilities and services connected to the extent defined in Regulations before occupation. A written statement of compliance with the approval must be to the relevant authority or private certifier by the licensed building work contractor, or where there is no licensed building work contractor, by a licensed building work supervisor or a private certifier. The time limit for provision of the certificate of compliance is ten business days of either a notice of completion or, where such notification was not required, of the occupation of the building.

TEMPORARY OCCUPATION

Section 68

A council may consider the temporary occupation of part or all of a building and if it grants approval, it may be subject to conditions that the council thinks are reasonable to impose.

In the case of a council refusing an application for temporary occupation, a council must:

- notify the applicant in writing
- advise of the reasons for the decision
- advise the applicant of the right of appeal and the time within which the appeal has to be commenced.

Building fire safety - Section 71

Section 71 requires councils to establish or participate in a building fire safety authority. Such an authority has responsibility for ongoing inspection of buildings to ensure reasonable maintenance of safe buildings.

The authority has the power under the Act to give directions to enforce reasonable compliance.

ADVERTISEMENTS

Section 74

Approval for outdoor advertisements

The erection or alteration of advertising structures and signs is defined as development, and as a result these may require development approval.

A number of advertisements are listed as not being development. These are set out in Schedule 3 of the Regulations and do not need development approval.

The definition of development can include commencing the display of an advertisement not involving any structural work (eg the painting or sticking of an advertisement on a window or a wall). Therefore, unless the relevant authority is of the opinion that the display of a particular advertisement is exempt from the definition of development, development approval is necessary for the display of the advertisement. However, the replacement or renewal of advertisements on existing buildings or structures does not involve seeking a separate development approval as it is only the commencement of the display of an advertisement that may be considered as development. There are exceptions to this general rule in the City of Adelaide and where other specific conditions were imposed on the original approval for an advertisement.

Licences

The Development Act 1993 states that where a development approval is given under the Act for an outdoor advertisement, no further licence or other authorisation is required under the Local Government Act 1934–1982. This means that the Development Act must be used to control the erection of new advertising hoardings and the commencement of advertisement display. Licensing under the Local Government Act will be confined to the renewal of licences for advertisement hoardings existing when the Development Act commenced and the licensing of the display of new advertisements that do not require development approval.

Removal of existing advertisements

The Act, (together with Section 666b of the Local Government Act), empowers a council or DAC to remove or take down advertisements or advertising hoardings that, in its opinion:

- disfigure the natural beauty of the locality or otherwise detract from the amenity of the locality
- are contrary to the character desired for the locality under the relevant development plan.

The council or DAC may serve a notice on the person using the advertisement, or the owner or occupier of the land, ordering the advertisement hoarding to be removed or the advertisement obliterated within a period specified on the notice. This period should not be less than one month.

However, no notice may be served if the advertisement is:

(1) authorised under the Local Government Act or the Electoral Act

(2) required under some other legislation

(3) an advertisement for the sale or lease of the land on which the advertisement is situated.

The notice may be served either personally, by post or, where the identity of the owner or advertiser is not readily ascertainable, it may be fixed in a prominent position on the advertisement.

Appeal provisions

The person on whom the notice is served may, within one month of service of the notice or such longer period as the Environment, Resources and Development Court may allow, appeal to the court, which may make such order or direction as it sees fit.

Failure to remove the advertisement

Where a person receives a notice and fails to remove the advertisement within the period specified, the relevant authority may carry out the requirements of the notice and recover the cost as a debt from the person on whom the notice was served. In addition, the person on whom the notice was served shall be guilty of an offence and liable to a penalty.

Granting approval to an advertisement

The Act enables the relevant authority to grant approval to an advertising hoarding subject to such conditions as it thinks fit to impose. Conditions concerning the maintenance, use and removal of the structure are particularly important, as the relevant authority will not be able to withhold the issue of a licence under the Local Government Act.

The relevant authority must give reasons on its decision notification form for imposing conditions. The reasons would usually be to prevent the advertisement hoarding from disfiguring the natural beauty of the locality, or detracting from the amenity of the locality and to prevent the land being used permanently for an advertising hoarding.

The policy that the relevant authority must have regard to when making decisions on individual applications is contained in the Development Plan. That document sets out principles of development control for regions and local areas. The principles relating to advertisements usually appear under the headings Appearance of Land and Buildings or Outdoor Advertisements.

