



Agenda Report for Decision

Meeting Date: 15 May 2025

Item Name	Amendments to State Planning Commission Practice Direction 12 (Conditions) 2020	
Presenters	Cassia Byrne & Hayley Pasut	
Purpose of Report	Decision	
Item Number	5.1	
Strategic Plan Reference	N/A	
Work Plan Reference	N/A	
Confidentiality	Not Confidential – Release Immediately	
Related Decisions	SPC Agenda Report – Item 5.4 – 5 October 2023 SPC Agenda Report – Item 4.2 – 1 February 2024 SPC Agenda Report - Item 4.1 – 20 June 2024	
Conflicts Declared	Nil	
Is the Report author aware of any potential undeclared conflict?		NO

Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately).
2. Approve *State Planning Commission Practice Direction 12 (Conditions) 2020* as amended at **Attachment 1** for publication on the SA planning portal.
3. Authorise the Chair to sign the draft Gazette Notice at **Attachment 2** to give notice of amendments to *State Planning Commission Practice Direction 12 (Conditions) 2020*.
4. Note the Department will arrange for the Gazette Notice to be published in the Government Gazette.
5. Authorise the Chair to sign the letter at **Attachment 3** to the Minister for Planning advising that amendments have been made to *State Planning Commission Practice Direction 12 (Conditions) 2020*.

Background

Section 127 of the *Planning, Development and Infrastructure Act 2016* (PDI Act) provides that in assessing developments, relevant authorities:

- must attach conditions to any approvals as specified by practice direction; and
- must not attach conditions that are inconsistent with any practice direction published by the Commission (and that practice direction may prohibit certain conditions or classes of conditions).

The Commission first issued *State Planning Commission Practice Direction 12 (Conditions) 2020* (Practice Direction 12) on 18 June 2020. It was most recently amended on 1 July 2024 as version 4.

The Minister for Planning (the Minister) has written to the Commission to request further amendments to Practice Direction 12 (**Appendix A**). The changes are in relation to prohibiting conditions that require any aspect of a Class 1a development, that is not relevant to the suitability of the building for occupation, to be completed prior to occupation.

Discussion

Certificate of Occupancy for Class 1a conditions

With the recent introduction of certificate of occupancy requirements for Class 1a (houses) developments, conditions applied to planning consent decisions that require items to be completed 'prior to occupancy' (where not relevant to the suitability for the building for occupation) introduce doubt as to whether the certificate ought to be issued. A certificate of occupancy is a document that confirms that the building is safe and suitable to be occupied, and that the building, as constructed, does not pose an immediate risk to the structural safety and safety of the occupants.

Section 152(3)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act) states that an application for a certificate of occupancy relating to a Class 1a building must be accompanied by the following information:

- a copy of a duly completed Statement of Compliance; and
- if the development has been approved subject to conditions, such evidence as the council may require to show that any conditions relevant to the suitability of the building for occupation have been satisfied.

Through discussions with the development industry and at the Minister's Liaison Group, it has been identified that there may be circumstances where relevant authorities apply conditions to planning consent that require aspects, such as landscaping, paving and works to council road reserve, to be completed 'prior to occupancy'.

Conditions that are not relevant to the suitability of the building for occupation should not be imposed in this way as to introduce doubt as to whether a Certificate of Occupancy ought to be issued, especially where the matters are not relevant to the suitability of the occupation of the building as contemplated by section 152 of the Act.

The Minister has request that an amendment be made to Practice Direction 12 to prohibit conditions that require any aspect of a Class 1a development, that is not relevant to the suitability of the building for occupation, to be completed prior to occupation.

This amendment to Practice Direction 12 will reduce confusion amongst the community in circumstances where a certificate of occupancy is issued, but there are conditions that otherwise prevent occupancy of a Class 1a dwelling.

Next Steps

Subject to the Commission's approval of amended Practice Direction 12, notice of the variation must be published in the Gazette pursuant to section 42(4)(b) of the PDI Act before the changes may take effect. Given this, it is recommended the draft Gazette Notice at **Attachment 2** be signed by the Chair of the Commission.

