



DRAFT FOR CONSULTATION - 14/1/19

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

Introduction

Section 42 of the *Planning, Development and Infrastructure Act 2016* allows the State Planning Commission (the “Commission”) to issue practice directions for the purposes of the Act. Generally, practice directions specify procedural requirements or steps in connection with a matter arising under the Act. In certain cases, the Act requires a particular matter to be addressed or dealt with by a practice direction.

This practice direction is being made by the Commission to support the operation of section 127 of the Act, which specifies that a decision under Part 7 of the Act is subject to such conditions (if any) as a relevant authority thinks fit to impose in relation to the development, or as may be specified by any practice direction or otherwise imposed under another provisions of the Act.

Practice direction

Part 1 – Preliminary

1 – Citation

This practice direction may be cited as the State Planning Commission Practice Direction (Conditions) 2019.

2 – Commencement of operation

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

3 – Object of practice direction

The object of this practice direction is –

- (a) to provide clear direction as to the type of conditions that may be validly imposed by a relevant authority pursuant to section 127 (1)(b) and (2)(a) of the Act, including prohibiting certain conditions or classes of condition; and
- (b) to specify conditions that must be imposed on the granting of a development authorisation for certain classes of development.

4 – Interpretation

In this practice direction, unless the contrary intention appears –

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

Note: Section 14 of the Acts Interpretation Act 1915 provides that an expression used in an instrument made under an Act has, unless the contrary intention appears, the same meaning as in the Act under which the instrument was made.

Part 2 – Conditions

5 – Conditions a relevant authority thinks fit to impose

- (1) If a development authorisation is granted by a relevant authority, conditions may be imposed as the relevant authority thinks fit under section 127(1)(a) of the Act.
- (2) Under section 127(2)(a) of the Act, any condition imposed by the relevant authority must be consistent with this practice direction.
- (3) In accordance with section 127 of the Act, the relevant authority may, for example, approve a development subject to a condition:
 - (a) that regulates or restricts the use of any land or building subject to development; or
 - (b) that provides for the management, preservation or conservation of any land or building subject to development; or
 - (c) that regulates maintenance of any land or building subject to development; or
 - (d) if the applicant is seeking approval for temporary development – that provides that, at a future time specified in the condition –
 - (i) the previous use of the land will revive, or a use of the land will cease;
 - (ii) any person who has the benefit of the development will restore the land to the state in which it existed immediately before the development.
- (4) A condition imposed on a development authorisation must—
 - (a) **Be final**

Except where it is deferred to a later consent, 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 119(3) of the Act provides that further information can be sought, and a final decision made with complete details of the proposal.
 - (b) **Relate to the 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.
 - (c) **Have Planning purpose**

A condition must be for a purpose envisaged by the Act. Conditions that do not seek to attain relevant objectives set out in the Code may be invalid. Conditions must be reasonably required in relation to the development or the use of land as a consequence of the development.
 - (d) **Be fair and reasonable**

Conditions must be fair and applied in a reasonable manner. Conditions that are unduly onerous or require actions beyond the power of the developer may be invalid.

- (e) **Provide certainty and clarity**
A condition must be clear and definite. Vague and uncertain conditions may have no effect or may be unenforceable.
- (5) A condition imposed on a development authorisation may—
- (a) limit how long—
 - (i) a lawful use may continue; or
 - (ii) works may remain in place; or
 - (b) state that development must not start until—
 - (i) other development permits for development on the same land have been given; or
 - (ii) other development on the same land, including development that the development application does not cover, has been substantially started or completed; or
 - (c) require compliance with an infrastructure agreement for the land; or
 - (d) require development, or a part of development, to be completed within a stated period; or
 - (e) require the payment of a deed under an agreement to support a requirement under paragraph (d); or
 - (f) provide that a proposed development assessed as deemed-to-satisfy except for 1 or more minor variations will be undertaken so as to address any minor variation in order to make it consistent with the deemed-to-satisfy requirement.
- (6) A development condition must not—
- (a) require a person other than the applicant to carry out works for the development; or
 - (b) require a person to enter into an infrastructure agreement; or
 - (c) other than in relation to an offset scheme established under the Act or regulations, require a monetary payment for the establishment, operating or maintenance costs of, works to be carried out for, or land to be used for—
 - (i) infrastructure; or
 - (ii) for the imposition of a condition by a State infrastructure provider—infrastructure or works to protect the operation of the infrastructure; or
 - (d) require an access restriction strip; or
 - (e) limit the period a development approval has effect for a use or works forming part of a network of infrastructure, other than State-owned or State-controlled transport infrastructure; or
 - (f) fetter statutory powers by binding future decisions of a relevant authority, nor can it fetter the discretion of an authority under any other legislation.
 - (g) require the payment of money by requiring a cash contribution to public works (except where the works can directly and solely be attributed to the development proposal, and it is clear the cash will be directly applied to address a planning purpose).
 - (h) require substantial variation by altering the fundamental nature of an application (if an application as lodged does not fundamentally comply with the Code, refusal of the application may be a more appropriate determination than attempting to address the fundamental discrepancy via condition); or
 - (i) require 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 Act).

- (7) A development condition must not be inconsistent with a development condition of an earlier development approval in effect for the development, unless—
- (a) the same person imposes the conditions; and
 - (b) the applicant agrees in writing to the later condition applying; and
 - (c) if the applicant is not the owner of the premises when the later development application is made—the owner agrees in writing to the later condition applying.
- (8) A development condition that complies with subclause (7) will apply instead of the earlier condition.
- (9) A condition attached to a deemed-to-satisfy development application must relate only to the subject matter of the application and cannot go beyond the scope of what is being approved.

6 – Conditions specified by practice direction

- (1) Column 2 of the following table specifies conditions which must be imposed on a development authorisation issued by a relevant authority if a development incorporates the class of development specified in Column 1.

Class of development	Condition	Note
If a development authorisation provides for the killing, destruction or removal of a regulated tree or a significant tree	The prescribed number of trees must be planted and maintained to replace the regulated/significant tree. The tree planted must satisfy any criteria prescribed by the regulations OR [if so determined by the relevant authority upon application of the applicant] A payment of an amount calculated in accordance with the regulations by made into the relevant fund in lieu of planting 1 or more replacement trees.	The relevant authority may, on the application of the applicant, determine that a payment of an amount calculated in accordance with the regulations be made into the relevant fund in lieu of planting 1 or more replacement trees (and the condition requirements will then be adjusted accordingly).
Division of land in an Environment and Food Production Area	The additional allotments created will not be used for residential development.	Refer to section 7 of the Act

Class of development	Condition	Note
If the Commissioner of Police determines that a proposed development involves the creation of fortification, but does not consist <u>only</u> of the creation of fortifications and the relevant authority resolves to grant consent or approval to the proposed development	The creation of fortifications is prohibited.	Refer to section 124 of the Act
Any application involving essential infrastructure of a prescribed class or Crown development	Before any building work is undertaken, the building work must be certified by a building certifier, or by some person determined by the Minister, as complying with the provisions of the Building Rules to the extent that is appropriate.	Refer to Section 130(20) or 131(21) of the Act

Note: To the extent that section 127 of the Planning, Development and Infrastructure Act 2016 applies as if it formed part of the repealed Act (being the Development Act 1993) –

- (a) a reference in this clause to a relevant authority will be taken to be a reference to a relevant authority under the repealed Act; and*
- (b) a reference in this clause to a development approval will be taken to be a reference to a development approval under the repealed Act.*