Sections 84 and 85 of the Act deal with enforcement proceedings and offences if the conditions are not complied with.

LAND MANAGEMENT AGREEMENTS

Section 57

The Act empowers the Minister or the relevant council to enter into a Land Management Agreement (LMA), relating to the development, management, preservation, or conservation of land, with the owner of the land. A LMA can be particularly relevant to the preservation or conservation of indigenous vegetation cover that may be of scientific or historic significance or for walking trails or other public interest issues applying to the management of private land.

An LMA can be related to the regulation of development, such as the division of land or the construction of buildings. However as a LMA must have regard to the Development Plan and any relevant authorization it cannot be used to find a way

around the Development Plan policy. If an agreement is entered into in connection with an application for Development Plan Consent that is a category 2 or 3 development, a note of the existence of the agreement or a proposed agreement must be included on the notice.

An LMA can also, with participation by the Minister, be used to vary or set aside liability. This provision was placed in the Act to assist the State Government in the freeholding of Crown shack sites.

An LMA is only binding when it has been noted on the certificate of title. Also, it is binding on the owner of the land, whether or not the LMA was originally made with that owner.

A register of LMA's must be kept available for public inspection (without changes). A person is entitled, on payment of a prescribed fee, to a copy of an agreement.

APPEALS AND ENFORCEMENT

THE ENVIRONMENT RESOURCES AND DEVELOPMENT COURT

Sections 8 and 14 ERD Court Act

The Environment, Resources and Development Court Act establishes the Environment Resources and Development Court to hear:

- appeals against decisions of a relevant authority on proposals for development
- enforcement proceedings initiated by either a relevant authority or private individuals and bodies
- proceedings brought under other legislation such as the Environment Protection Act and the Heritage Act.

As part of the judiciary, the court is independent of the Minister, the Development Assessment Commission and Councils.

The court comprises:

- a Presiding Member, who is a Judge of the District Court and is responsible for the administration of the court
- other judges as required
- a number of magistrates
- a Master of the Court
- a number of Commissioners with experience in a range of disciplines relevant to the administration of the Development Act. A Commissioner with the appropriate knowledge and experience may, for example, act as a building referee for the purpose of resolving a dispute relating to the Building Rules.

The court also has a Registrar, an Assistant Registrar and administrative and ancillary staff. It has public offices and courtrooms in Adelaide. However, appeals and enforcement proceedings involving development in country areas are usually held near the site.

HEARINGS

Section 15 ERD Court Act and Section 88

The court, when hearing and determining proceedings, may comprise a full bench of a Judge and two Commissioners, or alternatively may comprise :

- a Judge Magistrate or Commissioner sitting alone
- two or more Commissioners.

A full bench will only be constituted where the parties involved request it or the Presiding Member considers the questions to be determined in the hearing are of enough importance to warrant a full bench.

Judgments are made by majority decision. The Court may:

- confirm, vary or reverse any decision under appeal
- confirm, vary or quash any order under appeal
- make an order for a person to carry out or to refrain from certain actions
- make an order in relation to building work.

While the law binds the court, the intent of a hearing is to resolve the issue in dispute having regard to the policy set out in the Development Plan or the Building Rules, as relevant. For this reason, hearings are not usually rigid legal debates but concentrate on the issues before the court, whether they relate to subjective issues such as amenity or more technical debate relating to specific requirements of the Building Rules.

WHO CAN APPEAL?

Section 86

The Court may hear the following matters:

- an appeal by a person (who has applied for a development approval) against a refusal to grant approval or the conditions attached to the approval (except in relation to provisional development plan consent for non–complying development, and where the development is not a consequence of a change in the law regulating an existing use)
- an appeal by a third party (who has been given notice of the decision) against the decision on a Category 3 development in the Development Plan

- an appeal by a person who has applied for a certificate of occupancy or an approval to occupy a building on a temporary basis against a refusal
- an appeal by a person who has been served with any order for the completion of work
- an appeal by a person in relation to matters under Part 6 (Regulation of Building Work) of the Act
- an appeal by a person in dispute over the Building Rules and:

  (1) their effect

  (2) the manner in which they ought to be carried into effect

  (3) their modification

  (4) their satisfaction

  (5) the construction of a party wall and the apportionment of costs.

