

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

Introduction

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

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

In this case, this practice direction is made by the Commission to support the operation of:

- Part 7, Division 2, Subdivision 3 of the Act (Code assessed development), and specifically section 106(2) of the Act, in relation to a minor variation to development being deemed-to-satisfy development; and
- Part 7 Division 6 of the Act (Variation of authorisation), and specifically section 128(2)(b) of the Act and regulation 65(1) of the *Planning, Development and Infrastructure (General) Regulations 2017* (the Regulations), in relation to a minor variation to a planning consent.

This practice direction specifies steps that must be taken by a relevant authority for the purposes of these provisions of the Act and the Regulations.

Additional context

The following provides additional context on the operation of the Act, Regulations and Planning and Design Code (the Code) which is of relevance to the matters outlined in this practice direction:

- (1) An Accredited professional planning level 3 or planning level 4 is only able to act as the relevant authority for the assessment of deemed-to-satisfy development (with only an Accredited professional planning level 3 being able to act where there may be 1 or more minor variations under section 106(2) of the Act).
- (2) An application for planning consent for performance assessed development is subject to public notification under section 107 of the Act, unless excluded by the Code.
- (3) In some situations (typically in relation to heights of buildings), the Code notification exclusions reference deemed-to-satisfy criteria (operating as designated performance features) which trigger notification if they are not satisfied.
- (4) Section 122 of the Act, Schedule 9 of the Regulations and the Code together set out the requirement to undertake referrals to prescribed bodies for certain classes of proposed developments. In some situations, the Code excludes the requirement to undertake referrals.

- (5) Only the relevant authority has the authority to make a determination referred to in subclause (2), (3) or (4) above for a performance assessed application for planning consent, including in the case of an application for the variation of a development authorisation.
- (6) In accordance with section 53(5) of the Regulations, where a council is acting as the relevant authority for the purpose of granting the final development approval under the Act and the council has received notice that all relevant consents have been granted under Part 7 of the Act (and none of those consents have lapsed), the council must, within 5 business days -
 - (a) if the consents are consistent – grant the final development approval; or
 - (b) if 2 or more consents are inconsistent – take reasonable steps to inform the applicant of the inconsistency.

Practice direction

Part 1 – Preliminary

1 – Citation

This practice direction may be cited as the State Planning Commission Practice Direction 19 Minor Variations 2024.

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 to specify:

- (1) matters to be considered by a relevant authority when it is determining whether a variation is:
 - (a) a minor variation from any Deemed-to-Satisfy criteria in the Code; or
 - (b) minor in nature for the purposes of section 128(2)(b) of the Act and regulation 65(1) of the Regulations; and
- (2) how a relevant authority must document a decision that a variation is minor.

4 – Interpretation

In this practice direction, unless the contrary intention appears –

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

Adjacent land in relation to other land, means land that is no more than 60 metres from the other land.

Code means the Planning and Design Code.

Contextually important means of importance when considering the characteristics of the variation and its relationship with the context of the site and adjacent land.

DTS criteria means the Deemed-to-Satisfy Criteria in the Code.

DTS development application means an application for planning consent that is to be assessed under section 106 of the Act (including after taking into account the operation of section 106(2)).

Insignificant means unimportant or trifling.

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

Site means the same as in Part 8 – Administrative Terms and Definitions in the Code.

Variation means either a departure from a DTS criteria, or a variation to a previously authorised planning consent, as the circumstance requires under Part 2 - Clause 6 or 7 of this practice direction.

Notes:

Section 10 of the Legislation Interpretation Act 2021 provides that every word in the singular will be construed as including the plural. This law applies to this practice direction.

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.

5 – Requirement to consider practice direction when acting under relevant provisions

- (1) Pursuant to section 42(2) of the Act, a relevant authority is required, in acting under section 106(2), or, subject to subclause (2), in acting under section 128(2)(b) and regulation 65(1), to consider the provisions and principles set out in Part 2.
- (2) Sub-clause (1) does not apply in relation to a proposed variation to a planning consent that provides for the division of land into more than 20 allotments, including a combined application for related ancillary development such as earthworks, retaining walls or other similar works fundamentally associated with the division of land.

Note – For the avoidance of doubt, the relevant authority may still determine the variation to be minor in nature and apply the procedural steps under regulation 65(1).

Part 2 - Principles for determining a minor variation

6 – Minor variation to DTS criteria

- (1) Subject to subclause (4), a relevant authority may consider that a variation (or multiple variations) to any DTS criteria that is relevant to a DTS development application constitutes a minor variation under section 106(2) of the Act if it is satisfied that:
 - (a) the extent (if any) to which the variation departs from a measurable feature of the DTS criteria is insignificant; and