A letter to the Minister at **Attachment 3** advising that the Commission has made the requested amendments to Practice Direction 12 has also been prepared for the Commission's consideration.

It is anticipated that the Minister will advise stakeholders of the amendments to Practice Direction 12 when guidance material being prepared by the Department is also circulated by the Minister.

Attachments:

1. Revised Practice Direction 12 – Conditions (#23074402)
2. Gazette Notice – Practice Direction 12 - Conditions (#23074357)
3. Letter to the Minister for Planning (#23074747)

Appendices:

- A. Letter from the Minister for Planning – (#23056003)

Prepared by: Hayley Pasut

Endorsed by: Ben Sieben and Jane Trotter

Date: April 2025

Introduction¹

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 5 of this practice direction commences operation on 26 June 2025.

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.

Column 1: Class of development	Column 2: Condition	Note
Where the application is for or includes the killing, destruction or removal of a regulated or significant tree	<p>Either:</p> <ol style="list-style-type: none">a. Replacement trees must be planted within 12 months of completion of the development at the following rates:<ol style="list-style-type: none">i. if the development relates to a regulated tree—2 trees to replace a regulated tree; orii. if the development relates to a significant tree—3 trees to replace a significant tree. <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> <ol style="list-style-type: none">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).</p>

Column 1: Class of development	Column 2: Condition	Note
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
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"> 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. 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. 	

Column 1: Class of development	Column 2: Condition	Note
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 application¹; 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); or
- (p) restrict the occupation of a Class 1a dwelling, for matters not relevant to the suitability of the occupation of the building as contemplated by section 152 of the Act

Issued by the State Planning Commission

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

Version 5: Commences operation on 26 June 2025

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

¹ 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.

Infrastructure Type	Issues Identified	Potential Treatment	Indicative Timing/Priority
Essential Electrical Infrastructure	<ul style="list-style-type: none"> Existing 33kV overhead powerlines located within the proposed development site 33kv transformers located within proximity to the site Major upgrades required 	<ul style="list-style-type: none"> All 33KV Infrastructure will require upgrading to an 11KV network. A further 66V transmission line will be required to run parallel to the existing ElectraNet high voltage system together with two new substations to service the new 11/66KV system. An interim solution to convert part of the 33KV system to 11KV could achieve 1.8MVA for some interim capacity. 	High Priority Interim solution prior to occupation
Essential Gas Infrastructure	<ul style="list-style-type: none"> No existing gas infrastructure within the CGA. Will require future upgrades. 	<ul style="list-style-type: none"> The existing 280mm trunk main located at Carlton Road, Gawler East, be extended into the proposed subdivision. This extension can be progressively installed to service future residential development in the affected area. 	High Priority prior to occupation

PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016

SECTION 42

*Practice Directions**Preamble*

The State Planning Commission may issue a practice direction for the purposes of this Act.

A practice direction may specify procedural requirements or steps in connection with any matter arising under this Act.

A practice direction must be notified in the Gazette and published on the SA planning portal.

A practice direction may be varied or revoked by the State Planning Commission from time to time by a further instrument notified in the Gazette and published on the SA Planning Portal.

NOTICE

Pursuant to Section 42(4)(b) of the *Planning, Development and Infrastructure Act 2016*, I, Sally Smith, delegate of the State Planning Commission:

- vary *State Planning Commission Practice Direction 8—Council Swimming Pool Safety Inspections 2019*; and
- fix 1 July 2025 as the day on which the varied *State Planning Commission Practice Direction 8—Council Swimming Pool Safety Inspections 2019* will come into operation.

Dated: 17 June 2025

SALLY SMITH
Deputy Chief Executive
Delegate, State Planning Commission

PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016

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A practice direction must be notified in the Gazette and published on the SA Planning Portal.

A practice direction may be varied or revoked by the State Planning Commission from time to time by a further instrument notified in the Gazette and published on the SA Planning Portal.