Applicant appeals

A person who applies for a development approval and disagrees with the decision of the relevant authority may appeal (except in relation to a decision on a PDP consent for non–complying development). This appeal may be either against:

(1) a refusal to grant a development approval

(2) conditions attached to a development approval.

The appeal will be against the relevant authority that made the decision. However, when DAC consults with a council on land division and includes any of its requirements in addition to its own on a development approval, DAC must differentiate the council's requirements from its own. Appeals against such requirements will be against either DAC or the council.

If an applicant disagrees with a decision of the relevant authority, they may lodge an appeal with the court within two months from the day on which they were notified of the decision. The court may allow additional time for lodgment of appeals, but only in exceptional circumstances.

Third party appeals - Section 38

Where the relevant authority has given public notification (in relation to a Category 3 development), any person may lodge written representations or comments to the relevant authority within the period specified in the notice. The relevant authority, within five business days of making its decision, will notify all persons who made representations on the proposal of its decision and of the date of the decision. This notification will be given either personally or by post. Any person who made representations and received notice of the decision and disagrees with the decision may appeal to the Court. The appeal must be lodged within fifteen business days from the date of the decision of the relevant authority. There is no provision for late

appeals, except if the court, in its discretion, determines there is some extraordinary reason. A development approval or a PDP consent given to an applicant does not take effect until the time for instituting an appeal by a third party has expired, or until any appeal under these circumstances has been determined.

Commercial Competitive Advantage - Section 88a

A person who participates in, or supports proceedings before a court must disclose any commercial competitive interest. If a development proceeds despite opposition from persons with commercial competitive interest, the proponent can apply to the court for damages due to delays to the development to obtain commercial benefit. The court in considering such loss must satisfy itself that the defendant's sole purpose in initiating the appeal was to prevent development to obtain commercial benefit.

Occupancy appeals - Sections 67 and 68

A person who applies for a certificate of occupancy for a building or approval to occupy a building on a temporary basis without a certificate of occupancy and disagrees with the decision of the relevant authority may appeal. This appeal may be:

- against the refusal to issue a certificate of occupancy for a part or all of a building
- to obtain approval for temporary occupation of a building.

If an applicant disagrees with the decision of the relevant authority, they may lodge an appeal with the court within 28 days from the day on which they were notified of the decision. The court may allow additional time for the lodgment of appeals.

Completion of work appeal - Section 56

Where a person has received a development approval and has legally commenced but not fully completed the work related to the approval within the prescribed time period, the relevant authority may, by notice, require the outstanding work to be completed. A person who receives such a notice may appeal against either:

- the requirement to carry out specific work in order to fully complete the development
- the time period specified by the relevant authority in which the work is to be carried out.

If an applicant disagrees with the notice issued by the relevant authority they may lodge an appeal with the court within 14 days from the day on which the relevant authority issued the notice. The court may allow additional time for the lodgment of appeals.

Contravening development appeal (Civil Enforcement) -

Section 84

Where a person:

- undertakes work on a development in breach of a condition or conditions of the development approval
- undertakes work on a development in breach of the approved plans and specifications
- undertakes development without approval

the relevant authority may, by notice, require the person to take any action necessary to correct the breach.

A person who receives such a notice may lodge an appeal with the court within 14 days from the day on which the relevant authority issued the notice. The court may allow additional time for the lodgment of appeals.

Emergency order appeals - Section 69

Where the owner of a building has received notice of an emergency order from a relevant authority to do one or more of the following things:

- evacuate the building or land
- carry out building or other work
- not carry out a specific activity or to cease a specific activity

the owner may appeal to the court against the requirements of the order. An appeal must be lodged with the court within 14 days from the day on which the notice was issued. The Court may allow additional time for the lodgment of appeals.

LODGING APPEALS

Section 86

There is no standard form for a notice of appeal. It may be in the form of an ordinary letter or may be a detailed and formal legally–worded statement. The rules of the court set out other details in relation to procedures.

