



## Introduction

This practice direction is issued by the State Planning Commission (“the Commission”) under sections 42(1) and 127 of the *Planning, Development and Infrastructure Act 2016* (“the Act”).

## Practice direction

### Part 1 – Preliminary

#### 1 – Citation

This practice direction may be cited as the *State Planning Commission Practice Direction 12 (Conditions) 2020*.

#### 2 – Commencement of operation

This practice direction came into operation on 31 July 2020.

Version 4 of this practice direction commences operation on 1 July 2024.

#### 3 – Object of practice direction

The object of this practice direction is –

- (a) to specify conditions that may be 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*.

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

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

## **Part 2 – Conditions**

### **4 – 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.

### **5 – Conditions specified by practice direction**

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.

<b>Column 1: Class of development</b>	<b>Column 2: Condition</b>	<b>Note</b>
Where the application is for or includes the killing, destruction or removal of a regulated or significant tree	<p>Either:</p> <p>a. Replacement trees must be planted within 12 months of completion of the development at the following rates:</p> <p>i. if the development relates to a regulated tree—2 trees to replace a regulated tree; or</p> <p>ii. if the development relates to a significant tree—3 trees to replace a significant tree.</p> <p>Replacement trees cannot be within a species specified under regulation 3F(4)(b) of the Planning, Development and Infrastructure (General) Regulations 2017, and cannot be planted within 3 metres of an existing dwelling or in-ground swimming pool; or</p> <p>b. Payment of an amount calculated in accordance with the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019 be made into the relevant urban trees fund (or if an urban trees fund has not been established for the area where the relevant tree is situated, or the relevant authority is the Commission or an assessment panel appointment by the Minister or a joint planning board, the Planning and Development Fund) in lieu of planting 1 or more replacement trees. Payment must be made prior to the undertaking of development on the land.</p>	The relevant authority may, on the application of the applicant, determine that a payment of an amount calculated in accordance with the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019 be made into the relevant fund in lieu of planting 1 or more replacement trees (in which case condition (b) will apply).
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

<b>Column 1: Class of development</b>	<b>Column 2: Condition</b>	<b>Note</b>
Where 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
Where the application is for or includes a new dwelling in an area subject to the Urban Tree Canopy Overlay in the Planning and Design Code	<p>Either:</p> <ul style="list-style-type: none"> <li>a. Tree(s) must be planted and/or retained in accordance with DTS/DPF 1.1 of the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). New trees must be planted within 12 months of occupation of the dwelling(s) and maintained.</li> <li>b. Where provided for by any relevant off-set scheme established under section 197 of the <i>Planning, Development and Infrastructure Act 2016</i> (as at the date of lodgement of the application), payment of an amount calculated in accordance with the off-set scheme may be made in lieu of planting/retaining 1 or more trees as set out in the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). Payment must be made prior to the issue of development approval.</li> </ul>	

<b>Column 1: Class of development</b>	<b>Column 2: Condition</b>	<b>Note</b>
Where the application includes rainwater tank(s) to be installed in accordance with DTS/DPF 1.1 of the Stormwater Management Overlay in the Planning and Design Code	Rainwater tank(s) must be installed in accordance with DTS/DPF 1.1 of the Stormwater Management Overlay in the Planning and Design Code (as at the date of lodgement of the application) within 12 months of occupation of the dwelling(s).	
Where the application involves the division of land under the <i>Community Titles Act 1996</i> and it creates more than six community lots when all stages of the development are complete (including the subsequent division of development lots under the <i>Community Titles Act 1996</i> , if applicable).	Council must confirm that either the common driveway (including all access points to and from the common driveway) has been constructed or that evidence of appropriate security for the construction of the common driveway has been provided before the State Planning Commission issues its land division certificate under section 138 of the <i>Planning, Development and Infrastructure Act 2016</i> .	

## 6 – Conditions or classes of conditions prohibited by section 127 of the Act

A development condition must not do any one or more of the following —

- (a) require a person or body not related to the subject development authorisation to carry out works for the development; or
- (b) require further approval (whether a development authorisation or under other legislation) to enable the condition to be met unless the condition relates to a matter reserved for further consideration; or
- (c) require a person to enter into an infrastructure agreement; or
- (d) require the payment of a monetary contribution towards public works (including the establishment, operating or maintenance costs of public infrastructure, works to be carried out for public infrastructure or land to be used for public infrastructure), unless:
  - (i) the payment or contribution relates to an offset scheme established under the Act or Regulations, or a carparking fund established under the *Development Act 1993*; or
  - (ii) the payment or contribution relates to an obligation imposed under an Infrastructure Agreement; or

- (iii) the works can be directly attributed to or are required as a result of the development proposal and the monetary contribution will be applied to the relevant works; or
- (e) require an access restriction strip; or
- (f) 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
- (g) fetter statutory powers by binding future decisions of a relevant authority, nor can it fetter the discretion of an authority under any other legislation; or
- (h) require substantial variation by altering the fundamental nature of an application<sup>1</sup>; or
- (i) relate to any other subject matter other than the subject matter of the application; or
- (j) go beyond the scope of what is being approved; or
- (k) be unduly onerous; or
- (l) be vague and uncertain; or
- (m) be for a purpose other than a purpose envisaged by the Act; or
- (n) prevent the leasing, renting or occupation of ancillary accommodation; or
- (o) restrict the occupation of ancillary accommodation (including by restricting occupation to family members of those residing in the primary dwelling).

### **Issued by the State Planning Commission on 18 February 2021**

Note: This practice direction commences operation in accordance with clause 2 'Commencement of operation'

Version 4: Commences operation on 1 July 2024

Version 3: Commences operation on 13 October 2023

Version 2: Commences operation on 19 March 2021

Version 1: Commenced operation on 31 July 2020

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<sup>1</sup> Where an application as lodged does not comply with the Code, refusal of the application may be a more appropriate determination than attempting to address any fundamental discrepancy via condition.