NOTICE

Pursuant to Section 42(4)(b) of the *Planning, Development and Infrastructure Act 2016*, I, Craig Holden, Chair, State Planning Commission:

- vary *State Planning Commission Practice Direction 12 (Conditions) 2020*; and
- fix the day on which *State Planning Commission Practice Direction 12 (Conditions) 2020* is published on the SA Planning Portal as the day on which the varied practice direction will come into operation.

Dated: 16 May 2025

CRAIG HOLDEN
Chair, State Planning Commission

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16 May 2025

Hon Nick Champion MP
Minister for Planning

By email: officeofministerchampion@sa.gov.au

Dear Minister Champion

Amendments to State Planning Commission Practice Direction 12 (Conditions) 2020

I write in relation to your correspondence of 7 April 2025 regarding amendments to *State Planning Commission Practice Direction 12 (Conditions) 2020* (Practice Direction 12).

The State Planning Commission (Commission) agrees it is important to improve certainty and reduce confusion amongst the community around development conditions that impact the issuing of a certificate of occupancy.

I am pleased to advise that on 15 May 2025, the Commission approved amendments to Practice Direction 12 to achieve the following:

- prohibit conditions that restrict the occupation of a Class 1a dwelling for matters not relevant to the suitability of the occupation of the building as contemplated by section 152 of the Act.

I understand notice of the amendments to Practice Direction 12 will be published in the Government Gazette before the revised Practice Direction 12 is published on the SA planning portal and commences operation.

The Commission acknowledges the additional work related to the implementation of Certificates of Occupancy being progressed by Planning and Land Use Services within the Department for Housing and Urban Development (the Department).

In order to reduce correspondence to stakeholders on this matter, the Commission recommends that you send a letter to councils, private building certifiers and industry informing them of the changes to Practice Direction 12, along with the guidance material being prepared by the Department.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'C' followed by a long horizontal stroke that curves upwards at the end.

Craig Holden
Chair



25EXT0139

Mr Craig Holden
Chair
State Planning Commission

By email: saplanningcommission@sa.gov.au

Dear Mr Holden

With the recent introduction of certificate of occupancy requirements for Class 1a (houses) developments, there are concerns that conditions applied to planning consent decisions that require items to be completed 'prior to occupancy' (that may not be relevant to the suitability for the building for occupation) introduce doubt as to whether the certificate ought to be issued.

Section to 152(3)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act) states that an application for the issuing a certificate of occupancy relating to a Class 1a building must be accompanied by the following information:

- A copy of a duly completed Statement of Compliance; and
- If the development has been approved subject to conditions, such evidence as the council may require to show that any conditions relevant to the suitability of the building for occupation have been satisfied.

Through discussions with the development industry and at the Minister's Liaison Group, it has been identified that there may be circumstances where relevant authorities apply conditions to planning consent that require aspects such as landscaping, paving and works to council road reserve to be completed 'prior to occupancy'.

Conditions that are not relevant to the suitability of the building for occupation should not be imposed in this way as to introduce doubt as to whether a Certificate of Occupancy ought to be issued, especially where the matters are not relevant to the suitability of the occupation of the building as contemplated by section 152 of the Act.

I understand that Practice Direction 12 – Conditions 2020 issued by the State Planning Commission specifies conditions that are prohibited from being attached to development authorisations. As such, I request that an amendment be made to Practice Direction 12 to prohibit conditions that require any aspect of a Class 1a development, that is not relevant to the suitability of the building for occupation, to be completed prior to occupation.



OFFICIAL

This amendment to Practice Direction 12 will reduce confusion amongst the community in circumstances where a certificate of occupancy is issued, but there are conditions that otherwise prevent occupancy of a Class 1a dwelling.

I am advised that the Department for Housing and Urban Development will update guidance material and undertake further training of stakeholders to assist in a smooth transition to the issuing of Certificates of Occupancy.

I thank the Commission for progressing this important amendment.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nick Champion', with a stylized flourish extending to the right.

Hon Nick Champion MP
Minister for Planning

7 / 4 / 2025