A notice of appeal is to state, as briefly as practicable, a statement of matters leading up to the appeal, the grounds for the appeal and the detailed location of the land affected. The notice of appeal must be signed by the applicant(s) for approval or consent or, in the case of third parties, by the objector, an attorney under power or a solicitor or other representative. In the case of a company or incorporated body, the common seal must be affixed.

Further and better particulars

After lodging the notice of appeal, the person appealing may ask the court to direct the relevant authority (the council or DAC) to supply more information on the reasons for its decision. The court may also, on the request of the relevant authority, direct the appellant to give further details of the grounds for appeal. Further information or detail, whether given by the relevant authority or by the appellant, is not used to confine that party's case before the court. Its purpose is to enable all parties to be fully informed.

Representation of parties

Appellants are entitled to representation by a lawyer or any other person they may nominate. It is not uncommon for appellants to conduct their own cases. Lawyers usually represent a relevant authority, but it is not unusual for their staff to conduct a case.

COMPULSORY CONFERENCE

Section 16 ERD Court Act

A conference of the parties is held under the chairmanship of a member of the court. Its purpose is to try and resolve the outstanding differences between the parties other than through the formal hearing of any proceedings.

The member of the court may dispense with this conference if they consider no useful purpose will be served by holding it or if they consider that some other reason justifies not holding a conference. However, even if no compromise is likely a conference can be useful to clarify the issues and establish an understanding on the conduct of the subsequent appeal hearing.

Any compromise or settlement agreed on behalf of a party through counsel or other representative at a conference shall be binding on the party represented. The member of the Court may, without further inquiry, make any determination or order necessary to give effect to any such compromise or settlement. Subject to the above, anything said or done during the proceedings of a conference is inadmissible to the proceedings of the court except by consent of all parties. The chair of a conference may also give a judgment at a conference (with costs) where a party delays or obstructs a conference.

BUILDING REFEREES

Section 87 of the ERD Court Act

Section 87 provides that a building dispute may be referred directly to a building referee for resolution. Such a referee can hear the matter, inspect the site where relevant, and issue appropriate orders. Such an order will take the place of a hearing and will be binding on the parties.

HEARINGS

Sections 21 and 23 ERD Court Act

In its proceedings, the court is not bound by the formal 'Rules of Evidence' that apply to a court. It may inform itself as it sees fit. In the hearing of proceedings, the court is required to act according to equity, good conscience and the substantial merits of the case. The court may confirm, vary or reverse any decision subject to appeal and may make any order or direction it considers necessary.

For the purpose of its proceedings, the court may

(1) summon the attendance of any person before the court or to a conference

(2) require the production of any relevant documents

(3) take evidence on oath or affirmation.

Any person who fails to comply with the directions of the court in such matters, or who misbehaves willfully, insults the court or interrupts proceedings shall be guilty of an offence and liable to a penalty.

Although it is not bound, the court usually adopts the following order of proceedings at an appeal:

1. Various letters, applications, documents and plans which have passed between other parties and the relevant authority during the administrative consideration of the appellant's application are tendered, usually in an order and manner previously agreed upon by the parties.
2. The appellant, or their representative, makes a short statement outlining their case and calls any witnesses. They are examined, cross–examined and re–examined in a manner similar to the course in which evidence is taken in courts. Evidence is taken on oath or affirmation. If a witness overlooks something that is relevant, they are allowed to bring it forward at a later stage. After re–examination, the members of the court ask the witness any questions not previously covered in their evidence which the members think may be relevant. The parties are then given an opportunity to ask any further questions that may have arisen from questions put to the witness by the members of the court.
3. The relevant authority's opening address is then taken. Subsequently, its witnesses are questioned in the same manner as the appellant's witnesses.
4. If there are other parties involved, their witnesses are then heard and questioned in the same manner.
5. Each of the parties may make a final address, with the appellant making the closing speech.

View or inspection - Section 20 and 24 ERD Court Act

The Court usually places great importance on a view or inspection of the site proposed for the development under consideration and the locality around the site.

The court may use a view to give its members a better understanding of the matter in dispute and the opportunity to form an opinion. It is usually left to the parties to establish an appropriate time for a view. The court proceeds on a view only after inviting the parties to accompany it. In practice, counsel, other representatives and sometimes witnesses usually go with it. On occasions sworn evidence is taken on site.

Any person who obstructs the court in the carrying out a view or inspection has committed an offence and is subject to a penalty.