- (b) the extent (if any) to which the variation will impact adjacent land is insignificant; and
 - (c) the effect of the variation will not be contextually important.
- (2) If a variation results in a departure from another DTS criteria, then that departure also constitutes a variation which must meet the criteria under Part 2 Clause (6)(1) to be considered a minor variation.
- (3) A relevant authority may consider more than one variation to DTS criteria, however each variation must meet the criteria under Part 2 Clause (6)(1) to be considered a minor variation.
- (4) A variation to DTS criteria cannot be considered to constitute a minor variation under this clause if the variation:
- (a) relates to any DTS criteria where:
 - i. the criteria is applied as a Designated Performance Feature and listed (or is in some other way connected to, repeated, or reflected) in Column B of Table 5 – Procedural Matters (PM) – Notification in the relevant Zone in the Code; and
 - ii. the failure to meet the criteria would trigger a requirement to undertake public notification (whether or not the relevant authority considers at this point that it would qualify for an exemption from notification by virtue of it being minor in nature); or
 - (b) relates to any DTS criteria where:
 - i. the criteria is listed (or is in some other way connected to, repeated, or reflected) within the Procedural Matters – Referrals in any Overlay that applies to the site of the development or that is included in Part 9 – Referrals in the Code; and
 - ii. failure to meet the criteria would require a referral to a referral body (whether or not the relevant authority considers at this point that it would qualify for an exclusion by virtue of item 1 in Column A of Table 5 in the relevant Zone in the Code).

7 – Minor variation to planning consent

Note – In accordance with Part 1 Clause 5(2) the following does not apply in relation to a proposed variation to a planning consent that provides for the division of land into more than 20 allotments.

- (1) Subject to subclause (4), a relevant authority may consider that a variation to a planning consent (including any variation of a condition of consent) is minor in nature as provided by section 128(2) of the Act and regulation 65(1) of the Regulations if it is satisfied that:
- (a) the variation is insignificant; and

- (b) the extent (if any) to which the variation will impact adjacent land is insignificant; and
 - (c) the effect of the variation will not be contextually important.
- (2) If a particular element or aspect of a planning consent which is sought to be varied has previously been varied (either under section 128(2)(b) of the Act or as a minor variation), the relevant authority must consider any subsequent variation under this Clause 7 in comparison to the original planning consent (prior to any variations).
- (3) In the case of multiple variations to a planning consent for different elements or aspects, whether occurring concurrently or via a series of variations over time (and either previously under section 128(2)(b) of the Act or as minor variations), the relevant authority must be satisfied that the cumulative effect of all variations when considered together is minor in nature in comparison to the original planning consent (prior to any variations).
- (4) A variation cannot be considered to be minor in nature under this clause if the variation:
- (a) would change the assessment pathway or essential nature of the proposed development if it were being processed as a variation of a development authorisation under section 128(2)(b) of the Act; or
 - (b) would require public notification under Column B of Table 5 – Procedural Matters (PM) – Notification in the relevant Zone in the Code if it were being processed as a variation of a development authorisation under section 128(2)(b) of the Act (whether or not the relevant authority considers it would qualify for an exemption from notification by virtue of it being minor in nature); or
 - (c) would require a referral to a referral body under the Procedural Matters – Referrals in any Overlay that applies to the site of the development or that is included in Part 9 – Referrals in the Code if it were being processed as a variation of a development authorisation under section 128(2)(b) of the Act (whether or not the relevant authority considers it would qualify for an exemption to a referral by virtue of it being minor in nature); or
 - (d) introduces a new element that requires planning consent; or
 - (e) relates to a condition of planning consent that was directed by a referral body, except where support in writing has been provided by that relevant referral body in relation to the proposed minor variation.

Part 3 – Making the determination

8 – Expediency

- (1) A relevant authority must make its determination under this practice direction as expeditiously as possible.

Part 4 - Documenting decision making for a minor variation

9 – Documentation

- (1) If a relevant authority determines that a variation to any DTS criteria constitutes a minor variation under section 106(2) of the Act, it must record the following on the SA planning portal for the relevant development application:
 - (a) a declaration that this practice direction has been considered in relation to the variation; and
 - (b) the specific DTS criteria to which the variation relates; and
 - (c) in relation to the application of this practice direction – a brief explanation as to why it is satisfied that:
 - i. the extent (if any) to which the variation departs from a measurable feature of the DTS criteria is insignificant; and
 - ii. the extent (if any) to which the variation will impact adjacent land is insignificant; and
 - iii. the effect of the variation will not be contextually important.
- (2) If a relevant authority determines a variation to a planning consent is minor in nature as provided by section 128(2)(b) of the Act and regulation 65(1) of the Regulations, it must record the following on the SA planning portal for the relevant development application:
 - (a) that the relevant planning consent is still operative; and
 - (b) a declaration that this practice direction has been considered in relation to the variation; and
 - (c) in relation to the application of this practice direction (except where it relates to a division of land into more than 20 allotments) – a brief explanation as to why it is satisfied that:
 - i. the variation is insignificant; and
 - ii. the extent (if any) to which the variation will impact adjacent land is insignificant; and
 - iii. the effect of the variation will not be contextually important.
 - (d) in relation to a determination that has been made on some other basis – a brief explanation as to the reasons why the relevant authority has determined that the proposed variation is minor in nature and does not contravene sub-clauses (2)(a), (b) and (c).

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