



## **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 commences operation on the day the Phase Two (Rural Areas) Planning and Design Code Amendment comes into effect pursuant to section 73(12) of the *Planning, Development and Infrastructure Act 2016*.

#### **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.

*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**

#### **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 10 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 regulations 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

Column 1: Class of development	Column 2: Condition	Note
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

## 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
  - (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.

**Issued by the State Planning Commission on 18 June 2020**

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

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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.