All hearings of the court are to be in public, unless the court directs that a hearing or part of a hearing should take place in chambers. The court may give directions to restrict publication of evidence or documents before it or to exclude a person from the hearing.

Other parties - Section 17 ERD Court Act

The court may join a third party as a party to any proceedings before the court. In addition, a Minister may intervene in an appeal if it is considered to be a matter of public importance. This means the Minister may appear before the court and make statements. The court is then required to have regard to the Minister's comments when making its decision.

DECISION

After all the enquiries have been completed, the court considers its decision. When the decision is reached, it is made known at a public hearing. Where there is a dissenting or varying opinion by a member of the court, it is published separately.

If, having considered the evidence, the court comes to a preliminary conclusion that the appeal should be allowed but, subject to the imposition of conditions, the court publicly announces its view and invites the parties to consider the respective conditions and to bring forward any views on them prior to the final decision.

Costs - Section 29 ERD Court Act

The court may make an order for costs against any party if it considers that any proceedings are frivolous, vexatious or instituted for the purpose of delay or obstruction.

Amendment of proposals and curing irregularities

Where a person initiates proceedings to the court, and it appears to the court that there has been a minor procedural omission affecting the proceedings or the decision against which the proceedings are brought and that it would be in the interests of justice, the court may direct that the omission be cured and not taken account of.

Where a person initiates proceedings, and it appears to the court that the proceedings could be resolved in a manner fair to all parties if modifications were

made to the application or proposal originally put to a relevant authority and that it would be in the interests of justice if there were such modifications, the court may amend the application or proposal accordingly.

FURTHER APPEAL

Sections 30 and 31 ERD Court Act

A party to proceedings before the court may appeal to the Supreme Court, constituted of a single judge, in the case of:

- a decision or order made by the court (except for when it is comprised as a full bench)
- a decision or order made by a magistrate
- a decision or order made by a Master or a Registrar
- an interlocutory order made by the Court.

In any other case an appeal may be made to the full court of the Supreme Court.

ENFORCEMENT

CONTRAVENING DEVELOPMENT

Control of development

The Development Act provides that development must not be undertaken without the relevant development approval. Moreover, a person or body must comply with any condition attached to a development approval or a Land Management Agreement.

The Act provides powers for enforcement proceedings against any person or body for a contravention of the Act. A relevant authority or any person may, as a result, take action if:

(1) development is undertaken without a valid development approval

(2) development is undertaken contrary to conditions under which a development approval has been issued

(3) development is legally commenced but not substantially completed within the prescribed time period for the lapse of the development approval

(4) development has been substantially but not fully completed within the prescribed time period for the lapse of the development approval.

The Act also provides that proceedings may be undertaken against development that continues contrary to the repealed Planning Act. In addition, the Act provides the Governor with similar powers of enforcement for development undertaken without any relevant approval from the Governor, or contrary to conditions imposed by the Governor.

Proceedings - Part II of the Act and Section 55

The Act provides for an integrated system for the hearing of appeals and matters of enforcement within the jurisdiction of the Environment Resources and Development Court.

The types of proceedings provided by the Act can be separated into two distinct groups:

(1) incomplete development

(2) unauthorised development.

INCOMPLETE DEVELOPMENT

Sections 55 and 56

The problem

When a person or body contravenes the Development Act by commencing work in accordance with a development approval but fails to substantially complete that development within the prescribed time for the lapse of the development approval, the relevant authority may apply to the court for an order. In this case the relevant authority will be the council or DAC, but where the Governor has approved the development the relevant authority includes the Minister.

In the event that the work has been substantially but not fully completed within the prescribed time for the lapse of the development approval, the relevant authority can, by written notice, require the owner of the land to complete the development within a specified time. If the owner fails to carry out the work as required by the notice the relevant authority can arrange for it to be done. It can also recover any costs and expenses reasonably incurred as a debt due from the owner.

A person who is served with such a notice by a relevant authority can appeal to the court, as previously described in Completion of work appeal on page 69.

Application

Where the relevant authority for the order lodges an application, the Court is required to give those persons who have an interest in the matter a reasonable opportunity to be heard at the hearing of the application by the relevant authority. Such persons may include:

- the applicant
- any owner or occupier of the land
- any other person who is able to satisfy the Court they have a material interest in the proceedings.

The order

If, after the hearing, the court is satisfied that there has been a contravention of the Act, it may issue an order. This order is a direction of the court to the respondent and may:

- require the respondent to remove or demolish any building
- require the respondent to remove all structures and restore the land, as far as is practicable, to its condition before commencement of the development
- extend the period within which the development may be completed
- require any other work considered appropriate to the application.

Penalties

Any person who fails to comply with such an order is guilty of an offence with a maximum penalty of a division four fine (the court may also impose an additional penalty for default).

In addition, the relevant authority may, with approval from the court, carry out any works required by an order and recover the costs of the works as a debt from the respondent.

UNAUTHORISED DEVELOPMENT

Sections 84 and 85

The Problem

When a person or body contravenes, or threatens to contravene, the Development Act or the repealed Planning Act, the relevant authority or any other person can take action to try to remedy or restrain a breach.

The relevant authority is empowered to direct a person to refrain from the act or course of action that constitutes the breach or to make good any breach. Such directions can be made by the relevant authority in the form of a written notice or, if the direction is required to be given urgently, orally by an authorised officer. In the latter situation, the oral direction must be confirmed in writing by 5pm on the following business day. The relevant authority can only give a direction if the breach has occurred within the previous 12 months.

The relevant authority can specify in the direction a time period for restraint or for remedying the breach.

A person can appeal to the court against such a direction made by a relevant authority. The procedure for the appeal is described in Contravening development appeal on page 69. Not withstanding an appeal, a direction remains operative pending the outcome of the appeal.

A person or body who wishes to remedy or restrain a breach of the Development Act or the repealed Planning Act can apply to the court for an order. The procedures for the application are described below.

Application

The application for an order may be made ‘ex parte’. This means the court can hear the application without the presence of the person alleged to have committed the contravention (that person is called the respondent). If the court decides there is a case to answer, it will summon the person to appear and present reasons as to why the order should not be made.

The court must first convene a conference between the applicant and the respondent and any other person who it decides has a proper interest in the matter to explore any possible resolution of the conflict.

Following the conference, the court may decide to issue an order or allow the respondent to make an application for development approval in order to remedy the breach.

The order, which is a direction of the court, may:

orequire the respondent to refrain, either temporarily or permanently, from continuing the breach

- require the respondent to make good the breach within a specific period
- cancel or vary any development approval
- require the respondent to pay compensation to any person who has suffered as a result of the breach
- require the respondent to pay exemplary damages.

The court may make an interim order.

Timing

Proceedings may be commenced at any time within three years of the date of the alleged contravention or at any later time with the agreement of the Attorney–General.

FINES AND COSTS

Where a council initiates offence proceedings and the Crown is not a party, all fines imposed on a person who is found guilty are paid to the council. Fines arising from proceedings initiated by DAC are paid to the Treasurer of the State and form part of the general revenue of the State.

In addition, the court has the power to award costs to a person or body incurring expense as part of proceedings when the court considers it warranted. The relevant authority may therefore receive payment for its expenses in taking action.

DEVELOPMENT ASSESSMENT PERFORMANCE

Section 45A of the Act enables the Minister to appoint an investigator to look at the assessment performance of a relevant authority. This section could apply to a council, a regional panel or the Development Assessment Commission. It generally could be involved if the Minister has reason to believe the authority is failing in a substantial way in the exercise of it assessment responsibilities under the Act.

If the Minister appoints an investigator, that person or persons then seek required information and report to the Minister with any recommended actions.

The Minister may then provide advice or directions to the relevant authority. If the Minister considers that the authority does not act on the advice within a reasonable time, the Minister may give mandatory directions.

These powers are in addition to any exercisable under the Local Government Act.

GLOSSARY OF TERMS

CH	Commissioner of Highways
CPB	Coast Protection Board
DAC	Development Assessment Commission
EIS	Environmental Impact Statement
ERD Court	Environment Resources and Development Court
ETSA	Electricity Trust of South Australia
FAC	Federal Airports Corporation
LTO	Land Titles Office
PBR consent /PBRC	Provisional Building Rules Consent
PDP consent /PDPC	Provisional Development Plan Consent